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U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

2–12–07 Monday
Vol. 72 No. 28 Feb. 12, 2007

Pages 6433–6688

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Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0169]

Pine Shoot Beetle; Additions to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pine shoot beetle regulations by adding the entire State of Iowa and two counties, Morris and Somerset, in New Jersey to the list of quarantined areas. We are taking this action following the detection of pine shoot beetle in these areas. This action is necessary to prevent the spread of pine shoot beetle, a pest of pine trees, into noninfested areas of the United States.

DATES: This interim rule is effective February 12, 2007. We will consider all comments that we receive on or before April 13, 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–2006–0169 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–2006–0169, 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–2006–0169.

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: Mr. Weyman Fussell, Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–5705.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.50 through 301.50–10 (referred to below as the regulations) restrict the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of pine shoot beetle (PSB) into noninfested areas of the United States.

PSB is a pest of pine trees that can cause damage in weak and dying trees, where reproduction and immature stages of PSB occur. During ''shoot feeding,'' young beetles tunnel into the center of pine shoots (usually of the current year's growth), causing stunted and distorted growth in host trees. PSB is also a vector of several diseases of pine trees. Factors that may result in the establishment of PSB populations far from the location of the original host tree include: (1) Adults can fly at least 1 kilometer, and (2) infested trees and pine products are often transported long distances. This pest damages urban ornamental trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

PSB hosts include all pine species. The beetle has been found in a variety of pine species (*Pinus* spp.) in the United States. Scotch pine (*P. sylvestris*) is the preferred host of PSB. The Animal and Plant Health Inspection Service (APHIS) has determined, based on scientific data from European countries, that fir (*Abies* spp.,) larch (*Larix* spp.,) and spruce (*Picea* spp.) are not hosts of PSB.

Surveys conducted by State and Federal inspectors have revealed that areas in Iowa and New Jersey are infested with PSB. Copies of the surveys may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The regulations in § 301.50–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which PSB has been found by an inspector, in which the Administrator has reason to believe PSB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which PSB has been found. The regulations further provide that less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing a quarantine and regulations that impose restrictions on the intrastate movement of regulated articles that are equivalent to those imposed on the interstate movement of those articles; and (2) the designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of PSB.

In accordance with these criteria, we are designating the entire State of Iowa and two additional counties, Morris and Somerset, in New Jersey to the list of quarantined areas. Previously, two counties in Iowa (Dubuque and Scott) and five counties in New Jersey (Bergen, Hunterdon, Passaic, Sussex, and Warren) had been quarantined due to PSB. We took this action in an interim rule published in the **Federal Register** and effective on October 3, 2006 (71 FR 58243–58246, Docket No. APHIS–2006–0117). Since then, the Iowa Department of Agriculture has elected not to enforce an intrastate quarantine; it is, therefore, necessary to designate the entire State as a quarantined area. The New Jersey Department of Agriculture has elected to implement an intrastate quarantine; therefore, quarantined areas are listed at

the county level based on reports of the presence of PSB in individual counties.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent PSB from spreading to noninfested areas of the United States. 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 rule 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 amends the PSB regulations by adding the counties of Morris and Somerset in New Jersey and the entire State of Iowa to the list of quarantined areas.

Entities affected by this rule may include nurseries, Christmas tree farms, logging operations, moving companies and others who sell, process, or move regulated articles interstate from these areas. As a result of this rule, any regulated articles to be moved interstate from a quarantined area must first be inspected and/or treated in order to qualify for a certificate or limited permit. This action will help prevent the artificial spread of the pest to new areas, and consequently avoid economic damage to timber, nursery, and Christmas tree producers in areas that could become infested if no action were taken.

Certain pine products will not be allowed to be shipped during certain months of the year or will be required to undergo debarking before transport occurs. Enterprises such as Christmas tree farms, nurseries and greenhouses, sawmill and logging operations, and others in the newly designated PSB quarantined areas wishing to move regulated articles from these areas may be affected by compliance requirements; however, costs associated with issuance of certificates and limited permits are borne by the issuing agency.

APHIS has identified approximately 1,077 entities in Iowa and the two New Jersey counties we are designating as quarantined areas that sell, process, or move forest products and thus may be affected by this rule (table 1). Of these entities, there were approximately 747 that produced nursery and greenhouse crops, 303 Christmas tree farms, and at least 27 sawmills in 2002. In addition, an unknown number of sawmills and logging operations in the newly quarantined counties process pine tree products. According to information previously collected by APHIS, pine trees and pine tree products such as cut Christmas trees sold in these areas largely remain within the regulated areas. Nurseries and greenhouses specialize in production of deciduous landscape products rather than production of rooted pine Christmas trees and pine nursery stock. The latter products in general constitute a small part of their production, if they are produced at all. Therefore, the rule is not likely to affect most nurseries and greenhouses.

TABLE 1.—CHRISTMAS TREE FARMS, NURSERIES, SAWMILLS AND THEIR MARKET SALES

Quarantined areas	Number of Christmas tree farms	Market sales of Christmas tree farms ($1,000)	Nurseries & green-houses	Market sales of nurseries & greenhouses ($1,000)	Number of sawmills (NAICS code 321113)	Sales revenues [1] ($1,000)
Iowa	215	1,424	554	77,610	27	54,229
Morris and Somerset (NJ)	88	323	193	43,957	.....	.....
Total	303	1,747	747	121,567	27	54,229

[1] The number of sawmills is reported by State only and thus there are no numbers by county. In the case of New Jersey, there are no numbers by State, either. Source: 2002 Census Bureau. American FactFinder. Sector 00: All sectors: Geographic Area Series: Economy Wide Key Statistics (*http://factfinder.census.gov*).

The Small Business Administration (SBA) has established size standards to determine when an entity is considered small. Nursery stock growers may be considered small when they have annual sales of $750,000 or less, and Christmas tree growers may be considered small when they have annual sales of $5 million or less.

The 2002 Agricultural Census does not report sales by entity size. However, from previously gathered information, APHIS expects that the majority of these entities are small by the SBA size standards.

Regulated articles from quarantined areas may be moved interstate if accompanied by a certificate or limited permit. A certificate for interstate movement of regulated articles from quarantined areas is issued by an inspector after it is determined that the regulated articles are not infested with PSB and do not present a risk of spreading PSB to other areas. A limited permit is issued by an inspector for the interstate movement of regulated articles from quarantined areas when they are to be moved to a specified destination for processing, handling, or utilization and the movement will not result in the spread of PSB. Regulated articles must have the name of the consignor and consignee, as well as the certificate or limited permit, attached during all segments of interstate movement.

A request for a certificate or a limited permit must be made at least 48 hours prior to transporting the regulated articles interstate. The cost for this service falls upon the issuing agency, and not the person/business entity requesting the certificate/limited permit.

In summary, this rule designates newly quarantined areas for PSB. APHIS has identified approximately 747 nursery and greenhouse farms, 303 cut Christmas tree farms, at least 27 sawmills and an unknown number of logging operations, in the newly quarantined two counties in New Jersey and the whole state of Iowa. As noted previously, the movement of cut Christmas pine trees and pine tree products by these establishments is generally within the regulated counties and States. Thus, those farms, nurseries, logging operations, and other entities

are expected to be little affected by this rule.

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 § 301.50–3, paragraph (c) is amended as follows:

■ a. By revising the entry for Iowa to read as set forth below.

■ b. In the entry for New Jersey, by adding new counties in alphabetical order to read as set forth below.

§ 301.50–3 Quarantined areas.

* * * * *

(c) * * *

* * * * *

Iowa

The entire State.

* * * * *

New Jersey

* * * * *

Morris County. The entire county.

* * * * *

Somerset County. The entire county.

* * * * *

Done in Washington, DC, this 6th day of February 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–2325 Filed 2–9–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1416

RIN 0560–AH62

2006 Emergency Agricultural Disaster Assistance Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule sets forth the Commodity Credit Corporation regulations for the 2006 Emergency Agricultural Disaster Assistance. The rule establishes seven disaster programs to provide funds to eligible producers in counties affected by the 2005 hurricanes Katrina, Ophelia, Rita, Wilma, or a related condition. To be eligible, counties must have been designated a major disaster or emergency area by the President or declared a natural disaster by the Secretary of Agriculture. Counties contiguous to such counties will also be eligible.

DATES: This rule is effective February 9, 2007.

FOR FURTHER INFORMATION CONTACT: Diane Sharp, Director, Production, Emergencies, and Compliance Division; Farm Service Agency; United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517; telephone (202) 720–7641; e-mail *Diane.Sharp@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

This final rule implements the Emergency Agricultural Disaster Assistance Act of 2006, Public Law 109–234, Title III (the Act). During calendar years (CY's) 2005 and 2006 the production of agricultural commodities produced in certain counties in Alabama, Arkansas, Florida, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Texas was hindered by widespread and significant destruction caused by hurricanes Katrina, Ophelia, Rita, Wilma. Counties in these States which the President or the Secretary of Agriculture has designated or declared disaster areas during CY 2005, or during 2006 for a request that was pending as of December 31, 2005, and all counties contiguous to these counties, are eligible for emergency disaster assistance under the Act. The Act provides that the Secretary of Agriculture (Secretary) shall use funds of the Commodity Credit Corporation (CCC) to assist producers of agricultural commodities through programs administered by the Farm Service Agency (FSA). All counties, owners, lessees, livestock, crops, losses, must meet all of the eligibility criteria provided in this rule including being the result of the listed hurricanes as provided. The programs are summarized as follows:

- Livestock Compensation Program (LCP). LCP will provide payments to livestock owners and cash lessees (not both for same livestock) for certain feed losses.
- Livestock Indemnity Program II (LIP II). LIP–II will provide benefits to livestock owners and contract growers (not both for same livestock) for certain livestock deaths. For previous LIP programs see 67 FR 7265, February 19, 2002, and 69 FR 23721, April 30, 2004.
- Citrus Disaster Program (Citrus). The 2005 Citrus Program will provide benefits to citrus producers who suffered citrus crop production losses and associated fruit-bearing tree damage, including related clean-up and rehabilitation costs.
- Fruit and Vegetable Disaster Program (Fruit and Vegetable). The Fruit and Vegetable Program will provide benefits to producers who suffered fruit and vegetable crop production losses, including related clean-up costs.
- Tropical Fruit Disaster Assistance Program (Tropical Fruit). The Tropical Fruit Program will provide benefits to producers of carambola, longan, lychee, and mangos who suffered tropical fruit production losses.
- Nursery Disaster Assistance Program (Nursery). The Nursery Program will provide benefits to commercial ornamental nursery and fernery producers who suffered inventory losses and incurred clean-up costs.
- Tree Assistance Program (TAP). The 2005 Hurricane TAP will provide

benefits to producers who suffered tree, bush, or vine losses for site preparation, replacement, rehabilitation, and pruning.

• The 2005 Catfish Grant Program is authorized under the LCP provision of the Act and will provide assistance in the form of grants to states having catfish producers who suffered catfish feed losses.

Notice and Comment

Section 3034 of the Act requires that the regulations necessary to implement title III of the Act shall be made without regard to the notice and comment provisions of Section 553 of title 5, United States Code or of the Statement of Policy of the Secretary effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking, or the Paperwork Reduction Act. Thus, this rule is issued as final and is effective immediately.

Executive Order 12866

This rule has been determined to be economically significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget. A Cost-Benefit Analysis (CBA) was completed and is available from the contact person listed above.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act since the Farm Service Agency is not required to publish a notice of proposed rulemaking for this rule.

Environmental Review

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), the FSA regulations for compliance with NEPA at 7 CFR part 799, and Section 106 of the National Historic Preservation Act. The following programs were determined to have no potential impact upon the human and natural environment because they solely involve the transfer of funds to offset production- and disaster-related losses with no site-specific or ground-disturbing activities occurring as a requirement or an immediate result of program implementation: Livestock Compensation Program, Livestock Indemnity Program II, 2005 Hurricane Citrus Disaster Program, 2005 Hurricane Fruit and Vegetable Disaster Program, 2005 Hurricane Tropical Fruit Disaster Program, 2005 Hurricane Nursery Disaster Assistance and 2005 Catfish Grant Program. Therefore, no environmental assessment was needed for these programs.

FSA is currently completing a Programmatic Environmental Assessment (PEA) on the 2005 Hurricanes Tree Assistance Program to examine the potential impacts of program implementation on the human and natural environments. No benefit shall be paid under the program until FSA has completed the PEA and issued a decision document.

Executive Order 12372

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

Executive Order 12612

This rule does not have Federalism implications that warrant the preparation of a Federalism Assessment. This rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This interim rule is not retroactive and it does not preempt State law. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, and tribal government or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

Section 3034(b)(3) of the Act provides that the regulations necessary to implement title III of the Act shall be promulgated without regard to the Paperwork Reduction Act, 44 U.S.C. 35.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule has been determined to be Major under the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104–121) (SBREFA). SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. Accordingly, FSA finds that it would be contrary to the public interest to delay implementation of this rule because it would significantly delay assistance to the many people affected by the hurricane disasters addressed by this rule. This rule is thus effective immediately.

Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The regulation is available at *http://www.fsa.usda.gov* under the heading 'Other Partners.'

E-Government Act Compliance

CCC 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. For information pertinent to E–GOV compliance related to this rule, please contact the person named above under the information contact section.

Summary of Economic Impacts

Crops

Florida and Louisiana sustained the most damage from the 2005 hurricane season. According to the Florida State Department of Agriculture, losses for citrus, vegetable, tropical fruit, and nursery damage by the 2005 hurricanes was estimated at $1.7 billion and the Louisiana State University Ag Center reports damage of $35.8 million. For example, Florida Citrus Mutual reports there were nearly 352,000 acres of citrus affected for Hurricane Wilma alone. There were 152,000 acres in Tier 1, 95,000 acres in Tier 2, 79,000 acres in Tier 3 and 26,000 acres in Tier 4. Based on the tier payment system Florida citrus payments alone could be more than $350 million for producers without insurance or NAP coverage and $368 million for producers with insurance or NAP coverage. However, most producers have received some form of

payment already and are not eligible to receive payment under this program due to the payment limitations provisions. As of November 14, 2006, the Federal Crop Insurance Cooperation (FCIC) has paid out $463.8 million, including nearly $60 million for citrus. Limited payment data from other payment sources prevents a definite calculation of payments paid to producers to date. Eligible producers' payments are not expected to exceed $95 million. If payments exceed $95 million, payments to eligible producers will be reduced by a uniform national percentage determined by CCC.

Livestock

The estimated $50 million in expected claims for the 2006 LIP–II ($30 million) and the 2006 LCP ($20 million) are expected to significantly affect individual farmers; however these programs are not expected to have noticeable effects on aggregate social welfare. In comparison, FSA paid $16.9 billion to farmers and ranchers in fiscal 2005, with the largest payments category being $8 billion paid under the Direct and Counter Cyclical Program. However, payments to individual claimants should provide needed monetary relief from significant financial losses suffered as a result of conditions related to the 2005 Hurricanes.

Trees

Estimated TAP program payments range from $4.6 million to $8.6 million, with a most likely estimate of $5.5 million. Throughout the range of estimates, Florida comprises 63 percent of the estimated damage to fruit and nut trees, vines and bushes, and thus would receive a similar level of total TAP assistance.

List of Subjects for 7 CFR Part 1416

Agriculture, Citrus fruits, Disaster assistance, Fish, Livestock, Nursery stock.

■ For the reasons set forth above, 7 CFR part 1416 is added as follows:

PART 1416—2006 EMERGENCY AGRICULTURAL DISASTER ASSISTANCE PROGRAMS

Subpart A—General Provisions for 2006 Emergency Agricultural Disaster Assistance Programs

Sec.
1416.1 Applicability.
1416.2 Eligible counties, hurricanes, and disaster periods.
1416.3 Administration.
1416.4 Definitions.
1416.5 Application for payment.
1416.6 Limitations on payments and other benefits.
1416.7 Insurance requirements.
1416.8 Appeals.
1416.9 Offsets, assignments, and debt settlement.
1416.10 Records and inspections thereof.
1416.11 Refunds; joint and several liability.

Subpart B—Livestock Compensation Program

1416.100 Applicability.
1416.101 Definitions.
1416.102 Eligible livestock and producers.
1416.103 Application process.
1416.104 Payment calculation.
1416.105 Availability of funds.

Subpart C—Livestock Indemnity Program II

1416.200 Applicability.
1416.201 Definitions.
1416.202 Eligible owners and contract growers.
1416.203 Eligible livestock.
1416.204 Application process.
1416.205 Payment calculation.
1416.206 Availability of funds.

Subpart D—Citrus Disaster Program

1416.300 Applicability.
1416.301 Definitions.
1416.302 Eligible crops and producers.
1416.303 Application process.
1416.304 Payment calculations.
1416.305 Availability of funds.

Subpart E—Fruit and Vegetable Disaster Program

1416.400 Applicability.
1416.401 Definitions.
1416.402 Eligible fruit and vegetable producers.
1416.403 Application process.
1416.404 Payment calculations.
1416.405 Availability of funds.

Subpart F—Tropical Fruit Disaster Program

1416.500 Applicability.
1416.501 Definitions.
1416.502 Eligibility requirements.
1416.503 Application process.
1416.504 Payment calculation.
1416.505 Availability of funds.

Subpart G—Nursery Disaster Program

1416.600 Applicability.
1416.601 Eligibility requirements.
1416.602 Application process.
1416.603 Payment calculations.
1416.604 Availability of funds.

Subpart H—2005 Hurricane Tree Assistance Program

1416.700 Applicability.
1416.701 Definitions.
1416.702 Eligible producers and stands.
1416.703 Application process.
1416.704 Payment calculation.
1416.705 Obligations of a participant.

Subpart I—2005 Catfish Grant Program

1416.800 General.

Authority: Title III, Pub. L. 109–234, 120 Stat. 474; 16 U.S.C. 3801, note.

Subpart A—General Provisions for 2006 Emergency Agricultural Disaster Assistance Programs

§ 1416.1 Applicability.

(a) This part establishes the terms and conditions under which the following programs will be administered under Title III of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 for producers affected by the 2005 hurricanes listed in § 1416.2:

(1) Livestock Compensation Program (LCP);

(2) Livestock Indemnity Program II (LIP II);

(3) Citrus Disaster Program (Citrus Disaster);

(4) Fruit and Vegetable Disaster Program (Fruit and Vegetable Disaster);

(5) Tropical Fruit Disaster Program (Tropical Fruit);

(6) Nursery Disaster Program (Nursery);

(7) 2005 Hurricane Tree Assistance Program (Hurricane TAP);

(8) Catfish Grant Program (Catfish Grants).

(b) The amount that may be expended for payments under subparts B through I of this part shall not exceed the amounts authorized in Title III of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006.

(c) To be eligible for payments under these programs, producers must comply with all applicable provisions under subparts B through I of this part.

§ 1416.2 Eligible counties, hurricanes, and disaster periods.

(a) Except as provided in paragraph (c) of this section, the Commodity Credit Corporation (CCC) will provide assistance under the programs listed in § 1416.1 to eligible producers who have suffered certain losses due to 2005 hurricanes Katrina, Ophelia, Rita, or Wilma, or a related condition, in the counties provided in paragraph (d) of this section. CCC funds for the programs in subparts B through I of this part are made available under the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006.

(b) The ''Disaster Period'' is the time period in which losses occurred that may be considered eligible for the programs under subparts B, C, H and I of this part.

(c) The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 provides that no

producer receives duplicative payments under the programs in subparts B through I of this part and any other Federal program for the same loss. Under the regulations at 7 CFR part 760, Subpart E, eligible livestock owners and contract growers were provided benefits for certain livestock deaths that occurred as a result of 2005 hurricanes Dennis, Katrina, Ophelia, Rita, or Wilma in many of the same counties as provided in paragraph (d) of this section. The benefits provided under 7 CFR part 760, Subpart E, are significantly greater than the benefits to be provided under Subpart C of this part. Accordingly, to ensure the statutory requirement that no producer receives duplicative payments under the program in Subpart C of this section and any other Federal program for the same loss, eligible livestock under the program in Subpart C of this section shall be limited to catfish and crawfish in any county listed in paragraph (d) of this section that was an eligible county under 7 CFR 760.101.

(d) Counties are eligible for emergency disaster assistance under this Act if they received a Presidential designation or Secretarial declaration or are counties contiguous to such counties. Accordingly, the following counties are eligible:

State	County	Disaster period			
		Katrina	Ophelia	Rita	Wilma
Alabama	Baldwin	8/29/05–10/28/05			
Alabama	Bibb	8/29/05–10/28/05			
Alabama	Blount	8/29/05–10/28/05			
Alabama	Butler	8/29/05–10/28/05			
Alabama	Chilton	8/29/05–10/28/05			
Alabama	Choctaw	8/29/05–10/28/05			
Alabama	Clarke	8/29/05–10/28/05			
Alabama	Colbert	8/29/05–10/28/05			
Alabama	Conecuh	8/29/05–10/28/05			
Alabama	Covington	8/29/05–10/28/05			
Alabama	Cullman	8/29/05–10/28/05			
Alabama	Dallas	8/29/05–10/28/05			
Alabama	Escambia	8/29/05–10/28/05			
Alabama	Fayette	8/29/05–10/28/05			
Alabama	Franklin	8/29/05–10/28/05		9/23/05–11/22/05	
Alabama	Geneva	8/29/05–10/28/05			
Alabama	Greene	8/29/05–10/28/05			
Alabama	Hale	8/29/05–10/28/05			
Alabama	Jefferson	8/29/05–10/28/05			
Alabama	Lamar	8/29/05–10/28/05			
Alabama	Lauderdale	8/29/05–10/28/05			
Alabama	Lawrence	8/29/05–10/28/05			
Alabama	Limestone	8/29/05–10/28/05			
Alabama	Lowndes	8/29/05–10/28/05			
Alabama	Marengo	8/29/05–10/28/05			
Alabama	Marion	8/29/05–10/28/05			
Alabama	Marshall	8/29/05–10/28/05			
Alabama	Mobile	8/29/05–10/28/05			
Alabama	Monroe	8/29/05–10/28/05			
Alabama	Morgan	8/29/05–10/28/05			
Alabama	Perry	8/29/05–10/28/05			
Alabama	Pickens	8/29/05–10/28/05			
Alabama	St. Clair	8/29/05–10/28/05			
Alabama	Shelby	8/29/05–10/28/05			
Alabama	Sumter	8/29/05–10/28/05			
Alabama	Tuscaloosa	8/29/05–10/28/05			
Alabama	Walker	8/29/05–10/28/05			
Alabama	Washington	8/29/05–10/28/05			
Alabama	Wilcox	8/29/05–10/28/05			
Alabama	Winston	8/29/05–10/28/05			
Arkansas	Ashley	8/29/05–10/28/05		9/23/05–11/22/05	
Arkansas	Chicot	8/29/05–10/28/05		9/23/05–11/22/05	
Arkansas	Columbia	8/29/05–10/28/05		9/23/05–11/22/05	
Arkansas	Crittenden	8/29/05–10/28/05		9/23/05–11/22/05	
Arkansas	Desha	8/29/05–10/28/05		9/23/05–11/22/05	
Arkansas	Lafayette	8/29/05–10/28/05		9/23/05–11/22/05	
Arkansas	Lee	8/29/05–10/28/05		9/23/05–11/22/05	
Arkansas	Miller	8/29/05–10/28/05		9/23/05–11/22/05	
Arkansas	Phillips	8/29/05–10/28/05		9/23/05–11/22/05	
Arkansas	St. Francis	8/29/05–10/28/05		9/23/05–11/22/05	
Arkansas	Union	8/29/05–10/28/05		9/23/05–11/22/05	
Florida	Bay	8/24/05–10/23/05			
Florida	Brevard				10/23/05–12/22/05
Florida	Broward	8/24/05–10/23/05			10/23/05–12/22/05
Florida	Calhoun	8/24/05–10/23/05			
Florida	Charlotte				10/23/05–12/22/05
Florida	Collier	8/24/05–10/23/05			10/23/05–12/22/05
Florida	De Soto				10/23/05–12/22/05

State	County	Disaster period			
		Katrina	Ophelia	Rita	Wilma
Florida	Escambia	8/24/05–10/23/05			
Florida	Franklin	8/24/05–10/23/05			
Florida	Glades				10/23/05–12/22/05
Florida	Gulf	8/24/05–10/23/05			
Florida	Hardee				10/23/05–12/22/05
Florida	Hendry				10/23/05–12/22/05
Florida	Highlands				10/23/05–12/22/05
Florida	Hillsborough				10/23/05–12/22/05
Florida	Holmes	8/24/05–10/23/05			
Florida	Indian River				10/23/05–12/22/05
Florida	Jackson	8/24/05–10/23/05			
Florida	Lee				10/23/05–12/22/05
Florida	Liberty	8/24/05–10/23/05			
Florida	Manatee				10/23/05–12/22/05
Florida	Martin				10/23/05–12/22/05
Florida	Miami-Dade	8/24/05–10/23/05			10/23/05–12/22/05
Florida	Monroe	8/24/05–10/23/05			10/23/05–12/22/05
Florida	Okaloosa	8/24/05–10/23/05			
Florida	Okeechobee				10/23/05–12/22/05
Florida	Orange				10/23/05–12/22/05
Florida	Osceola				10/23/05–12/22/05
Florida	Palm Beach				10/23/05–12/22/05
Florida	Polk				10/23/05–12/22/05
Florida	St. Lucie				10/23/05–12/22/05
Florida	Santa Rosa	8/24/05–10/23/05			
Florida	Sarasota				10/23/05–12/22/05
Florida	Volusia				10/23/05–12/22/05
Florida	Wakulla	8/24/05–10/23/05			
Florida	Walton	8/24/05–10/23/05			
Florida	Washington	8/24/05–10/23/05			
Louisiana	Acadia	8/29/05–10/23/05		9/23/05–11/22/05	
Louisiana	Allen	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Ascension	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Assumption	8/29/05–10/28/05			
Louisiana	Avoyelles	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Beauregard	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Bienville	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Bossier	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Caddo	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Calcasieu	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Caldwell	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Cameron	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Catahoula	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Claiborne	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Concordia	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	De Soto	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	East Baton Rouge	8/29/05–10/28/05			
Louisiana	East Carroll	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	East Feliciana	8/29/05–10/28/05			
Louisiana	Evangeline	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Franklin	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Grant	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Iberia	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Iberville	8/29/05–10/28/05			
Louisiana	Jackson	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Jefferson	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Jefferson Davis	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Lafayette	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Lafourche	8/29/05–10/28/05			
Louisiana	La Salle	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Lincoln	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Livingston	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Madison	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Morehouse	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Natchitoches	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Orleans	8/29/05–10/28/05			
Louisiana	Ouachita	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Plaquemines	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Pointe Coupee	8/29/05–10/28/05			
Louisiana	Rapides	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Red River	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Richland	8/29/05–10/28/05		9/23/05–11/22/05	

State	County	Disaster period			
		Katrina	Ophelia	Rita	Wilma
Louisiana	Sabine	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	St. Bernard	8/29/05–10/28/05			
Louisiana	St. Charles	8/29/05–10/28/05			
Louisiana	St. Helena	8/29/05–10/28/05			
Louisiana	St. James	8/29/05–10/28/05			
Louisiana	St. John the Baptist.	8/29/05–10/28/05			
Louisiana	St. Landry	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	St. Martin	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	St. Mary	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	St. Tammany	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Tangipahoa	8/29/05–10/28/05			
Louisiana	Tensas	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Terrebonne	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Union	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Vermilion	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Vernon	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Washington	8/29/05–10/28/05			
Louisiana	Webster	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	West Baton Rouge	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	West Carroll	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	West Feliciana	8/29/05–10/28/05			
Louisiana	Winn	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Adams	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Alcorn	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Amite	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Attala	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Benton	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Bolivar	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Calhoun	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Carroll	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Chickasaw	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Choctaw	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Claiborne	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Clarke	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Clay	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Coahoma	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Copiah	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Covington	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	De Soto	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Forrest	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Franklin	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	George	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Greene	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Grenada	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Hancock	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Harrison	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Hinds	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Holmes	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Humphreys	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Issaquena	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Itawamba	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Jackson	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Jasper	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Jefferson	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Jefferson Davis	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Jones	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Kemper	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Lafayette	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Lamar	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Lauderdale	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Lawrence	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Leake	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Lee	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Leflore	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Lincoln	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Lowndes	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Madison	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Marion	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Marshall	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Monroe	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Montgomery	8/29/05–10/28/05		9/23/05–11/22/05	

State	County	Disaster period			
		Katrina	Ophelia	Rita	Wilma
Mississippi	Neshoba	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Newton	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Noxubee	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Oktibbeha	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Panola	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Pearl River	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Perry	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Pike	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Pontotoc	8/29/05–10/28/05			
Mississippi	Prentiss	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Quitman	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Rankin	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Scott	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Sharkey	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Simpson	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Smith	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Stone	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Sunflower	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Tallahatchie	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Tate	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Tippah	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Tishomingo	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Tunica	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Union	8/29/05–10/28/05			
Mississippi	Walthall	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Warren	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Washington	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Wayne	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Webster	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Wilkinson	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Winston	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Yalobusha	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Yazoo	8/29/05–10/28/05		9/23/05–11/22/05	
North Carolina	Beaufort		9/11/05–11/10/05		
North Carolina	Bladen		9/11/05–11/10/05		
North Carolina	Brunswick		9/11/05–11/10/05		
North Carolina	Carteret		9/11/05–11/10/05		
North Carolina	Columbus		9/11/05–11/10/05		
North Carolina	Craven		9/11/05–11/10/05		
North Carolina	Currituck		9/11/05–11/10/05		
North Carolina	Dare		9/11/05–11/10/05		
North Carolina	Duplin		9/11/05–11/10/05		
North Carolina	Hyde		9/11/05–11/10/05		
North Carolina	Jones		9/11/05–11/10/05		
North Carolina	Lenoir		9/11/05–11/10/05		
North Carolina	New Hanover		9/11/05–11/10/05		
North Carolina	Onslow		9/11/05–11/10/05		
North Carolina	Pamlico		9/11/05–11/10/05		
North Carolina	Pender		9/11/05–11/10/05		
North Carolina	Pitt		9/11/05–11/10/05		
North Carolina	Sampson		9/11/05–11/10/05		
North Carolina	Tyrell		9/11/05–11/10/05		
North Carolina	Washington		9/11/05–11/10/05		
South Carolina	Horry		9/11/05–11/10/05		
Tennessee	Fayette	8/29/05–10/28/05		9/23/05–11/22/05	
Tennessee	Giles	8/29/05–10/28/05			
Tennessee	Hardeman	8/29/05–10/28/05		9/23/05–11/22/05	
Tennessee	Hardin	8/29/05–10/28/05		9/23/05–11/22/05	
Tennessee	Lawrence	8/29/05–10/28/05			
Tennessee	McNairy	8/29/05–10/28/05		9/23/05–11/22/05	
Tennessee	Shelby	8/29/05–10/28/05		9/23/05–11/22/05	
Tennessee	Wayne	8/29/05–10/28/05			
Texas	Anderson			9/23/05–11/22/05	
Texas	Angelina			9/23/05–11/22/05	
Texas	Austin			9/23/05–11/22/05	
Texas	Brazoria			9/23/05–11/22/05	
Texas	Cass	8/29/05–10/28/05		9/23/05–11/22/05	
Texas	Chambers			9/23/05–11/22/05	
Texas	Cherokee			9/23/05–11/22/05	
Texas	Fort Bend			9/23/05–11/22/05	
Texas	Galveston			9/23/05–11/22/05	
Texas	Gregg			9/23/05–11/22/05	

State	County	Disaster period			
		Katrina	Ophelia	Rita	Wilma
Texas	Grimes			9/23/05–11/22/05	
Texas	Hardin			9/23/05–11/22/05	
Texas	Harris			9/23/05–11/22/05	
Texas	Harrison			9/23/05–11/22/05	
Texas	Henderson			9/23/05–11/22/05	
Texas	Houston			9/23/05–11/22/05	
Texas	Jasper			9/23/05–11/22/05	
Texas	Jefferson			9/23/05–11/22/05	
Texas	Leon			9/23/05–11/22/05	
Texas	Liberty			9/23/05–11/22/05	
Texas	Madison			9/23/05–11/22/05	
Texas	Marion			9/23/05–11/22/05	
Texas	Matagorda			9/23/05–11/22/05	
Texas	Montgomery			9/23/05–11/22/05	
Texas	Morris			9/23/05–11/22/05	
Texas	Nacogdoches			9/23/05–11/22/05	
Texas	Newton			9/23/05–11/22/05	
Texas	Orange			9/23/05–11/22/05	
Texas	Panola			9/23/05–11/22/05	
Texas	Polk			9/23/05–11/22/05	
Texas	Rusk			9/23/05–11/22/05	
Texas	Sabine			9/23/05–11/22/05	
Texas	San Augustine			9/23/05–11/22/05	
Texas	San Jacinto			9/23/05–11/22/05	
Texas	Shelby			9/23/05–11/22/05	
Texas	Smith			9/23/05–11/22/05	
Texas	Trinity			9/23/05–11/22/05	
Texas	Tyler			9/23/05–11/22/05	
Texas	Upshur			9/23/05–11/22/05	
Texas	Walker			9/23/05–11/22/05	
Texas	Waller			9/23/05–11/22/05	
Texas	Wharton			9/23/05–11/22/05	

§ 1416.3 Administration.

(a) These programs are administered under the general supervision of the Administrator, Farm Service Agency (FSA), or Executive Vice President of CCC.

(b) CCC representatives do not have authority to modify or waive any of the provisions of the regulations of subparts B through I of this part.

(c) The State FSA committee shall take any action required by the regulations of subparts B through H of this part that the county FSA committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with the regulations of subparts B through H of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with subparts B through H of this part.

(d) No provision or delegation to a State or county FSA committee shall preclude the Executive Vice President, CCC, FSA Deputy Administrator for Farm Programs (Deputy Administrator), or a designee of such, from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

§ 1416.4 Definitions.

The following definitions apply to the programs in subparts B through H of this part. The definitions in parts 718 and 1400 of this chapter shall also apply, except where they conflict with the definitions in this section.

Application period means the date established by the Deputy Administrator for producers to apply for program benefits.

Bush means a thick densely branched woody shrub grown in the ground for the production of an annual crop for commercial market for human consumption.

Commercial use means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible producer.

Crop insurance means an insurance policy reinsured by the Federal Crop Insurance Corporation under the Federal Crop Insurance Act, as amended.

Farming operation means a business enterprise engaged in producing agricultural products.

Owner means one who had legal ownership of the trees, bushes, vines, or livestock for which benefits are being requested under subparts B through H, on the day such plant or livestock perished or suffered losses due to an eligible hurricane.

Tier means the geographic bands of damage generally correlating to the severity of damage caused by the maximum sustained winds of the applicable hurricanes.

Tree means a tree (including a Christmas tree, ornamental tree, nursery tree, and potted tree).

Vine means a perennial plant grown under normal conditions from which an annual fruit crop is produced for commercial market for human consumption, such as grape, kiwi, or passion fruit that has a flexible stem supported by climbing, twining, or creeping along a surface.

§ 1416.5 Application for payment.

(a) A producer who applies for any program under subparts B through H of this part shall submit an application and required supporting documentation to the county FSA office serving the county where the eligible loss occurred; or in the case of LCP, where the eligible livestock were physically located on the applicable date.

(b) The application must be filed during the application period

announced by the Deputy Administrator.

(c) Payments may be made for eligible losses suffered by an eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer signs the application for payment. Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

(d) Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without all required data program benefits will not be approved or provided.

(e) A minor child shall be eligible to apply for program benefits so long as all eligibility requirements are met and one of the following conditions exists:

(1) The right of majority has been conferred upon the minor by court proceedings or statute;

(2) A guardian has been appointed to manage the minor's property, and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which a surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1416.6 Limitations on payments and other benefits.

(a) A producer may receive no more than $80,000 under LCP, subpart B of this part.

(b) A producer may receive no more than $80,000 under LIP–II, subpart C of this part.

(c) A single producer may receive no more than $80,000 total combined payments from subpart D of this part, the Citrus Disaster Program, subpart E of this part, the Fruit and Vegetable Program, subpart F of this part, the Tropical Fruit Program, and subpart G of this part, the Nursery Program.

(d) Limits per person for payments made under subpart I of this part for Catfish Grants will be $80,000 per producer. This limit shall be enforced by the State administering the grant program.

(e) An individual or entity whose adjusted gross income is in excess of $2.5 million, as determined under part 1400 of this title, shall not be eligible to receive benefits under this part, except for TAP and Catfish Grants.

(f) As a condition to receive benefits under this part, a producer must have been in compliance with the provisions of parts 12 and 718 of this title for the 2005 crop year and must not otherwise be barred from receiving benefits under any law.

(g) An individual or entity determined to be a foreign person under part 1400 of this title shall not be eligible to receive benefits under this part.

(h) In addition to limitations provided in each subpart of this part, producers cannot receive duplicate benefits under this part and any other Federal programs for the same loss, including but not limited to the following:

(1) Crop insurance indemnity payments under 7 CFR Part 400;

(2) The Noninsured Crop Disaster Assistance Program, part 1437 of this chapter;

(3) Part 701 of this title, the Emergency Conservation Program;

(4) The Hurricane Indemnity Program, subpart C of part 760 of this title.

(i) An applicant's actual loss or actual costs incurred because of losses due to an eligible hurricane must equal or exceed the benefit requested under this part.

§ 1416.7 Insurance requirements.

For the Citrus, Fruit and Vegetable, Tropical Fruit and Nursery Disaster Programs:

(a) Payment rates for producers who did not have crop insurance or coverage under the Noninsured Crop Disaster Assistance Program (NAP) will be 5 percent less than the rates received by producers who did have crop insurance or NAP coverage.

(b) Eligible producers who elected to not purchase crop insurance on an insurable crop, or to sign up for NAP that was available on an uninsurable crop for which benefits are received under these programs, must purchase such coverage for the next available coverage period in the form of:

(1) Crop insurance that is, at a minimum, at least at the catastrophic level on that crop, although producers required to purchase a citrus policy may purchase a fruit or tree policy; or

(2) NAP coverage.

(c) If a producer who is required to purchase crop insurance or NAP for the applicable year fails to do so, the producer must refund any disaster payment made under these programs. Required refunds will be serviced as a claim under part 1403 of this chapter.

§ 1416.8 Appeals.

The appeal regulations set forth at parts 11 and 780 of this title apply to determinations made pursuant to subparts B through H of this part.

§ 1416.9 Offsets, assignments, and debt settlement.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any producer shall be made without regard to questions of title under State law and without regard to any claim or lien against the commodity, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at parts 792 and 1403 of this title apply to payments made under subparts B through H of this part.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing the assignment of payments found at part 1404 of this chapter.

§ 1416.10 Records and inspections thereof.

Producers receiving payments under the programs in subparts B through H or any other person who furnishes information for the purposes of enabling such producer to receive a payment under subparts B through H of this part shall maintain any books, records, and accounts supporting any information so furnished for 3 years following the end of the year during which the application for payment was filed. Producers receiving payments or any other person who furnishes such information to CCC shall permit authorized representatives of USDA and the General Accounting Office during regular business hours to inspect, examine, and to allow such persons to make copies of such books or records, and to enter upon, inspect and verify all applicable livestock and acreage in which the applicant has an interest for the purpose of confirming the accuracy of the information provided by the applicant.

§ 1416.11 Refunds; joint and several liability.

In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under subparts B through H of this part, and if any refund of a payment to CCC shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to CCC together with interest and late-payment charges as provided for in part 792 of this title.

Subpart B—Livestock Compensation Program

§ 1416.100 Applicability.

This subpart sets forth the terms and conditions applicable to the Livestock Compensation Program (LCP).

§ 1416.101 Definitions.

The following definitions apply to this subpart.

Adult beef bulls means male bovine animals that were at least 2 years old and used for breeding purposes on the beginning date of the applicable disaster period.

Adult beef cows means female bovine animals that had delivered one or more offspring before the beginning date of the disaster period. A first-time bred beef heifer shall also be considered an adult beef cow if it was pregnant on the beginning date of the disaster period.

Adult buffalo and beefalo bulls means male animals of those breeds that were at least 2 years old and used for breeding purposes on the beginning date of the disaster period.

Adult buffalo and beefalo cows means female animals of those breeds that had delivered one or more offspring before the beginning date of the applicable disaster period. A first-time bred buffalo or beefalo heifer shall also be considered to be an adult buffalo or beefalo cow if it was pregnant on the beginning date of the disaster period.

Adult dairy bulls means male bovine animals of a breed used for producing milk for human consumption that were at least 2 years old and used for breeding dairy cows on the beginning date of the disaster period.

Adult dairy cows means female bovine animals used for the purpose of providing milk for human consumption that had delivered one or more offspring before the beginning date of the disaster period. A first-time bred dairy heifer shall also be considered an adult dairy cow if it was pregnant on the beginning date of the disaster period.

Agricultural operation means a farming operation.

Application means the ''2005 Hurricanes Livestock Compensation Program Application'' form.

Disaster period means the applicable disaster period as set forth in § 1416.2.

Equine animal means a domesticated horse, mule or donkey.

Goat means a domesticated, ruminant mammal of the genus *Capra*, including Angora goats.

Non-adult beef cattle means male, female or neutered male bovine animals that weighed 500 pounds or more on the beginning date of the disaster period, but do not meet the definition of adult beef cows or bulls.

Non-adult buffalo/beefalo means male, female or neutered male animals of those breeds that weighed 500 pounds or more on the beginning date of the disaster period, but do not meet the definition of an adult buffalo or beefalo cow or bull.

Non-adult dairy cattle means male, female or neutered male bovine livestock, of a breed used for the purpose of providing milk for human consumption, that weighed 500 pounds or more on the beginning date of the disaster period, but do not meet the definition adult dairy cows or bulls.

Poultry means domesticated chickens, turkeys, ducks and geese. Poultry will be further delineated by sex, age and purpose of production, as determined by CCC.

Sheep means domesticated, ruminant mammals of the genus *Ovis.*

Swine means domesticated omnivorous pigs, hogs, and boars. Swine will be further delineated by sex and weight as determined by CCC.

§ 1416.102 Eligible livestock and producers.

(a) To be considered eligible, livestock must meet all the following conditions:

(1) Be adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, equine, poultry, elk, reindeer, sheep, goats, swine or deer;

(2) Been physically located in an eligible county on the beginning date of the disaster period;

(3) Been maintained for commercial use as part of a farming operation on the beginning date of the disaster period; and

(4) Not have been produced and maintained for reasons other than commercial use as part of a farming operation. Such excluded uses include, but are not limited to wild free roaming animals or animals used for recreational purposes, such as pleasure, hunting, pets, or for show.

(b) To be considered an eligible livestock producer, a producer must have:

(1) Owned or cash-leased, but not both for the same livestock, eligible livestock on the beginning date of the disaster period; and

(2) Suffered a loss of feed:

(i) From produced or purchased forage or feedstuffs which was:

(A) Damaged or destroyed by an eligible hurricane; and

(B) Physically located in an eligible county; and

(C) Intended for use as feed for only the livestock found eligible under paragraph (a) of this section.

(ii) The value of such loss, as determined by CCC, equals or exceeds the amount calculated according to § 1416.104(a).

§ 1416.103 Application process.

(a) Applicants must submit to CCC:

(1) A completed application in accordance with § 1416.5;

(2) Adequate proof, as determined by CCC, that the feed lost:

(i) Was for the claimed eligible livestock;

(ii) Occurred as a direct result of the eligible hurricane during the disaster period; and

(iii) Had a value, as determined by CCC, equal to or greater than the amount calculated in accordance with § 1416.104(a); and

(iv) Any other supporting documentation as determined by CCC to be necessary to make a determination of eligibility of the applicant. Supporting documents include, but are not limited to: verifiable purchase records; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Agency records; National Guard records; written contracts; production records; Internal Revenue Service records; property tax records; private insurance documents; sales records, and similar documents.

(b) [Reserved]

§ 1416.104 Payment calculation.

(a) LCP payments are calculated by multiplying the national payment rate for each livestock category, as provided in paragraph (c) of this section, by the number of eligible livestock in each category. The national payment rate represents the cost of the amount of corn needed to maintain the specific livestock for 30 days, as determined by CCC. Adjustments shall be applied in accordance with paragraph (b) of this section and § 1416.105;

(b) The LCP payment calculated in accordance with paragraph (a) of this section shall be reduced by the amount the applicant received for the specific livestock under the Feed Indemnity Program in accordance with subpart D of part 760 of this title.

(c) The eligible livestock categories are:

(1) Adult beef cows or bulls;

(2) Non-adult beef cattle;

(3) Adult buffalo or beefalo cows or bulls;

(4) Non-adult buffalo or beefalo;

(5) Adult dairy cows or bulls;

(6) Non-adult dairy cattle;

(7) Goats;

(8) Sheep;

(9) Equine;

(10) Reindeer;

(11) Elk;

(12) Poultry; and

(13) Deer.

§ 1416.105 Availability of funds.

(a) In the event that the total amount of eligible claims submitted under this subpart and subpart I of this part exceeds $95 million, each payment shall

be reduced by a uniform national percentage, as determined by CCC,

(b) Such payment reduction shall be applied after the imposition of per-person payment limitations as provided in § 1416.6.

Subpart C—Livestock Indemnity Program II

§ 1416.200 Applicability.

(a) This subpart sets forth the terms and conditions applicable to the Livestock Indemnity Program II (LIP–II).

(b) Eligible livestock owners and contract growers will be compensated in accordance with § 1416.205 for eligible livestock deaths that occurred in eligible counties as a direct result of an eligible hurricane during the disaster period.

§ 1416.201 Definitions.

The following definitions are applicable for all purposes of administering LIP–II.

Adult beef bull means a male bovine animal that was at least 2 years old and used for breeding purposes before it died.

Adult beef cow means a female bovine animal that had delivered one or more offspring before dying. A first-time bred beef heifer shall also be considered an adult beef cow if it was pregnant at the time it died.

Adult buffalo and beefalo bull means a male animal of those breeds that were at least 2 years old and used for breeding purposes before it died.

Adult buffalo and beefalo cow means a female animal of those breeds that had delivered one or more offspring before dying. A first-time bred buffalo or beefalo heifer shall also be considered an adult buffalo or beefalo cow if it was pregnant at the time it died.

Adult dairy bull means a male bovine animal of a breed used for producing milk for human consumption that was at least 2 years old and used for breeding dairy cows before it died.

Adult dairy cow means a female bovine animal used for the purpose of providing milk for human consumption that had delivered one or more offspring before dying. A first-time bred dairy heifer shall also be considered an adult dairy cow if it was pregnant at the time it died.

Agricultural operation means a farming operation.

Application means the ''2005 Hurricanes Livestock Indemnity Program II Application'' form.

Buck means a male goat.

Catfish means catfish grown as food for human consumption by a commercial operator on private property in water in a controlled environment.

Contract means, with respect to contracts for the handling of livestock, a written agreement between a livestock owner and another individual or entity setting the specific terms, conditions and obligations of the parties involved regarding the production of livestock or livestock products.

Controlled environment means an environment in which everything that can practicably be controlled with structures, facilities, growing media (including but not limited to water and nutrients) by the producer, is in fact controlled by the producer.

Crawfish means crawfish grown as food for human consumption by a commercial operator on private property in water in a controlled environment.

Disaster period means the applicable disaster period as set forth in § 1416.2.

Doe means a female goat.

Equine animal means a domesticated horse, mule or donkey.

Ewe means a female sheep.

Goat means a domesticated, ruminant mammal of the genus *Capra,* including Angora goats. Goats will be further delineated by sex (bucks and does) and age (kids).

Kid means a goat less than 1 year old.

Lamb means a sheep less than 1 year old.

Non-adult beef cattle means male, female or neutered male bovines that do not meet the definition of adult beef cows or bulls. Non-adult beef cattle is further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time they died.

Non-adult buffalo or beefalo means a male, female or neutered male animal of those breeds that do not meet the definition of adult buffalo/beefalo cow or bull. Non-adult buffalo or beefalo is further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time of death.

Non-adult dairy cattle means male, female, or neutered male bovine livestock, of a breed used for the purpose of providing milk for human consumption, that do not meet the definition of adult dairy cows or bulls. Non-adult dairy cattle is further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time they died.

Poultry means domesticated chickens, turkeys, ducks and geese. Poultry will be further delineated by sex, age and purpose of production, as determined by CCC.

Ram means a male sheep.

Sheep means domesticated, ruminant mammals of the genus *Ovis.* Sheep will be further delineated by sex (rams and ewes) and age (lambs).

Swine means domesticated omnivorous pigs, hogs, and boars. Swine will be further delineated by sex and weight as determined by CCC.

§ 1416.202 Eligible owners and contract growers.

(a) To be considered eligible, a livestock owner must have had legal ownership of the eligible livestock, as provided in § 1416.203(a), on the day the livestock died.

(b) To be considered eligible, a contract grower on the day the livestock died must have had:

(1) A written agreement with the owner of eligible livestock setting the specific terms, conditions and obligations of the parties involved regarding the production of livestock; and

(2) Control of the eligible livestock, as provided in § 1416.203(b), on the day the livestock died.

§ 1416.203 Eligible livestock.

(a) To be considered eligible livestock for eligible livestock owners, livestock:

(1) In any county provided in § 1416.2(d) that was an eligible county in accordance with 7 CFR 760.101, must meet all the following:

(i) Be catfish or crawfish as defined in § 1416.201;

(ii) Died in an eligible county as a direct result of an applicable hurricane during the disaster period;

(iii) Been maintained for commercial use as part of a farming operation on the day they died; and

(iv) Before dying, not have been produced or maintained for reasons other than commercial use as part of a farming operation, including but not limited to wild free roaming animals or animals used for recreational purposes, such as pleasure, hunting, pets, or for show.

(2) In any county provided in § 1416.2(d) that was not an eligible county according to 7 CFR 760.101, must meet all the following:

(i) Be adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, catfish, crawfish, equine, sheep goats, swine, poultry or deer;

(ii) Died in an eligible county as a direct result of an applicable hurricane during the disaster period;

(iii) Been maintained for commercial use as part of a farming operation on the day they died; and

(iv) Before dying, not have been produced or maintained for reasons other than commercial use as part of a farming operation, including but not limited to wild free roaming animals or animals used for recreational purposes, such as pleasure, hunting, pets, or for show.

(b) To be considered eligible livestock for eligible contract growers, livestock must meet all the following:

(1) Be poultry as defined in § 1416.201;

(2) Died in an eligible county provided in § 1416.2(d) that was not an eligible county as provided in 7 CFR 760.101;

(3) Died as a direct result of an eligible hurricane during the applicable disaster period as set forth in § 1416.2;

(4) Been maintained for commercial use as part of a farming operation on the day they died; and

(5) Before dying, not have been produced or maintained for reasons other than commercial use as part of a farming operation, including but not limited to wild free roaming animals or animals used for recreational purposes, such as pleasure, hunting, pets, or for show.

(c) No producer may receive duplicative payments under this subpart and any other Federal program for the same loss. Except catfish and crawfish, livestock that died in any county set forth in § 1416.2(d) that was an eligible county under § 760.101 of this title are not eligible livestock under this subpart.

§ 1416.204 Application process.

(a) Applicants must submit to CCC a completed application in accordance with § 1416.5, a copy of their grower contract if the applicant is a contract grower, and other supporting documents necessary for determining the eligibility of the applicant. Supporting documents must show: Evidence of loss; current physical location of livestock in inventory; and physical location of claimed livestock at the time of death.

(b) Applicants must provide adequate proof that the death of the eligible livestock occurred in an eligible county as a direct result of an eligible hurricane during the disaster period. The quantity and kind of livestock that died as a direct result of the eligible hurricane may be documented by: Purchase records; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Agency records; National Guard records; written contracts; production records, Internal Revenue Service records; property tax records; private insurance documents; and other similar verifiable documents, as determined by CCC.

(c) Certifications of livestock deaths by third parties may be accepted only if both the following conditions are met:

(1) The livestock owner or livestock contract grower, as applicable, certifies in writing:

(i) That there is no other documentation of death available;

(ii) The number of livestock, by category determined by the Deputy Administrator, were in inventory at the time the applicable hurricane occurred;

(iii) Other details necessary for CCC to determine the certification acceptable; and

(2) The third party provides their telephone number, address, and a written statement containing:

(i) Specific details about their knowledge of the livestock deaths;

(ii) Their affiliation with the livestock owner;

(iii) The accuracy of the deaths claimed by the livestock owner; and

(iv) Other details necessary for CCC to determine the certification acceptable.

§ 1416.205 Payment calculation.

(a) Under this subpart, separate payment rates are established for eligible livestock owners and eligible livestock contract growers in accordance with paragraphs (b) and (c) of this section. LIP–II payments are calculated by multiplying the national payment rate for each livestock category, as determined in paragraphs (b) and (c) of this section, by the number of eligible livestock in each category, as provided in paragraphs (f), (g) and (h) of this section. Adjustments shall be applied in accordance with paragraphs (d) and (e) of this section and § 1416.206.

(b) The LIP–II national payment rate for eligible livestock owners is based on 30 percent of the average fair market value of the livestock.

(c) The LIP–II national payment rate for eligible livestock contract growers is based on 30 percent of the average income loss sustained by the contract grower with respect to the dead livestock.

(d) The payment calculated for eligible livestock owners shall be reduced by the amount the applicant received for the specific livestock under:

(1) Subpart E of Part 760 of this title, the Livestock Indemnity Program;

(2) Subpart G of Part 760 of this title, the Aquaculture Program; and

(3) Part 1437 of this chapter, the Noninsured Crop Disaster Assistance Program.

(e) The payment calculated for eligible livestock contract growers shall be reduced by the amount the applicant received for the specific livestock:

(1) Under the Livestock Indemnity Program under Subpart E of Part 760 of this title; and

(2) From the party who contracted with the producer to grow the livestock for the loss of income from the dead livestock.

(f) The categories of eligible livestock in any county provided in § 1416.2(d) that was not an eligible county according to 7 CFR 760.101 for eligible livestock contract growers are as follows:

(1) Chickens, layers, roasters;
(2) Chickens, broilers, pullets;
(3) Chickens, chicks;
(4) Turkeys, toms, fryers, roasters;
(5) Turkeys, poults;
(6) Ducks;
(7) Ducks, ducklings;
(8) Geese, goose; and
(9) Geese, gosling.

(g) The categories of eligible livestock in any county provided in § 1416.2(d) that was not an eligible county according to 7 CFR 760.101 for eligible livestock owners are as follows:

(1) Adult beef cows;
(2) Adult beef bulls;
(3) Non-adult beef cattle;
(4) Adult buffalo or beefalo cows;
(5) Adult buffalo or beefalo bulls;
(6) Non-adult buffalo/beefalo;
(7) Adult dairy cows;
(8) Adult dairy bulls;
(9) Non-adult dairy cattle;
(10) Swine, sows, boars, barrows, gilts over 150 pounds;
(11) Swine, sows, boars, barrows, gilts 50 to 150 pounds;
(12) Swine, feeder pigs under 50 pounds;
(13) Goats, bucks;
(14) Goats, does;
(15) Goats, kids;
(16) Sheep, rams;
(17) Sheep, ewes;
(18) Sheep, lambs;
(19) Deer;
(20) Chickens, layers, roasters;
(21) Chickens, broilers, pullets;
(22) Chickens, chicks;
(23) Turkeys, toms, fryers, roasters;
(24) Turkeys, poults;
(25) Ducks;
(26) Ducks, ducklings;
(27) Geese, goose;
(28) Geese, gosling;
(29) Catfish;
(30) Crawfish; and
(31) Equine.

(h) The categories of eligible livestock in any county provided in § 1416.2(d) that was an eligible county according to 7 CFR 760.101 for eligible livestock owners are as follows:

(1) Catfish; and
(2) Crawfish.

§ 1416.206 Availability of funds.

(a) In the event that the total amount of eligible claims submitted by eligible livestock owners under this subpart exceeds $30 million, each payment to eligible livestock owner shall be reduced by a uniform national percentage, as determined by CCC.

(b) Such payment reduction shall be applied after the imposition of the applicable per-person payment limitations in § 1416.6.

Subpart D—Citrus Disaster Program

§ 1416.300 Applicability.

This subpart sets forth the terms and conditions applicable to the Citrus Disaster Program.

§ 1416.301 Definitions.

Citrus means eligible citrus types that are those listed within the Risk Management Agency (RMA) Florida Citrus Fruit Crop Provisions.

Grove means contiguous acreage of the same citrus crop.

§ 1416.302 Eligible crops and producers.

(a) A producer must be an owner, operator, landlord, tenant, or sharecropper who shares in the risk of producing the citrus crop and is entitled to share in the crop available for marketing from the farm or would have shared had the crop been produced. Producers that did not market citrus in both 2004 and 2005 are not eligible, except producers with groves that will be of fruit-bearing age for 2006, but were too immature to producer marketable fruit in 2004 or 2005.

(b)(1) Citrus producers will be reimbursed on a per-acre basis for each eligible grove. Payment will be based on the severity of destruction as determined by the paths of the storms and damage estimates by CCC considering levels of loss correlating to the severity of damage caused by maximum sustained winds of the hurricane. The levels of damage that will determine payment rates are as follows:

Tier I—75 percent or greater crop loss and associated tree damage.
Tier II—50 to 74 percent crop loss and associated tree damage/loss.
Tier III—35 to 49 percent crop loss and associated tree damage/loss.
Tier IV —15 percent and greater associated tree damage only.

(2) Citrus producers who suffered citrus crop production losses and associated fruit-bearing tree damage, including related cleanup and rehabilitation costs, must provide to CCC a certified statement on a CCC-approved form of the level of destruction, the number of acres in the disaster-affected grove, and the geographic location of the losses.

(c) If the actual level of loss is greater than the level of loss associated with the tier based on the location of the grove, the applicant may submit documentation to CCC to request the grove be placed in the next lower-numbered tier which represents a greater level of loss and a higher payment rate. Regardless of the level of loss incurred, the grove can only be placed in the next lower-numbered tier.

(d) If the actual level of loss is less than the tier associated with the location band for the grove, the producer shall certify to the lower loss level, which must be 15 percent or more, on the application and a lower payment rate will be used by CCC based upon the tier rate associated with the lower loss level.

§ 1416.303 Application process.

(a) Producers wishing to receive benefits must submit a completed application and report of acreage identifying the geographic location and number of acres in the disaster-affected area to their local FSA Service Center at the time an application for payment is being filed according to § 1416.5.

(b) Applicants must certify and provide adequate proof that the losses and expenses incurred to eligible citrus crops were a direct result of the hurricane, in accordance with § 1416.2.

§ 1416.304 Payment calculations.

(a) Payments will be calculated by multiplying the number of net acres in each tier times the applicable payment rate, as determined by CCC, times the producer's share of the loss. The number of net acres is determined by subtracting drainage ditches, canals, and other such land uses from the citrus acres planted in the grove. The following table provides the applicable payment rates for producers with crop insurance or NAP coverage and those without coverage:

	Producers with insurance or NAP coverage	Producers without insurance or NAP coverage
Tier I	$1,500	$1,425
Tier II	1,000	950
Tier III	600	570
Tier IV	100	95

(b) The percentages of the payment for citrus crops that are subject to the payment limitation and AGI provisions are:

Tier I—55 percent
Tier II —60 percent
Tier III—64 percent
Tier IV—0 percent

(c) The percentages of the payment for citrus crops that are not subject to the payment limitation and AGI provisions are:

Tier I—45 percent
Tier II—40 percent
Tier III—36 percent
Tier IV—100 percent

§ 1416.305 Availability of funds.

(a) In the event that the total amount of eligible claims submitted by eligible citrus producers under this subpart and subparts E, F, and G of this part exceeds $95 million, each payment to an eligible citrus producer shall be reduced by a uniform national percentage, as determined by CCC.

(b) Such payment reduction shall be applied after imposition of applicable per person payment limitation as provided in § 1416.6.

Subpart E—Fruit and Vegetable Disaster Program

§ 1416.400 Applicability.

This subpart sets forth the terms and conditions applicable to the Fruit and Vegetable Disaster Program.

§ 1416.401 Definitions.

Other than plasticulture means conventional row-cropped fruits and vegetables, and those crops that are double cropped on a previous crop's or season's plastic.

Plasticulture means production practices where the soil has been bedded, fumigated, fertilized, an irrigation system installed, and covered with plastic mulch.

Specialty crop means any commercially grown fruit or vegetable eligible for crop insurance or NAP coverage.

§ 1416.402 Eligible fruit and vegetable producers.

(a) Producers of fruits and vegetables utilizing ''plasticulture'', and ''other

than plasticulture'' production practices are eligible for assistance. Producer must be an owner, operator, landlord, tenant, or sharecropper who shares in the risk of producing the crop and is entitled to share in the crop available for marketing from the farm or would have shared had the crop been produced. Payments will be made on a per-acre basis, and are based on tiers and the severity of destruction as specified for citrus crops and the type of production practice.

(b) Producers must have at least a 35 percent loss in production, or a 15 percent or more associated crop damage. Producers must also document that the necessary materials and procedures were followed to produce vegetables using plasticulture or other than plasticulture.

(c)(1) Fruit and vegetable producers will be reimbursed on a per-acre basis for eligible acreage. Payment will be based on the severity of destruction as determined by the paths of the storms and damage estimates developed by CCC. Estimates take into account levels of loss generally correlating to the severity of damage caused by maximum sustained winds of the applicable hurricanes. The levels of damage that will determine payment rates are as follows:

Tier I—75 percent or greater crop and/or yield loss

Tier II—50 to 74 percent crop and/or yield loss

Tier III—35 to 49 percent crop and/or yield loss

Tier IV—15 percent or more crop and/or field damage

(2) Fruit and vegetable producers who suffered crop production losses and associated crop damage, including related cleanup, must provide to CCC a certified statement on a CCC approved form of the level of destruction, the number of the disaster affected acres, and the geographic location of the losses.

(d) If the actual level of loss is greater than the tier associated with the location of the acreage, the applicant may submit documentation to CCC to request the acreage be placed in the next lower-numbered tier which represents a greater level of loss and a higher payment rate.

(e) If the actual level of loss is less than the tier associated with the location of the acreage, the producer shall certify to the lower loss level on the application and a lower payment rate will be used by CCC based upon the tier rate associated with the lower loss level.

§ 1416.403 Application process.

(a) Producers wishing to receive benefits must submit a completed application and report of acreage identifying the geographic location and number of acres in the disaster-affected area to their local FSA Service Center at the time an application for payment is being filed according to § 1416.5.

(b) Applicants must certify and provide adequate proof that the losses and expenses incurred to eligible fruit and vegetable crops were a direct result of the applicable disaster, as set forth in § 1416.2.

§ 1416.404 Payment calculations.

(a) Payments will be calculated by multiplying the number of net acres in each tier times the applicable payment rate, as determined by CCC, times the producer's share of the loss. The number of net acres is determined by subtracting drainage ditches, canals, and other such land uses from the planted fruit and vegetable acres. The following table provides the applicable payment rates for producers with crop insurance or NAP coverage and those without coverage:

	Producers with insurance or NAP coverage		Producers without insurance or NAP coverage	
	Plasticulture	Other than plasticulture	Plasticulture	Other than plasticulture
Tier I	$3,750	$1,125	$3,560	$1,070
Tier II	2,500	750	2,375	710
Tier III	1,500	450	1,425	425
Tier IV	250	75	235	70

(b) The percentage of the payment for fruit and vegetable crops that are subject to the payment limitation and AGI provisions are:

Tier I—94.6667 percent

Tier II—94 percent

Tier III—93.3333 percent

Tier IV—0 percent

(c) The percentage of the payment for fruit and vegetable crops that are not subject to the payment limitation and AGI provisions are:

Tier I—5.3333 percent

Tier II—6 percent

Tier III—6.6667 percent

Tier IV—0 percent

(d) In addition to the prohibition in § 1416.6(g) a producer may not receive duplicate benefits under this subpart and subpart H of this part, the 2005 Hurricanes Tree Assistance Program.

§ 1416.405 Availability of funds.

(a) In the event that the total amount of eligible claims submitted by eligible fruit and vegetable producers under this subpart and subparts D, F, and G exceeds $95 million, each payment to an eligible fruit and vegetable producer shall be reduced by a uniform national percentage, as determined by CCC.

(b) Such payment reduction shall be applied after imposition of applicable per person payment limitation as provided in § 1416.6.

Subpart F—Tropical Fruit Disaster Program

§ 1416.500 Applicability.

This subpart sets forth the terms and conditions applicable to the Tropical Fruit Disaster Program.

§ 1416.501 Definitions.

Tropical Fruit means carambola, longan, lychee, and mangos for disaster program purposes.

§ 1416.502 Eligibility requirements.

(a) Eligible Tropical Fruit producers must have incurred 50 percent or greater loss in commercial production.

(b) Only those acres of the four eligible fruits located in Tier I or II as designated under § 1416.2 shall be considered for payment under this subpart.

§ 1416.503 Application process.

(a) Producers wishing to receive benefits must submit a completed application and report of acreage identifying the geographic location and number of acres in the disaster-affected area to their local FSA Service Center at the time an application for payment is

being filed as provided in § 1416.5. Applications will not be accepted after such date as announced by FSA. Applications for assistance are available at local FSA Service Centers.

(b) Applicants must certify and provide adequate proof that the losses and expenses incurred to eligible tropical fruit crops were a direct result of the applicable disaster, as set forth in § 1416.2.

§ 1416.504 Payment calculation.

(a) Payments are calculated by multiplying the number of affected acres by the payment rate times the producer's share of the crop. The payment rate for insured or NAP covered tropical fruit is a flat rate of $5000 per acre. The rate for uninsured or acreage without NAP coverage is $4750 per acre. The total payment is subject to the limitations in § 1416.6.

(b) In addition to the prohibition in § 1416.6(g), producers cannot receive duplicate benefits under this subpart and subpart H of this part, Hurricane TAP, for the same loss.

§ 1416.505 Availability of funds.

(a) In the event that the total amount of eligible claims submitted by eligible tropical fruit producers under this subpart and subparts D, E, and G exceeds $95 million, each payment to an eligible tropical fruit producer shall be reduced by a uniform national percentage, as determined by CCC.

(b) Such payment reduction shall be applied after imposition of applicable per person payment limitation as provided in § 1416.6.

Subpart G—Nursery Disaster Program

§ 1416.600 Applicability.

This subpart sets forth the terms and conditions applicable to the Nursery Disaster Program.

§ 1416.601 Eligibility requirements.

(a) Commercial ornamental nursery and fernery producers are eligible for assistance for inventory losses for each nursery or fernery operation and clean-up costs. For a nursery to be considered a commercial nursery, it must be certified by the appropriate state agency. Eligible producers include producers of the following types of nursery stock and such stock as announced by CCC:

(1) Deciduous shrubs, broadleaf evergreens, coniferous evergreens, shade and flowering trees.

(2) Stock for use as propagation in a commercial ornamental nursery operation.

(3) Fruit or nut seedlings grown for sale as seed stock for commercial orchard operations growing fruit or nuts.

(b) Eligible nursery inventory does not include:

(1) Edible varieties.

(2) Plants produced for reforestation purposes or for the purpose of producing a crop for which RMA does not provide insurance, or for which CCC does not provide assistance under NAP.

(c) Losses will be determined on an individual-nursery basis. Production loss from one nursery will not be offset by production from another nursery operated by the same applicant.

§ 1416.602 Application process.

(a) Producers wishing to receive benefits must submit a completed application and report of acreage identifying the geographic location, number of acres in the disaster-affected area, the inventory value before the hurricane, and the inventory value after the hurricane to their local FSA Service Center at the time an application for payment is being filed as provided in § 1416.5. The value of the inventory is the producer's wholesale price list, less the maximum customer discount they provide, not to exceed the prices in RMA's ''Eligible Plant List and Price Schedule.''

(b) Applicants must certify and provide adequate proof that the losses and expenses incurred to eligible nursery crops were a direct result of the applicable hurricane during the disaster period.

§ 1416.603 Payment calculations.

(a) Payments are calculated by multiplying the difference between the beginning and ending inventory value times 25 percent times the producer's share of the loss. The payment for production loss is subject to the payment limitation and AGI provisions.

(b) Producers are also eligible for a payment of $250 per acre for debris removal and associated costs from hurricane damage if they can document that these costs were equal to or greater than $250 per acre. None of the payment for cleanup is subject to the payment limitation and AGI provisions.

(c) In addition to the prohibition of § 1416.6(g), producers cannot receive duplicate benefits under this subpart and subpart H of this part, the Hurricane TAP, for the same loss.

§ 1416.604 Availability of funds.

(a) In the event that the total amount of eligible claims submitted by eligible nursery producers under this subpart and subparts D, E, and F exceeds $95 million, each payment to an eligible nursery producer shall be reduced by a uniform national percentage, as determined by CCC.

(b) Such payment reduction shall be applied after imposition of applicable per person payment limitation as provided in § 1416.6.

Subpart H—2005 Hurricane Tree Assistance Program

§ 1416.700 Applicability.

This subpart sets forth the terms and conditions applicable to the 2005 Hurricane Tree Assistance Program (TAP) for losses in eligible counties as defined according to § 1416.2.

§ 1416.701 Definitions.

Application means the ''2005 Hurricane Tree Assistance Program'' Application form.

Fruit tree means a woody perennial plant having a single main trunk, commonly exceeding 10 feet in height and usually devoid of branches below, but bearing a head of branches and foliage or crown of leaves at the summit that is grown for the production of an annual crop, including nuts, for commercial market for human consumption.

Stand means a contiguous acreage of the same crop of trees (including Christmas trees, ornamental trees, nursery trees, and potted trees), bushes (including shrubs), or vines.

§ 1416.702 Eligible producers and stands.

(a) An eligible producer means an individual, or legal entity, including an Indian tribe as defined under the Indian Self-Determination and Education Assistance Act; an Indian organization or entity chartered under the Indian Reorganization Act; a tribal organization as defined under the Indian Self Determination Education and Assistance Act; or, an economic enterprise as defined under the Indian Financing Act of 1974, which owns a tree, bushes, or vine.

(b) An eligible stand must:

(1) Be physically located in an eligible county;

(2) Have been impacted during an eligible disaster as set forth in § 1416.2; and

(3) Be grown for commercial use.

§ 1416.703 Application process.

(a) A complete application for 2005 Hurricane TAP benefits and related supporting documentation must be submitted to the county office prior to the deadline announced by the Deputy Administrator.

(b) A complete application includes all of the following:

(1) A form CCC–896 provided by CCC;

(2) Report of acreage identifying the geographic location and number of acres in the disaster-affected stand of claimed trees, bushes, and vines according to part 718 of this title;

(3) A written estimate of the number of acres of trees, bushes or vines lost or damaged which is prepared by the owner or someone who is a qualified expert, as determined by the county committee;

(4) Sufficient evidence of the loss to allow the county committee to calculate whether an eligible loss occurred.

(c) Before requests will be approved, the county committee:

(1) Must verify actual qualifying losses and the number of acres involved by on-site visual inspection of the land and trees, bushes or vines.

(2) May request additional information and may consider all relevant information in making their determination, including their members' own knowledge about the applicant's normal operations.

§ 1416.704 Payment calculation.

(a) An approved eligible producer shall be reimbursed in an amount not to exceed 75 percent of the eligible costs for the qualifying practice. The payment shall be the lesser of the 75% of actual costs for the practice or the amount calculated using rates established by the Deputy Administrator. The costs permitted shall only be approved for:

(1) Seedlings or cuttings, for trees, bushes or vine replanting;

(2) Site preparation and debris handling within normal cultural practices for the type of individual stand being re-established and necessary to ensure successful plant survival;

(3) Chemicals and nutrients necessary for successful establishment;

(4) Labor to plant seedlings or cuttings as determined reasonable by the county committee;

(5) Replacement, rehabilitation, and pruning; and

(6) Labor used to transplant existing seedlings established through natural regeneration into a productive tree stand.

(b) Costs for fencing, irrigation, irrigation equipment, protection of seedlings from wildlife, general improvements, re-establishing structures, windscreens and other costs as determined by the Deputy Administrator are not eligible for reimbursement benefits.

(c) When lost stands are replanted, the types planted may be different than those originally planted if the new types have the same general end use, as the county committee determines and approves. Payments will be based on the lesser of rates established to plant the types actually lost or the cost to establish the eligible alternative type used. If the species of plantings, seedlings or cuttings differs significantly from the species lost then, except as the county committee determines, the costs may not be reimbursed.

(d) Eligible producers may elect not to replant or rehabilitate the entire eligible stand. If so, the county committee shall calculate payment based on the number of qualifying trees, bushes or vines actually replanted or rehabilitated.

(e) In addition to the prohibition in § 1416.6(g), and the payment limitation in § 783.6(f) of this title, producers cannot receive duplicate benefits under this subpart and subpart D of this part, the Hurricane Citrus Disaster Program, for the same loss.

§ 1416.705 Obligations of a participant.

(a) Eligible producers must execute all required documents and complete the 2005 Hurricane TAP funded practice within 12 months of application approval.

(b) If a person was erroneously determined to be eligible or becomes ineligible for all or part of a 2005 Hurricane TAP benefit, the person and successor shall refund any payment paid under this part together with interest from the date of disbursement at a rate in accordance with part 1403 of this chapter.

(c) Participants must allow representatives of FSA to visit the site for the purpose of certifying compliance with 2005 Hurricanes TAP requirements.

Subpart I—2005 Catfish Grant Program

§ 1416.800 General.

(a) CCC will administer a limited program to provide assistance to catfish producers in eligible counties. Under the Catfish Grant Program, CCC will provide grants to the State governments of States where eligible counties are located. The amount of each grant will be based on the total value of the catfish feed loss suffered in every eligible county in the subject state as determined by CCC. Available grant funds under this subpart and funds under subpart B of this part will be uniformly prorated to ensure that available funding is not exceeded. Catfish producers in eligible counties who suffered at least a 30-day catfish feed loss may be eligible for these funds. Among other conditions of these grants, assistance provided by a State under such a grant to an applicant shall not exceed $80,000, except for general partnerships and joint ventures, in which case assistance shall not exceed $80,000 times the number of members that constitute the general partnership or joint venture.

(b) No producer may receive duplicate payments under this subpart and any other Federal programs for the same loss.

Signed in Washington, DC, February 2, 2007.

Thomas B. Hofeller,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 07–590 Filed 2–9–07; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1496

RIN 0560–AH39

Procurement of Commodities for Foreign Donation

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule adopts new procedures to be used by the Commodity Credit Corporation (CCC) in the evaluation of bids in connection with the procurement of commodities for foreign donation. CCC is amending the existing regulations to provide for the simultaneous review of commodity and ocean freight offers when evaluating lowest-landed cost options in connection with the procurement of commodities for foreign donation. This rule will enhance bidding opportunities for potential vendors while allowing CCC to more efficiently acquire commodities.

DATES: *Effective Date:* February 12, 2007.

FOR FURTHER INFORMATION CONTACT: Richard J. Chavez, United States Department of Agriculture (USDA), Farm Service Agency (FSA), Commodity Procurement Policy & Analysis Division (CPPAD), Room 5741–S, 1400 Independence Avenue, SW., Washington, DC 20250; Telephone: (202) 690–0194; Facsimile: (202) 690–2221; E Mail: *Richard.Chavez@USDA.gov.*

SUPPLEMENTARY INFORMATION:

Background

CCC procures agricultural commodities for donation overseas under various food aid authorities. These authorities include Title II of the Agricultural Trade Development and

Assistance Act of 1954 (Pub. L. 480), which is administered by the U.S. Agency for International Development (AID), and the Food for Progress and the McGovern-Dole International Food for Education and Child Nutrition Programs, which are administered by the Foreign Agricultural Service (FAS) within USDA.

Currently, CCC follows a two-step ocean freight bid evaluation process in connection with the procurement of commodities for foreign donations. First, CCC issues a public invitation soliciting bids for the sale of commodities and requests that ocean carriers provide indications of available freight rates to CCC. These ''indications'' of rates are not offers to CCC. In fact, CCC does not contract for ocean transportation for the donated commodities. Ocean transportation contracting is done by the Cooperating Sponsors (grantee organizations or foreign governments receiving the commodities) or by AID in the case of some Title II, Pub. L. 480 shipments.

At this point, CCC evaluates commodity bids together with the freight rate indications to identify the combination which would most likely result in the lowest-landed cost, i.e., the lowest combined cost of commodities and freight to destination. CCC will purchase the commodities to be donated overseas on that basis. Lowest-landed cost is calculated on the basis of U.S.-flag rates for that quantity of the commodities being purchased that is determined necessary and practical to meet cargo preference requirements, i.e., the tonnage to be shipped on U.S.-flag vessels. Although CCC does not contract for freight, the freight costs are borne by the U.S. Government from the same accounts as the commodity costs. Therefore, purchasing on the basis of lowest-landed cost will reduce outlays and maximize the use of funds.

CCC's commodity purchase determines the point at which the commodity is delivered to the carriers. However, as stated above, the freight rates used for this lowest-landed cost evaluation are not firm, fixed offers. Therefore, a second step is necessary that involves the Cooperating Sponsor or AID issuing invitations for firm freight offers. CCC will notify the Cooperating Sponsor(s) or AID of the location of the commodity as determined in its commodity bid evaluation and the Cooperating Sponsor or AID will issue ocean freight invitations that will lead to actual freight bookings by the Cooperating Sponsor or AID on firm, fixed ocean rates.

This two-step process has been in place for many years and was designed at the time that processed commodities were shipped at ocean carrier tariff rates that could be readily identified. Now, as rates are ''submitted rates'' and not tied to tariffs the process is exceedingly cumbersome and time-consuming, typically requiring 80 hours each month to analyze the first-step indications. Additionally, the process does not guarantee that commodities will be actually purchased and shipped on the basis of lowest-landed cost. One reason for this is that the U.S. Maritime Administration (MARAD), within the Department of Transportation, prioritizes U.S.-flag ocean service for purposes of cargo preference and assigns a higher priority to service that uses only U.S.-flag vessels to the final discharge point.

The current two-step process often results in commodities being purchased at locations based upon indications of service available from U.S.-flag carriers that have a lower priority. These port locations may not be cost-effective for the higher priority vessels, which can then displace the lower priority vessels and secure the cargo, often at a higher rate.

This rule will add clarity to the commodity bid evaluation process by eliminating the two-step process. A major constraint to revising this two-step process has been that computer resources available to CCC have been unable to analyze the large number of variables that comprise modern government commodity procurements and the complexities of cargo preference compliance. These include the many contract priorities that are mandated by law as well as the volume of possible commodity and freight cost variables that result from a national bidding system. CCC is now updating its computer bid-evaluation system to be able to accommodate a more unified one-step bid evaluation. The procurement for commodities using firm, fixed ocean rates to determine lowest-landed cost would be the most efficient method of procurement. Under such a system, the cargo preference requirements would be determined initially and not subject to a change of carriers. This should reduce the ocean freight costs considerably because the tonnage would be consolidated by the carriers' bids and by allowing lowest-landed cost and cargo preference requirements to determine the U.S. delivery points. The delivery time from call forward issuance to delivery abroad could be reduced because the current freight evaluation process would be streamlined.

The new procedures would apply to processed and bulk commodities and cover the assistance programs identified above. Under the one-step process, CCC would issue invitations for commodity bids and Cooperating Sponsors or AID would issue separate invitations for freight offers at approximately the same time. Freight invitations may call for bids to be submitted to the donee organization or AID via an Internet-based bid entry system maintained by CCC approximately 3 days prior to the time for receipt of commodity bids. Such a process would speed data input and evaluation as compared to the transmittal of written offers. Offers of commodities and freight would be invited on a ''bid-point'' basis, i.e., a point where the transfer of care and custody of the commodity from the vendor to the ocean carrier takes place. This point of transfer may include one or more terminals included under the specific bid point designation. CCC believes this specificity is desirable because a more general offer that designates a port area can have additional transfer costs once a specific terminal is named. CCC should be able to identify these extra costs at the time the bids are evaluated as it may impact on true lowest-landed cost calculations. The submitted freight offers will be reviewed by the donee organization, AID, and/or USDA prior to bid evaluation in order to determine the availability of service for commodities and destinations. Furthermore, the one-step bid evaluation process will be more efficient because ocean carriers are expected to offer quantity increments that are the most economical for them.

After commodity offers are received, CCC would evaluate the offers on the basis of lowest-landed cost by a comparison with offered freight rates. CCC would award the commodity bid on that basis and notify the Cooperating Sponsor of the bid accepted. The Cooperating Sponsor would be required to book freight at the rate CCC used for the lowest-landed cost determination, or a lower rate, except in circumstances where, in the opinion of the Contracting Officer and the applicable program agency's representative, extenuating circumstances (such as internal strife at the foreign destination or urgent humanitarian conditions threatening the lives of persons at the foreign destination) preclude such awards, or efficiencies and cost-savings lead to the use of different types of ocean services such as multi-trip voyage charters, indefinite delivery/indefinite quantity (IDIQ), delivery Cost and Freight (C &

F), delivery Cost Insurance and Freight (CIF), and indexed ocean freight costs.

Summary of Public Comments

On December 16, 2005, CCC published a proposed rule, Procurement of Commodities for Foreign Donation, in the **Federal Register** (70 FR 74717–74721). The proposed rule proposed new procedures to be used by CCC in the evaluation of bids in connection with the procurement of commodities for foreign donation. The rule provided a 30-day public comment period ending January 17, 2006.

In response to public requests, CCC reopened and extended the comment period for 45 days to March 9, 2006, via a document published in the **Federal Register** January 23, 2006 (71 FR 3442). Further, CCC determined that a public meeting would be held at USDA on February 21, 2006, to provide for open discussion on the proposed rule. The notice of a public meeting was published in the **Federal Register** on February 8, 2006 (71 FR 6399–6400).

On April 7, 2006, a supplemental to the proposed rule was published in the **Federal Register** to clarify two points (71 FR 17767–17768). First, CCC specifically recognized its obligations under the cargo preference legislation of the Merchant Marine Act, 1936. Secondly, CCC clarified the ''extenuating circumstances'' that may preclude awards on the basis of lowest landed cost. CCC also reopened and extended the comment period to May 8, 2006, to accord interested parties to comment thereon.

CCC received a total of 46 responses on the proposed rule, including the supplemental to the proposed rule. Among the respondents were steamship lines or their legal representatives, ports, vendors of commodities, and trade and industry groups. A few of the respondents submitted more than one response, reiterating their points made from an earlier submission or addressing new points. Many of the responses received addressed multiple points; therefore, the number of comments discussed in this rule exceeds the number of actual responses received.

The public comments received in response to the proposed rule, and CCC's response, are discussed below. While we considered the comments and suggestions received and understand the concerns and opinions expressed by the respondents, CCC did not change the final rule. This rule gives CCC necessary flexibility and is consistent with statutory requirements. Therefore, the proposed rule, including the supplemental to the proposed rule, is adopted as final, without change.

General Comments

Fourteen of the comments received requested an extension of the original 30-day public comment period. CCC believed that the requests for additional time to comment on the proposed rule were reasonable and therefore on January 23, 2006, reopened and extended the comment period to March 9, 2006 (71 FR 3442). Two of the comments received after January 23, 2006, supported the extended comment period. Another comment was grateful for the extension in that it permitted time for a public meeting to discuss the proposed rule. On April 7, 2006, CCC again reopened and extended the comment period to May 8, 2006 (71 FR 17767–17768).

Nine of the comments received supported the proposed rule. Many of these agreed that the one-step procurement process, using firm, fixed freight rates, would streamline CCC's procurement process making the actual purchases more cost efficient. CCC agrees.

One respondent noted that they were very pleased with the outcome of an interagency meeting on the proposed rule and that a consensus would be reached among the agencies before publication of the final rule. The agencies involved have met and have agreed that the one-step process will work efficiently for all interested parties.

Three comments stated that the proposed rule warranted a significant designation under Executive Order (EO) 12866 due to the expected economic impacts. However, the proposed rule was issued in conformance with EO 12866 and was determined to be not significant; therefore, it was not reviewed by the Office of Management and Budget (OMB). The projected economic impact from the implementation of a one-step bid evaluation process will arise, in part, from the savings that are derived from a truly ''lowest landed'' cost solution to commodity procurement. Under the current two-step process, as described in the background section of the rule, the indicative rates provided by the carriers are not firm—and the actual rates offered firm once the commodity is already purchased at a location, may bring into that procurement entirely different economics. This usually results in higher overall costs in the combination of freight and commodity. A one-step process should result in freight savings, derived in a more efficient manner in which ocean carriers are selected, but not, however, in avoidance of cargo preference. In addition, while the proposed rule was designated not significant under EO 12866, this final rule was designated significant and was reviewed by OMB.

Two comments stated that the Regulatory Flexibility Act was applicable to the proposed rule. The Regulatory Flexibility Act (5 U.S.C. 603) only requires regulatory flexibility analysis when an agency is required to publish a proposed rule by the public notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553). Section 553(a)(2) of the Act provides an exemption for matters relating to contracts. Therefore, by law, CCC was exempt from the Regulatory Flexibility Act provisions. Although not required by the APA to publish a proposed rule, CCC published the proposed rule because it is USDA policy under a memorandum published by the Secretary of Agriculture on July 24, 1971 (36 FR 13804) to give notice of proposed rulemaking and invite the public to participate in rulemaking even where not required by law. In addition, CCC did conduct a Regulatory Flexibility Analysis for this final rule and it is available with the cost-benefit analysis from the contact person indicated above.

One comment stated that the proposed rule would significantly alter the administration of small business and Javits-Wagner-O'Day programs in the Department. Commodity procurements under this rule will comply with Federal Acquisition Regulation (FAR) and Small Business Utilization requirements.

One comment recommended that CCC incorporate Incoterms and other industry-standard terminology in food aid programs. The contract terms for ocean freight are determined by the booking agreement with the cooperating sponsor and not within the scope of this rule.

Five comments requested that a working session and/or meeting be convened as soon as possible with member U.S. ship operating companies and other interested parties to learn more and share ideas about the proposed rule and its impact on the maritime industry. Two other comments added that the proposed rule and the Freight Bid Entry System (FBES) should be made part of a cooperative effort that involves all interested parties, including AID and MARAD. Over the past few years as the one-step procurement process was under development, USDA held numerous public meetings to share information on the one-step procurement process, including FBES.

These included five meetings in 2005, starting with two in March, followed by a meeting in April, May and June. On February, 21, 2006, CCC held a public meeting to discuss the proposed rule with all interested parties. Additionally, a prototype of FBES was presented at the International Food Aid Conference (IFAC) held in Kansas City in March, 2006. During that time, all interested parties were given the opportunity to view the system and ask questions. CCC and AID have had numerous meetings with MARAD over the past several years as they have moved toward a one-step procurement process. These meetings have focused in great detail on how the software would work. Meetings are scheduled and agencies are working cohesively to achieve consensus on the new system implementation.

One comment stated that the proposed rule change had not been analyzed and/or explained in enough detail to allow stakeholders to assess the impact on their business, including changes in commodity port distribution and overall program cost benefits. Five other comments stated that not enough information was provided on the one-step procurement process, including but not limited to mechanical, programmatic and administrative changes and limitations, making it difficult to provide meaningful comments. Another comment, while supportive of a modernized system, stated that the proposed change in the procurement process deserves a full and open review by all interested parties prior to its implementation. This was shared and supported by another comment.

CCC has held numerous public meetings to share information on the one-step procurement process, including FBES, and has received extensive comments and recommendations from industry. Also, CCC intends to conduct FBES training for steamship lines and vendors in Washington, DC, and Kansas City, respectively. Training will be held to accommodate these parties during the testing period.

One comment expressed concern that implementation of the FBES system could result in programmatic errors and procedural problems. Another comment added that the FBES system will need to be highly dependable. One other comment added that they were uncertain as to when FBES testing would take place and suggested that a working group be established to develop a protocol for the testing. CCC recognizes the importance of a highly dependable system. To help identify, resolve and prevent programmatic errors and procedural problems, CCC will continue to conduct system testing prior to implementation of the one-step procurement process. FBES testing is underway and will continue through late-2006. CCC is conducting system testing on small, medium, and large invitations.

Four comments urged that a side-by-side comparison of the current two-step procurement process versus the proposed one-step procurement process be run with results made available to the industry for evaluation and input prior to implementation. During agency meetings, it was agreed that CCC would conduct extensive internal testing followed by a period of training and opportunities for the external users of the system to gain experience using the system prior to implementation.

One comment stated that it would be very helpful for the industry to view some kind of sensitivity analysis or report which addresses how the constraints placed in the transportation part of the bids impacted the solution. The constraints that will be entered by the commodity vendors in the commodity bids, by the ocean carriers in ocean freight bids, the ports for port capacity, and KCCO for small business utilization or the MSA–17 (Great Lakes) requirements are absolute. All of these constraints will likely affect the contract and ocean freight awards as the system reviews literally billions of calculations.

One comment stated that FBES did not address two major concerns raised by cooperating sponsors. The first concern was the length of time required from the time the commodity is requested until it is available for shipment. The second concern was that the procurement process is built around a broad production schedule rather than the needs of the program for a timely arrival of the commodities in-country. The implementation of the one-step procurement process will immediately reduce the commodity time-line by two weeks. Additional improvements may be realized as we are able to take advantage of the system's capabilities. The issue of production schedules is a reality the Agency acknowledges. The new system will allow requests for food aid commodities to be handled more efficiently, both for domestic operations and for transit to the destination.

One comment stated that it was not clear how a forwarding agent would be able to access FBES, generate reports, download data, or determine if all offers submitted were reviewed for responsiveness. The system will be accessible to forwarding agents and information can be downloaded. An opportunity for training on the new system will be offered to freight forwarders.

One comment stated that it would be improper for CCC to superimpose a new set of rules on the procurement process without identifying the terms and substance of the rule, its operational relationship to related regulations, and its impact on stakeholders. The preamble outlines the process and explains the efficiencies that are expected to be realized with the implementation of the rule. The desire to identify the impact on the stakeholders and to receive input on the design of the system was the impetus to hold the open meetings outlined in the preamble. The majority of suggestions and concerns expressed in these meetings were incorporated into the system, or are planned to be incorporated in future releases.

One comment addressed the software development and testing process, recommending that a MARAD originated cargo preference flow chart be incorporated; MARAD be designated as sole authority to validate cargo preference requirements and to authorize related system software changes; linear programs provide the optimal solution and a sensitivity report; and system testing be open and transparent to all interested parties. All agencies involved will reach consensus prior to implementing the system. Further, all interested parties will have the opportunity to be trained and experiment with the system prior to implementation.

Two comments noted that the proposed rule was only a piece of a much broader and complicated mosaic of statutes and regulations and must be considered in conjunction with these statutes and regulations. CCC intends to administer any new procurement system in a manner consistent with its obligations under the current laws and regulations governing the procurement of commodities for foreign donation, including meeting cargo preference requirements.

One comment stated that the proposed rule did not explain how it would add clarity to the process, the basis for new incentives to consolidation of the carriers' bids, the rationale behind the one-step process being more efficient due to ocean carriers expected to offer quantity increments most economical for them, and how elimination of one of the monthly load periods will reduce delivery times. The proposed rule adds clarity to the commodity bid evaluation process by allowing for the simultaneous review of commodity and ocean freight offers when evaluating

lowest-landed cost options in connection with the procurement of commodities for foreign donation. The consolidation of cargo will inherently achieve improved efficiencies due to economies of scale. There is the potential to reduce the delivery time by two weeks due to the elimination of the need for a second round of ocean freight solicitation, offering, and bid evaluation.

Three comments concluded that the rule would not seem to accommodate the flexibility and transparency required by carriers to refine their bids. The new system, as with any procurement system that awards based on firm fixed offers, will require participants to make the offers as competitive as possible, and will maintain a firm equitable environment with all information stated in the solicitation stages.

One comment expressed concerns that the new procedures may permit the return of negative business practices such as ''blocking rates.'' Further, the respondent suggested that a provision be adopted whereby only competitive rates, not cost constructed rates, be evaluated. The new system will evaluate ocean carrier offers based on the priority of service. Priority 1 carriers will compete with priority 1 carriers for such cargoes as necessary in order to obtain compliance with cargo preference requirements. This procurement method will eliminate the negative business practices.

Another comment expressed concern that the new process would not permit U.S.-flag ocean carriers to link discharge ranges utilizing multiple Kansas City Commodity Office (KCCO) trade routes. Ocean carriers will be able to offer multiple discharge port ranges on one bid. Multiple bids may be entered if needed.

Two comments express concern over the one-step procurement process and its impact on the Great Lakes set-aside. The one-step procurement process will comply with the Great Lakes mandate that up to 25 percent of commodities purchased for Title II will be considered for delivery to the Great Lakes. The new system will evaluate the same as the previous system with regard to the MSA–17 provisions for the Great Lakes. The bid evaluation system will calculate the lowest-landed cost without cargo preference consideration, and up to the 25 percent maximum of the commodities purchased in the Great Lakes will be awarded to the Great Lakes.

One comment noted that references in the proposed rule to the possible use of alternative procurement procedures was confusing. On April 7, 2006, a supplemental to the proposed rule was published in the **Federal Register** (71 FR 17767–17768). The supplemental to the proposed rule clarified the meaning of alternative procurement procedures and when they would be utilized. The supplemental to the proposed rule provided examples for utilizing other than ''lowest-landed cost'' to award contracts for the procurement of commodities. The examples were internal strife at the foreign destination, or urgent humanitarian conditions threatening the lives of persons at the foreign destination.

One comment recommended that all factors be accommodated in the determination of courses of action, including a single bid process that may impose excessive bid submission windows. The new system will require ocean carriers to offer service in the future because of the transit times required to move the commodities from inland locations to the domestic delivery points.

Several comments addressed specific sections of the proposed rule.

Section 1496.5 Consideration of Bids

One comment noted that CCC must require that all vessel carriers specify the maximum cargo that they can transport under a specific invitation for bid. Additionally, vessels must be required to offer freight rates for all bid points from which they can provide service and when a properly offered cargo preference freight rate is used to establish the lowest-landed cost for a particular cargo transport, the procedures must require that the cargo be shipped using the carrier that offered the applied rate. The FBES system will allow ocean carriers to enter minimum and maximum tonnage constraints to their bids.

One comment expressed concern that port designations under the proposed one-step bid evaluation process would include ports that could not handle both containerized and bulk cargoes thereby urging USDA to only designate ports that could handle and load both types of cargo. No carrier will be required to move cargo out of a port for which they do not bid. Carriers bid the port they wish to use.

One comment added that CCC should continue to require commodity suppliers to include bid-points within ocean ports. Under the proposed one-step process, offers of commodities and freight would be invited on a bid-point basis, which may include one or more ocean ''port'' terminals under the specific bid point designation. CCC will be using the same approved ports and terminals that we currently use.

Section 1496.7 Final Contract Determinations

Section 1496.7(b) Combination of Bids

One of the comments received noted that the proposed rule included an unexplained reference to the use of other types of ocean services. On April 7, 2006, a supplemental to the proposed rule was published in the **Federal Register** to clarify ''extenuating circumstances'' and, in which case, the Contracting Officer may determine that such circumstances preclude awards on the basis of lowest-landed cost, or efficiency and cost savings justify the use of types of ocean service that would not involve an analysis of freight bids for each of CCC's commodity purchases (71 FR 17767–17768). Other types of services may include, but are not limited to, multi-trip voyage charters, indefinite delivery/indefinite quantity (IDIQ), delivery Cost and Freight (C&F), delivery Cost Insurance and Freight (CIF), and indexed ocean freight costs.

One of the comments stated that only American ships should deliver American goods. Four other comments received found the proposed rule unclear as to CCC's adherence to existing cargo preference requirements. Another comment added that the rule should be part of an effort that looks at all pieces of cargo preference requirements as well as the procurement of commodities for foreign donation. CCC will, of course, comply with cargo preference requirements, including the use of U.S.-flag ships, and administer any new procurement system in a manner consistent with its obligations under the cargo preference legislation of the Merchant Marine Act, 1936.

Three other comments stated that CCC needed to explain how cargo preference requirements will be applied and complied with under the proposed system before a final rule is published. Another comment was not quite sure how lowest-landed cost and cargo preference mix. The proposed system is about improving efficiencies in the commodity procurement process to realize saving and not about cargo preference. All CCC is proposing is that vessels actually bid and that CCC base its lowest landed-cost calculation on that bid. The cargo preference legislation requires that CCC use a certain percentage of U.S.-flag vessels to the ''extent such vessels are available at fair and reasonable rates * * *.'' CCC consults with MARAD as to ''fair and reasonable rates'' after we have vessel and offers and a tentative vessel fixture. This will not change. The proposed rule addresses only the process of

procurement up to a determination of ''lowest-landed cost.''

Section 1496.7(c) Notification of Awards

One of the comments stated that the new CCC procedures should require that commodity prices and freight rates for each invitation be made publicly available within seven days after the bid award and freight fixtures. The party submitting the accepted commodity procurement bid will be notified of the acceptance of the bid by CCC. Also, CCC's Purchase Contract Awards (PCAs) for foreign food aid donations are published within seven days of an award on the Internet at *http://www.fsa.usda.gov/daco/.* AID or the grantee organization, or its shipping agent, will be notified of the vessel freight rate used in determining the commodity contract award. Both FAS and AID publish freight awards for foreign food aid donations at *http://www.fas.usda.gov/food-aid.asp* and *http://www.AID.gov/business/ocean/solicitation.logon.html,* respectively.

Executive Order 12866

This final rule was issued in conformance with Executive Order 12866. This final rule was determined to be significant under Executive Order 12866 and was reviewed by OMB. A cost-benefit analysis was completed and is available from the contact person shown above.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. Nonetheless, a Regulatory Flexibility Analysis was completed and is available from the contact person shown above.

Environmental Evaluation

The environmental impacts of this rule have been determined to be consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR part 799. FSA concluded that the rule requires no further environmental review because it is categorically excluded. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this final rule.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The information collection required by this rule has been approved by OMB under the Paperwork Reduction Act of 1995 and assigned control number 0560–0258.

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act, which requires Federal Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. CCC is updating its computer bid-evaluation system that would accommodate a more unified one-step bid evaluation. Freight invitations would call for bids to be submitted through a web-based entry system.

Most of the information collections required by this rule are fully implemented for the public to conduct business with FSA electronically. However, a few may be completed and saved on a computer, but must be printed, signed and submitted to FSA in paper form.

Executive Order 12612

This rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 7 CFR Part 1496

Agricultural commodities, Exports, Food Assistance Programs, Foreign aid, Government procurement.

■ Accordingly, CCC amends 7 CFR part 1496 as follows:

PART 1496—PROCUREMENT OF COMMODITIES FOR FOREIGN DONATION

■ 1. The authority citation for part 1496 is revised to read as follows:

Authority: 7 U.S.C. 1431(b), 1721–1726a, 1731–1736g–2, 1736o, 1736o–1; 15 U.S.C. 714b and 714c; 46 U.S.C. 55305 and 55314.

■ 2. The heading for part 1496 is revised to read as set forth above.

■ 3. Section 1496.1 is revised to read as follows:

§ 1496.1 General statement.

This subpart sets forth the policies, procedures and requirements governing the procurement of agricultural commodities by CCC to be donated for assistance overseas under Title II of the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480); the Food for Progress Act of 1985; the McGovern-Dole International Food for Education and Child Nutrition Program; and any other program under which CCC is authorized to provide agricultural commodities for assistance overseas.

■ 4. In § 1496.2, paragraph (a) is amended by removing the last sentence and paragraph (b) is revised to read as follows:

§ 1496.2 Administration.

* * * * *

(b) Purchases are made to fulfill commodity requests received from AID in the administration of Public Law 480 and from a grantee organization receiving commodities under the other authorities set forth in § 1496.1 of this part.

■ 5. In § 1496.4, the first sentence is revised to read as follows:

§ 1496.4 Issuance of invitations.

From time to time, CCC will issue invitations to purchase or process agricultural products for utilization in the foreign assistance programs enumerated in § 1496.1 of this part.

* * *

■ 6. In § 1496.5, paragraph (b) is revised, paragraph (c) is removed and reserved, and paragraph (d) is revised to read as follows:

§ 1496.5 Consideration of bids.

* * * * *

(b) *Availability of ocean service.* (1) In determining lowest-landed cost as

specified in paragraph (a) of this section, CCC will use vessel rates offered in response to invitations issued by AID or grantee organizations receiving commodities under the authorities set forth in § 1496.1 of this part. If CCC or AID, in the case of Title II, Public Law 480, determines that it is not practicable to evaluate lowest-landed cost on the basis of a competitive ocean freight bid process, CCC may use other methods of soliciting freight rates that USDA or AID may approve for the foreign assistance programs that they respectively administer.

(2) In order to be considered in lowest-landed cost commodity bid evaluations, ocean freight rates must be submitted to grantee organizations or AID in response to an invitation for bids issued by grantee organizations or AID. All such freight invitations for bids must:

(i) Specify a closing time for the receipt of written freight offers and state that late written freight offers will not be considered;

(ii) Provide that written freight offers are required to have a canceling date no later than the last contract lay day specified in the invitation for bids;

(iii) Provide the same deadline for receipt of written freight offers from both U.S. flag vessel and non-U.S. flag vessels; and

(iv) Must be received and opened prior to receipt of written freight offers for the sale of commodities to CCC. The extent to which offered rates may be made public will depend upon regulations or guidelines applicable to the specific foreign assistance program involved.

(3) CCC may require donee organizations or AID to specify in their freight invitations that the ocean carriers submit bids electronically through a web-based system maintained by CCC. In the event of any discrepancy between information furnished to CCC electronically and the written offers submitted to grantee organizations or AID, the offers submitted to the grantee organization or AID will prevail. Copies of all written freight offers received in response to invitations for bids must be promptly furnished to CCC and CCC may require the grantee organization or its shipping agent to submit a written certification that all non-electronic offers received were transmitted to CCC.

(c) [Reserved].

(d) *Port performance.* (1) CCC may contact any port prior to bid evaluation to determine the port's cargo handling capabilities, including the adequacy of the port to receive, accumulate, handle, store, and protect the cargo. Factors which will be considered in this determination will include, but not be limited to, the adequacy of building structures, proper ventilation, freedom from insects and rodents, cleanliness, and overall good housekeeping and warehousing practices. CCC will require that capacity information be submitted electronically by the port and or the terminal prior to bid evaluation.

(2) If CCC determines that: A port is congested; facilities are overloaded; a vessel would not be able to dock and load cargo without delay; labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; or other similar situation exists that may adversely affect the ability of CCC to have the commodity delivered in a timely manner, CCC may consider the use of another coastal range or port. In considering another combination of commodity offers and vessel rate offers, CCC will adhere as closely as possible to the principal of lowest-landed cost.

* * * * *

■ 7. Section 1496.7 is revised to read as follows:

§ 1496.7 Final contract determinations.

(a) *Commodity awards.* (1) Invitations for the procurement of commodities and the evaluation of bids submitted in response to such invitations shall be performed as provided in the Federal Acquisition Regulations (FAR) and Department of Agriculture's procurement regulations set forth in chapter 4 of title 48 of the Code of Federal Regulations (the AGAR).

(2) If more than one bid for the sale of commodities is received and more than one delivery point has been designated in such bids, in order to achieve a combination of a freight rate and commodity award that produces the lowest-landed cost for the delivery of the commodity to the foreign destination, CCC may evaluate bids submitted for the sale of commodities on a delivery point-by-delivery point basis. In such cases, all bids submitted with respect to a specific delivery point will be evaluated under the provisions of the FAR, AGAR, and the solicitation, and CCC will determine the lowest bid for each delivery point.

(b) *Combination of bids.* CCC will determine which combination of commodity bids and bids for ocean freight rates result in the lowest-landed cost of delivery of the commodity to the foreign destination. CCC will award the contract for the purchase of the commodity that results in the lowest-landed cost and would be transported in compliance with cargo preference requirements under regulations prescribed by the Secretary of Transportation. The Contracting Officer may determine that extenuating circumstances preclude awards on the basis of lowest-landed cost, or efficiency and cost-savings justify use of types of ocean service that would not involve an analysis of freight bids for each of CCC's commodity purchases; however, in all such cases, commodities would be transported in compliance with cargo preference requirements under regulations prescribed by the Secretary of Transportation. Examples of extenuating circumstances are events such as internal strife at the foreign destination or urgent humanitarian conditions threatening the lives of persons at the foreign destination. Other types of services may include, but are not limited to, multi-trip voyage charters, indefinite delivery/indefinite quantity (IDIQ), delivery Cost and Freight (C & F), delivery Cost Insurance and Freight (CIF), and indexed ocean freight costs. Before contracts are awarded for other than a lowest-landed cost, the Contracting Officer shall consult with the applicable program agencies, and set forth, in writing, the reasons the contracts should be awarded on other than a lowest-landed cost.

(c) *Notification of awards.* (1) The party submitting the accepted commodity procurement bid will be notified of the acceptance of the bid by CCC.

(2) AID or the grantee organization, or its shipping agent, will be notified of the vessel freight rate used in determining the commodity contract award. The grantee organization or AID will be responsible for finalizing the charter or booking contract with the vessel representing the freight rate so used.

Signed at Washington, DC, on February 6, 2007.

Glen L. Keppy,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 07–619 Filed 2–7–07; 4:13 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27112; Directorate Identifier 2001–NE–49–AD; Amendment 39–14926; AD 2007–03–15]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–5 and –5B Series Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for CFM International CFM56–5 and –5B series turbofan engines. That AD requires exhaust gas temperature (EGT) harness replacement or the establishment of an EGT baseline and trend monitoring. That AD also requires replacement, if necessary, of certain EGT harnesses and EGT couplings as soon as a slow and continuous EGT drift downward is noticed after the effective date of that AD. This AD requires the same actions but for an increased population of affected EGT harnesses. This AD results from CFM International adding subsequently certified engine models to the list of engines that could have affected harnesses installed. We are issuing this AD to prevent unexpected deterioration of critical rotating engine parts due to higher than desired engine operating EGTs.

DATES: This AD becomes effective March 19, 2007. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 19, 2007.

ADDRESSES: You can get the service information identified in this AD from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800; fax (513) 552–2816.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7152; fax (781) 238–7199; e-mail: *james.rosa@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to CFM International CFM56–5 and –5B series turbofan engines. We published the proposed AD in the **Federal Register** on June 16, 2006 (71 FR 34852). That action proposed to require, for an increased population of affected EGT harnesses:

- EGT harness replacement or the establishment of an EGT baseline and trend monitoring; and
- Replacement, if necessary, of certain EGT harnesses and EGT couplings as soon as a slow and continuous EGT drift downward is noticed after the effective date of that AD.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

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

Docket Number Change

We are transferring the docket for this AD to the Docket Management System as part of our on-going docket management consolidation efforts. The new Docket No. is FAA–2007–27112. The old Docket No. became the Directorate Identifier, which is 2001–NE–49–AD. This AD might get logged into the DMS docket, ahead of the previously collected documents from the old docket file, as we are in the process of sending those items to the DMS.

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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

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 Federal Aviation Administration 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 FAA amends § 39.13 by removing Amendment 39–13020 (68 FR 3171, January 23, 2003) and by adding a new airworthiness directive,

Amendment 39–14926, to read as follows:

2007–03–15 CFM International: Amendment 39–14926; Docket No. FAA–2007–27112; Directorate Identifier 2001–NE–49–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 19, 2007.

Affected ADs

(b) This AD supersedes AD 2003–02–04, Amendment 39–13020.

Applicability

(c) This AD applies to CFM International CFM56–5 and –5B series turbofan engines:

(1) With an exhaust gas temperature (EGT) upper harness part number (P/N) CA170–00, with a serial number (SN):

(i) Listed in Table 1, Table 4, or Table 5 of CFM56 Service Bulletin (SB) No. CFM56–5B S/B 77–0008, Revision 3, dated April 4, 2005, or

(ii) Listed in Table 1 or Table 4 of CFM56 SB No. CFM56–5 S/B 77–0020, Revision 3, dated April 4, 2005.

(2) With an EGT lower harness P/N CA171–00, with a SN:

(i) Listed in Table 2, Table 4, or Table 5 of CFM56 SB No. CFM56–5B S/B 77–0008, Revision 3, dated April 4, 2005; or

(ii) Listed in Table 2 or Table 4 of CFM56 SB No. CFM56–5 S/B 77–0020, Revision 3, dated April 4, 2005.

(3) With an EGT coupling P/N CA172–02 with a SN:

(i) Listed in Table 3, Table 4, or Table 5 of CFM56 Service Bulletin (SB) No. CFM56–5B S/B 77–0008, Revision 3, dated April 4, 2005, or

(ii) Listed in Table 3 or Table 4 of CFM56 SB No. CFM56–5 S/B 77–0020, Revision 3, dated April 4, 2005.

(4) These engines are installed on, but not limited to Airbus Industrie A318, A319, A320, and A321 airplanes.

Unsafe Condition

(d) This AD results from CFM International adding subsequently certified engine models, CFM56–5B3/P1, CFM56–5B3/2P1, CFM56–5B4/P1, and CFM56–5B4/2P1, to the list of engines that could have affected harnesses installed, and increasing the population of affected EGT harnesses. We are issuing this AD to prevent unexpected deterioration of critical rotating engine parts due to higher than desired engine operating EGTs.

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.

(f) If an EGT harness or EGT coupling has a serial number that is followed by the letter ''W'', no further action is required for that part.

(g) For affected EGT harnesses and EGT couplings identified using paragraph (c) of this AD, with fewer than 3,000 engine flight hours-since-installation, do the following:

(1) Replace affected EGT harnesses and EGT couplings, not being trend monitored, with serviceable parts within 500 flight hours after the effective date of this AD; or

(2) After the effective date of this AD:

(i) Review the smooth data EGT trend via the System for Analysis of Gas Turbine Engines (SAGE), or equivalent, since the affected components were first installed on the current engine.

(ii) Continue this trend monitoring for the affected EGT harnesses and EGT couplings to ensure that the system does not show a minimum of 30 °C downward (i.e. cooler) indication, or more, without a corresponding change in other associated engine parameters such as N1 (LPT rotor speed), N2 (HPT rotor speed), and fuel flow.

(iii) Provided that there is sufficient, actual EGT margin to do so, replace the EGT harnesses and EGT couplings within 100 flight hours after they have been determined to be defective.

(iv) Continue to monitor the EGT indications for 3,000 engine flight hours since the first installation on the current engine.

Terminating Action

(h) Any of the following three conditions is terminating action for the trend monitoring requirements specified in paragraphs (g)(2)(i) through (g)(2)(iv) of this AD:

(1) Replacing an EGT harness and EGT coupling with a serviceable part, or

(2) Replacing an EGT harness and EGT coupling with an EGT harness and EGT coupling that has a letter ''W'' following the SN, or

(3) Accumulating 3,000 engine flight hours on an EGT harness and EGT coupling.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Airworthiness directive No. F–2003–001 R2, dated June 8, 2005, which is from the Direction Generale de L'Aviation Civile airworthiness authority for France, also addresses the subject of this AD.

(k) Contact James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7152; fax (781) 238–7199; e-mail: *james.rosa@faa.gov* for more information about this AD.

Material Incorporated by Reference

(l) You must use the CFM56 Service Bulletin Tables specified in the compliance of this AD, to determine applicability to this AD. The following Table 1 lists the Service Bulletins. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 1 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800; fax (513) 552–2816, for a copy of this service information. You may review copies at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

TABLE 1.—INCORPORATION BY REFERENCE

CFM56 Service Bulletin No.	Page	Revision	Date
CFM56–5B S/B 77–0008	All	3	April 4, 2005.
Total Pages: 34			
CFM56–5 S/B 77–0020	All	3	April 4, 2005.
Total Pages: 16			

Issued in Burlington, Massachusetts, on January 31, 2007.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–2068 Filed 2–9–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26570; Directorate Identifier 2006–NE–39–AD; Amendment 39–14931; AD 2007–03–20]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Makila 1A and 1A1 Turboshaft Engines

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

The back-up mode can be activated by an electrostatic discharge or by a malfunction of the collective pitch signal. The two engines fitted on the same helicopter can therefore be frozen in this back-up position at 85% N1.

Freezing both engines in the back-up mode can lead to an inability to continue safe flight and forced landing. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective March 19, 2007. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 19, 2007.

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.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This 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 AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 19, 2006 (71 FR 75896). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

The control system of the engines covered by this Airworthiness Directive includes an electrical back-up mode at 85% N1 (gas generator speed) activated on the detection of certain occurrences affecting engine control. The activation of the back-up mode is irreversible and freezes the engine at 85% N1.

An analysis of reported occurrences in service showed that the back-up mode can be activated by an electrostatic discharge or by a malfunction of the collective pitch signal. The two engines fitted on the same helicopter can therefore be frozen in this back-up position at 85% N1.

The present Airworthiness Directive therefore imposes the application of modification TU241 on the LPG board of the Makila 1A and 1A1 ECU, which reduces the aforementioned risk by changing the conditions in which the engines switch to and are maintained in the 85% NG back-up mode.

Freezing both engines in the back-up mode can lead to an inability to continue safe flight and forced landing.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This 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 required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are described in a separate paragraph of the AD, and take precedence over the actions copied from the MCAI.

Differences Between This AD and the Proposed AD

In paragraph (e) of the proposed AD, published December 19, 2006, we state ''Unless already done, before January 31, 2007, apply the modification TU 241 by replacing the LPG board of the ECU using Turbomeca Mandatory Service Bulletin No. 298 73 0241, dated April 5, 2006.'' Because that compliance date will have past before this AD becomes effective, we have changed paragraph (e) to read, ''Unless already done, within 30 days after the effective date of this AD, apply the modification TU 241 by replacing the LPG board of the ECU using Turbomeca Mandatory Service Bulletin No. 298 73 0241, dated April 5, 2006.''

Costs of Compliance

Based on the service information, we estimate that this AD will affect about five products of U.S. registry. We also estimate that it will take about 1.0 work-hour per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $3,500 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

AD on U.S. operators to be $17,900, or $3,580 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 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 this AD:

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 AD and placed it in the AD docket.

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 the NPRM, 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.

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 FAA amends § 39.13 by adding the following new AD:

2007–03–20 Turbomeca S.A.: Amendment 39–14931. Docket No. FAA–2006–26570; Directorate Identifier 2006–NE–39–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 19, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca Makila 1A and 1A1 turboshaft engines. These engines are installed on, but not limited to Eurocopter AS 332 Super Puma helicopters.

Reason

(d) European Aviation Safety Agency (EASA) AD No. 2006–0070, dated March 30, 2006, states:

The control system of the engines covered by this Airworthiness Directive includes an electrical back-up mode at 85% N1 (gas generator speed) activated on the detection of certain occurrences affecting engine control. The activation of the back-up mode is irreversible and freezes the engine at 85% N1.

An analysis of reported occurrences in service showed that the back-up mode can be activated by an electrostatic discharge or by a malfunction of the collective pitch signal. The two engines fitted on the same helicopter can therefore be frozen in this back-up position at 85% N1.

The present Airworthiness Directive therefore imposes the application of modification TU241 on the LPG board of the Makila 1A and 1A1 ECU, which reduces the aforementioned risk by changing the conditions in which the engines switch to and are maintained in the 85% NG back-up mode.

Freezing both engines in the back-up mode can lead to an inability to continue safe flight and forced landing.

Actions and Compliance

(e) Unless already done, within 15 days after the effective date of this AD, apply the modification TU 241 by replacing the LPG board of the ECU using Turbomeca Mandatory Service Bulletin No. 298 73 0241, dated April 5, 2006.

FAA AD Differences

(f) None.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Engine Certification Office, 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, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Contact Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7175; fax (781) 238–7199; e-mail: *christopher.spinney@faa.gov,* for more information about this AD.

(i) Refer to MCAI EASA Airworthiness Directive 2006–0070, dated March 30, 2006, and Turbomeca Mandatory Service Bulletin No. 298 73 0241, dated April 5, 2006, for related information.

Material Incorporated by Reference

(j) You must use Turbomeca Mandatory Service Bulletin No. 298 73 0241, dated April 5, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Turbomeca, 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15.

(3) You may review copies at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on January 31, 2007.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–2069 Filed 2–9–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25272; Directorate Identifier 2006–NE–16–AD; Amendment 39–14924; AD 2007–03–13]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (formerly Rolls-Royce plc) Dart 528, 529, 532, 535, 542, and 552 Series Turboprop Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce Deutschland Ltd & Co KG (formerly Rolls-Royce plc) (RRD) Dart 528, 529, 532, 535, 542, and 552 series turboprop engines. This AD would require repetitive inspections of high pressure turbine (HPT) blade platforms and shrouds, and reworking the engines if the inspections reveal excessive gaps between blade shrouds. This AD results from reports of HPT disk rim failures. We are issuing this AD to prevent HPT disk rim failures resulting in the release of portions of the HPT disk, uncontained engine failure, and damage to the airplane.

DATES: This AD becomes effective March 19, 2007. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 19, 2007.

ADDRESSES: You can get the service information identified in this AD from Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Dahlewitz, Germany; telephone 49 (0) 33–7086–1768; fax 49 (0) 33–7086–3356.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7747; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to RRD Dart 528, 529, 532, 535, 542, and 552 series turboprop engines. We published the proposed AD in the **Federal Register** on September 12, 2006 (71 FR 53610). That action proposed to require repetitive inspections of HPT blade platforms and shrouds, and reworking the engines if the inspections reveal excessive gaps between blade shrouds.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition 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 on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Comments

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

Incorporate Service Bulletin By Reference

The Modification & Replacement Parts Association requests that we incorporate the service bulletin by reference. We agree that the material should be incorporated by reference. We did so in the AD. The commenter also requests that we post service bulletins on the DMS. We are currently reviewing issues surrounding the posting of this material on the DMS as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will decide whether our current practice of not posting service bulletins on the DMS should be changed. The final rule remains unchanged.

Changes to the AD

We have made two changes to the AD. In the proposed AD, we mistakenly referred to the RRD Dart 528, 529, 532, 535, 542, and 552 series turboprop engines as turbofan engines. They are turboprop engines and we corrected the final rule accordingly.

Additionally, to clarify paragraph (f)(3), we added the words ''rework to DRS 611 standard.'' The sentence now reads ''Before exceeding 7,400 hours since last HPT blade inspection or rework to DRS 611 standard.''

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously.

Costs of Compliance

We estimate that this AD will affect about 30 RRD Dart 528, 529, 532, 535, 542, and 552 series turboprop engines installed on airplanes of U.S. registry. We also estimate that it will take about 22 work-hours per engine to perform the actions, and that the average labor rate is $80 per work-hour. No parts are required. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $52,800.

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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

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 Federal Aviation Administration 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 FAA amends § 39.13 by adding the following new airworthiness directive:

2007–03–13 Rolls-Royce Deutschland Ltd & Co KG (formerly Rolls-Royce plc): Amendment 39–149824. Docket No. FAA–2006–25272; Directorate Identifier 2006–NE–16–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 19, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) Dart 528, 529, 532, 535, 542, and 552 series turboprop engines. These engines are installed on, but not limited to, Hawker Siddeley, Argosy AW.650, Fairchild Hiller F–27, F–27A, F–27B, F–27F, F–27G, F–27J, FH–227, FH–227B, FH–227C, FH–227D, FH–227E, Fokker F.27 all makes; British Aircraft Corporation Viscount 744, 745D and 810; and Gulfstream G–159 airplanes.

Unsafe Condition

(d) This AD results from reports of high pressure turbine (HPT) disk rim failures. We are issuing this AD to prevent HPT disk rim failures resulting in the release of portions of the HPT disk, uncontained engine failure, and damage to 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.

(f) Using RRD Dart Service Bulletin (SB) Da72–543, dated July 11, 2003, and the scheme detailed in RRD Repair Instruction, ''Restoration of Platform and Shroud gaps by welding, DRS 611,'' dated July 15, 2005, inspect and repair HPT blade platforms and shroud abutment faces by weld build-up:

(1) After no more than 1,500 flight hours from the date of issue of this AD, if the engine has not been previously inspected or reworked to the DRS 611 standard;

(2) Each time new blades are installed; and

(3) Before exceeding 7,400 hours since last HPT blade inspection or rework to DRS 611 standard.

Alternative Methods of Compliance

(g) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) LBA airworthiness directive 2003–217, dated August 7, 2003, also addresses the subject of this AD.

(i) Contact Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7747, fax (781) 238–7199; e-mail: *jason.yang@faa.gov* for more information about this AD.

Material Incorporated by Reference

(j) You must use Rolls-Royce Deutschland Ltd & Co KG (RRD) Dart Service Bulletin Da72–543, dated July 11, 2003, and RRD Dart Repair Instruction, ''Restoration of Platform and Shroud Gaps by Gaps by Welding, DRS 611,'' dated July 15, 2005, to perform the actions required by this AD.

(1) The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) Contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Dahlewitz, Germany; telephone 49 (0) 33–7086–1768; fax 49 (0) 33–7086–335 for a copy of this service information.

(3) You may review copies at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on January 26, 2007.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–1708 Filed 2–9–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24926; Airspace Docket No. 06–ASW–1]

RIN 2120–AA66

Establishment, Modification and Revocation of VOR Federal Airways; East Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on January 18, 2007 (72 FR 2182), Airspace Docket No. 06–ASW–1, FAA Docket No. FAA–2006–24926. In that rule, an inadvertent error was made in the legal description for VOR Federal Airway V–75. Specifically, the description did not exclude the portion of the airway that is in Canadian airspace. This action corrects that error.

EFFECTIVE DATE: 0901 UTC, March 15, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On January 18, 2007, the FAA published in the **Federal Register** a final rule establishing 14 VOR Federal Airways (V–176, V–383, V–396, V–406, V–410, V–416, V–418, V–426, V–467, V–486, V–542, V–584, V–586, and V–609); modifying 12 VOR Federal Airways (V–14, V–26, V–40, V–72, V–75, V–90, V–96, V–103, V–116, V–297, V–435, and V–526); and revoking one VOR Federal Airway (V–42) (72 FR 2182).

Subsequent to the issuance of the final rule, an inadvertent error was identified in the legal description for V–75. Specifically, the description did not exclude that portion of the airway that is located within Canadian airspace.

VOR Federal Airways are published in paragraph 6010 of FAA Order 7400.9P dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The VOR Federal Airways listed in this document will be published subsequently in the Order.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description as published in the **Federal Register** on January 18, 2007 (72 FR 2182), Airspace Docket No. 06–ASW–1, FAA Docket No. FAA–2006–24926, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Amended]

Paragraph 6010 VOR Federal Airways.

* * * * *

V–75 [Corrected]

From Morgantown, WV; Bellaire, OH; Briggs, OH; DRYER, OH; INT DRYER 325° and Waterville, OH, 062° radials. The airspace within Canada is excluded.

* * * * *

Issued in Washington, DC, on February 2, 2007.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E7–2229 Filed 2–9–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Fluoxetine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Elanco Animal Health. The NADA provides for veterinary prescription use of fluoxetine hydrochloride chewable tablets for the treatment of canine separation anxiety.

DATES: This rule is effective February 12, 2007.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: *melanie.berson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed NADA 141 272 that provides for veterinary prescription use of RECONCILE (fluoxetine hydrochloride) Chewable Tablets for the treatment of canine separation anxiety in conjunction with a behavior modification plan. The NADA is approved as of January 19, 2007, and the regulations in part 520 (21 CFR part 520) are amended by adding new § 520.980 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning January 19, 2007.

FDA has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Add § 520.980 to read as follows:

§ 520.980 Fluoxetine.

(a) *Specifications.* Each chewable tablet contains 8, 16, 32, or 64 milligrams (mg) fluoxetine hydrochloride.

(b) *Sponsor.* See No. 000986 in § 510.600 of this chapter.

(c) *Conditions of use in dogs*—(1) Amount. 1 to 2 mg per kilogram body weight once daily.

(2) *Indications for use.* For the treatment of canine separation anxiety in conjunction with a behavior modification plan.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: January 31, 2007.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. E7–2172 Filed 2–9–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Ivermectin Topical Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Norbrook Laboratories, Ltd. The supplemental ANADA adds claims for persistent effectiveness against various species of external and internal parasites when cattle are treated with a topical solution of ivermectin.

DATES: This rule is effective February 12, 2007.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0169, e-mail: *john.harshman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Norbrook Laboratories, Ltd., Station Works, Newry BT35 6JP, Northern Ireland, filed a supplement to ANADA 200–272 for Ivermectin Pour-On for Cattle. The supplemental ANADA adds claims for persistent effectiveness against various species of external and internal parasites that were approved for the pioneer product with 3 years of marketing exclusivity (69 FR 501, January 6, 2004). The supplemental ANADA is approved as of January 19, 2007, and 21 CFR 524.1193 is amended to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 524.1193, revise the section heading, and paragraphs (b) and (e)(2) to read as follows:

§ 524.1193 Ivermectin topical solution.

* * * * *

(b) *Sponsors*. See Nos. 050604, 051311, 054925, 055529, 058829, 059130, and 066916 in § 510.600(c) of this chapter for use as in paragraph (e) of this section.

* * * * *

(e) * * *

(2) *Indications for use in cattle*. For the treatment and control of: Gastrointestinal roundworms (adults and fourth-stage larvae) *Ostertagia ostertagi* (including inhibited stage), *Haemonchus placei*, *Trichostrongylus axei*, *T. colubriformis*, *Cooperia oncophora*, *C. punctata*, *C. surnabada*, *Oesophagostomum radiatum*; (adults) *Strongyloides papillosus*, *Trichuris* spp.; lungworms (adults and fourth-stage larvae) *Dictyocaulus viviparus*; cattle grubs (parasitic stages) *Hypoderma bovis*, *H. lineatum*; mites *Sarcoptes scabiei* var. *bovis*; lice *Linognathus vituli*, *Haematopinus eurysternus*, *Damalinia bovis*, *Solenoptes capillatus*; and horn flies *Haematobia irritans*. It controls infections and prevents reinfection with *O. radiatum* and *D. viviparus* for 28 days after treatment, *C. punctata* and *T. axei* for 21 days after treatment, *H. placei*, *C. oncophora*, and *C. surnabada* for 14 days after treatment, and *D. bovis* for 56 days after treatment.

* * * * *

Dated: February 2, 2007.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. E7–2368 Filed 2–9–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 773

[FHWA Docket No. FHWA–05–22707]

RIN 2125–AF13

Surface Transportation Project Delivery Pilot Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) established a pilot program to allow the Secretary of Transportation to assign, and the State to assume, the Secretary's responsibilities under the National Environmental Policy Act (NEPA) for one or more highway projects. The Secretary may permit not more than five States (including the States of Alaska, California, Ohio, Oklahoma, and Texas) to participate in the program. Upon assigning NEPA responsibilities, the Secretary may further assign to the State all or part of the Secretary's responsibilities for environmental review, consultation or other action required under any Federal environmental law pertaining to the review of a specific project. In order to be selected for the pilot program a State must submit an application to the Secretary. Section 6005 requires the Secretary to promulgate rules that establish requirements relating to information required to be contained in an application by a State to participate in the pilot program. This final rule establishes these application requirements.

DATES: Effective March 14, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Ruth Rentch, Office of Project Development and Environmental Review, HEPE, 202–366–2034 or Mr. Michael Harkins, Office of the Chief Counsel, 202–366–4928, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

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

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

Background

Section 6005 of SAFETEA–LU (Pub. L. 109–59, 119 Stat. 1144), codified at 23 U.S.C. 327, established a pilot program that allows the Secretary of Transportation (Secretary) to assign up to five States, including Alaska, California, Oklahoma, Ohio, and Texas, the responsibilities of the Secretary for implementation of the National Environmental Policy Act (NEPA)(42 U.S.C. 4321–4347) for one or more highway projects. Upon assumption of NEPA responsibilities, a State may also be assigned all or part of the Secretary's responsibilities for environmental review, consultation or other action required under any Federal environmental law pertaining to the review or approval of highway projects. Whenever a State assumes the Secretary's responsibilities under this program, the State becomes solely responsible and solely liable for carrying out, in lieu of the Secretary, the responsibilities it has assumed, including coordination and resolution of issues with Federal environmental resource and regulatory agencies and responding to litigation. The Secretary's NEPA and other environmental responsibilities pertaining to the review and approval of highway projects, as well as the administration and implementation of this pilot program, has been delegated to the FHWA pursuant to 49 CFR 1.48.

In order to participate in this pilot program, a State must submit an application. Section 327(b)(2) of title 23, United States Code, requires the Secretary to promulgate regulations that establish requirements relating to the information that States must submit as part of their applications to participate in this pilot program. This final rule establishes these requirements.

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

The FHWA published its NPRM on April 5, 2006, at 71 FR 17040. In response to the NPRM, the FHWA received 10 comments. The commenters include two Federal agencies, three State departments of transportation (State DOT), one public interest group, two associations, and a consolidated group of comments from each of the State DOTs designated by the statute as pilot program participants (Designated Pilot States). One State DOT, the Alaska Department of Transportation and Public Facilities (ADOT&PF), submitted two comments. The FHWA considered each of these comments in adopting this final rule.

The majority of the comments addressed several common issues. These issues are identified and addressed under the appropriate section below.

Section-by-Section Discussion of Changes

Section 773.103 Definitions

Federal Environmental Law

There were several comments on the definition of ''Federal environmental law.'' First, the Designated Pilot States and the Texas Department of Transportation (TxDOT) commented that the regulation or the preamble should acknowledge that State DOTs already perform much of the work needed to comply with many environmental laws, and that the preamble should make clear that the key change under this pilot program is the transfer of specific decisionmaking and consulting responsibilities. The FHWA acknowledges that, pursuant to 23 CFR 771.109(c)(1), the State DOTs may currently prepare the environmental impact statement (EIS) and other environmental documents with the FHWA's guidance, participation, and independent evaluation of such documents. The FHWA further acknowledges that this pilot program will involve the transfer of decisionmaking and consulting responsibilities. As provided at 23 U.S.C. 327(e), upon assuming responsibility under this pilot program, the State shall be solely responsible and solely liable for carrying out such responsibilities until the pilot program is terminated.

Second, the Designated Pilot States commented that compliance with Executive Orders should be included in the regulation itself and not just in Appendix A. The FHWA agrees with this comment and has revised the definition of ''Federal environmental law'' to include Executive Orders. It is important to note, however, that Executive Orders are intended only to improve the internal management and administration of the Executive Branch of the Federal Government and do not create any legally enforceable rights. Nothing in this rulemaking is intended to change the legal force and effect of any Federal statute, regulation, or Executive Order cited herein. As provided at 23 U.S.C. 327(a)(2)(C), a State DOT's assumption of any responsibility under this pilot program is subject to the same procedural and substantive requirements that apply to the Secretary.

Third, the American Road and Transportation Builders Association (ARTBA) commented that the State DOTs should be delegated the FHWA's responsibility for making transportation conformity determinations. However, 23 U.S.C. 327(a)(2)(B)(ii)(I) expressly prevents the FHWA from delegating these responsibilities. Thus, the FHWA declines to make this change.

Lastly, the Environmental Protection Agency (EPA) commented that the rule should provide clarification on how all environmental regulations will be followed if all of the FHWA's environmental responsibilities are not assumed by a State DOT. The FHWA is aware of the procedural difficulties that may be caused by only a partial assumption of the FHWA's environmental responsibilities. Should a State DOT wish to exclude some of the FHWA's environmental responsibilities under the pilot program, and if satisfactory alternate procedures cannot be developed in the formal Memorandum of Understanding (MOU), then the FHWA may either choose to not assign the responsibilities to the State DOT or withdraw the affected projects from the pilot program. Under any scenario, the FHWA believes that this issue is more appropriate for the formal Memorandum of Understanding (MOU) between the FHWA and the State DOT rather than this rule. The FHWA is committed to ensuring full compliance with all environmental regulations.

Highway Project

There were several comments on the definition of ''highway project.'' First, the Designated Pilot States, TxDOT, ADOT&PF, ARTBA, and EPA all commented on the proposed exclusion of undertakings that are planned as multi-modal. Designated Pilot States, TxDOT, ADOT&PF, and ARTBA each commented that this exclusion is overly broad. Designated Pilot States and TxDOT both commented that the exclusion would prevent the States from assuming highway projects that include common multi-modal elements such as express bus service, pedestrian and bicycle paths, and park-and-ride lots. Designated Pilot States and TxDOT both commented that excluding projects that are funded under chapter 53 of title 49, United States Code, or that require the approval of the Federal Transit Administration (FTA) is sufficient to prevent the program from applying to projects that do not fit within the common meaning of the term ''highway project.'' The ADOT&PF wants to ensure that the definition does not exclude projects on the Alaska Marine Highway System, which occasionally involve funds from both FHWA and FTA. The EPA was concerned that the exclusion of multi-modal projects would limit the range of reasonable alternatives that may be considered for a project.

The FHWA agrees with each of the comments made by Designated Pilot States, TxDOT, ARTBA, and EPA and has revised the definition of ''highway project'' to remove the exclusion of multi-modal projects. The intent behind the proposed exclusion of multi-modal projects from the definition of highway project was not to be overly restrictive in the types of projects that States may assume, but rather to ensure that only actual highway projects are assumed. Also, the FHWA included express language at the end of the definition to further clarify that a State may include and consider alternatives that are excluded from this definition in the range of reasonable alternatives for a highway project.

However, with respect to the comment from ADOT&PF, the FHWA does not believe that it is appropriate to include projects that are funded under chapter 53 of title 49, United States Code. Projects funded under chapter 53 of title 49, United States Code, are transit projects that are administered and approved by the FTA. While no changes have been made concerning the source of funding under chapter 53 of title 49, United States Code, the FHWA notes that section 1108 of SAFETEA–LU provides flexibility to the States to transfer any funds made available for highway projects under chapter 53 of title 49, United States Code, to title 23, United States Code. Once transferred, these projects would no longer be excluded. Moreover, improvements to ferry boats and terminal facilities are eligible for assistance under title 23, United States Code. Thus, the FHWA believes it is appropriate for improvements to ferry terminal facilities

to be considered highway projects under the definition of this rule.

Second, the Designated Pilot States, ARTBA, California Department of Transportation (Caltrans), EPA, and Save Our Springs Alliance (SOS) all commented on the proposed exclusion of projects for which a draft environmental impact statement (DEIS) has already been issued by FHWA. The EPA and SOS were supportive of this exclusion in order to minimize changes of authority in the middle of project development. The Designated Pilot States, ARTBA, and Caltrans were opposed to this exclusion. Designated Pilot States stated that, given the short term of the pilot program, which is only six years after the date of enactment of SAFETEA–LU (August 10, 2005), it may not be possible for the State DOTs to carry-out many projects requiring an EIS all the way through the NEPA process.

After considering these comments, the FHWA has decided to remove this exclusion from the definition of ''highway project.'' The pilot program is only authorized for six years from the date of enactment of SAFETEA–LU. One year has already elapsed in developing these regulations and more time must still be spent in developing the application, giving public notice, considering the application, consulting with affected Federal agencies, and executing a memorandum of understanding. More time is also needed by States for obtaining legislative authority to consent to exclusive Federal court jurisdiction with respect to the responsibilities to be assumed. The FHWA's concern regarding the public frustration over changing the entity responsible for completing the EIS in the middle of a project will be minimized through the public notice requirement for the State DOTs' applications. To ensure that the public is given adequate notice of all projects for which a DEIS has already been issued, the FHWA has added a requirement at section 773.106(b)(1) to require each State DOT to specifically identify each project for which a DEIS has already been issued in its application. Additionally, the FHWA is also concerned about how to measure the State DOTs' success under the pilot program whenever a substantial amount of FHWA involvement has already occurred. Thus, in order to ensure that this pilot program allows for the greatest flexibility in the delegation of projects, the FHWA has eliminated this exclusion. While the FHWA does not believe that there is any specific threshold that is appropriate for this regulation, the decision about whether any project may be assumed is discretionary and will be made by the FHWA on a case-by-case basis.

Third, the Designated Pilot States, Caltrans, and EPA all commented on the proposed exclusion of projects listed on Executive Order (E.O.) 13274. The Designated Pilot States and Caltrans both urged the FHWA not to adopt an across-the-board rule excluding all E.O. 13274 projects, but to use discretion in determining which projects may be assumed on a case-by-case basis. The EPA asked the FHWA to clarify whether this exclusion applies only to E.O. 13274's priority list or to both the priority list and the transition list. After considering these comments, the FHWA has decided not to eliminate this exclusion. The projects designated under E.O. 13274 are high priority projects that have been designated by the Secretary as having national or regional significance. Moreover, the E.O. 13274 process itself involves high-level involvement of DOT and other Federal departments and agencies, which must collaborate and work together to expedite the environmental review of these projects. As a result, these projects require direct DOT involvement to not only ensure that special attention is given to these projects throughout the Federal Government, but also because these interactions require policy-making authority. With respect to EPA's comment concerning the scope of this exclusion, it is the FHWA's intent to exclude projects on both the priority list and the transition list. However, we do not believe that an amendment to the regulations is necessary to clarify this point.

Fourth, the Designated Pilot States and ADOT&PF commented on the proposed exclusion of Federal lands highway projects. The Designated Pilot States urge the FHWA to reassess this exclusion in light of ADOT&PF's comments on this issue and state that the exclusion, if any, should only apply to projects funded with funds under the Federal Lands Highway Program. The ADOT&PF states that this exclusion should be modified because it designs and constructs projects across Federal lands funded under the Federal Lands Highway Program. The FHWA agrees with these comments and has modified the exclusion to permit the State DOTs to assume environmental responsibilities for Federal lands projects that are funded under the Federal Lands Highway Program and both designed and constructed by the State.

Fifth, the EPA commented on the FHWA's intent to allow States to assume reevaluations. The EPA is concerned about the effects of changes of authority in the mid-course of project development. The FHWA does not believe that the issue of mid-course changes of authority in project development is significant in the context of a reevaluation. Reevaluations are separate and independent determinations concerning whether a specific NEPA determination is still valid. Unlike the issue concerning a DEIS, the State DOT will conduct a reevaluation from the beginning of this process. Additionally, due to the limited duration of this pilot program, the State DOTs' assumption of reevaluations will provide some data on the State DOTs' ability to assume the FHWA's environmental responsibilities.

Lastly, the EPA asked the FHWA to clarify whether a State can assume a Tier 2 project for which a Tier 1 determination has already been made. It is the FHWA's intent to allow States to assume Tier 2 projects for which a Tier 1 determination has already been made. However, we do not believe that an amendment to the regulations is necessary for this clarification.

Section 773.105 Statements of Interest

The American Association of State Highway and Transportation Officials (AASHTO) commented on the importance of ensuring that all five openings in the pilot program be filled. AASHTO suggested including a provision in the regulations that requires each designated pilot State (Alaska, California, Ohio, Oklahoma, and Texas) to submit a statement of interest within 60 days of the issuance of the final rule. The statement of interest would hold the designated pilot State's place in the program while that State develops its application. If the State declines to submit a statement of interest, then other States would have an opportunity to participate in the program. The FHWA agrees with this comment and has inserted a requirement at section 773.105 to require that each designated pilot State submit a statement of interest within 60 days after the effective date of these regulations. The FHWA has also inserted a requirement that each State actively work to develop and submit its application and meet all applicable program criteria, including the enactment of necessary State legal authority after a statement of interest is submitted. The FHWA further notes that, while SAFETEA–LU requires the FHWA to give priority to Alaska, California, Ohio, Oklahoma, and Texas, any State may submit an application to the FHWA at any time to participate in this pilot program. Should any of these five designated States decide not to

participate or fail to meet the eligibility criteria, the FHWA will consider another State's application.

Section 773.106 Application Requirements for Participation in the Program

There were several comments on the proposed application requirements. First, Designated Pilot States and TxDOT commented on the manner in which classes of projects must be identified in the application. Designated Pilot States and TxDOT felt that there was an inconsistency between the proposed regulations and the preamble of the NPRM, which implied that the State DOTs must individually identify each project in its application. In drafting the preamble to the NPRM, the FHWA did not intend to adopt this narrow approach. Rather, the FHWA intended for a flexible approach to identifying the classes of projects. State DOTs applying to this pilot program may choose to either identify individual projects or identify a class of projects by using a qualitative description of the projects. With the exception of specifically identifying each project for which a DEIS has already been issued, as discussed above, there are no limits intended to be placed on how the States identify the projects other than a requirement to identify the projects in sufficient terms so as to enable the FHWA, other agencies, and the public to reasonably know what projects the State DOT is intending to assume.

Second, TxDOT, ADOT&PF, Designated Pilot States, and SOS all commented on the requirement for the State DOT to include a philosophical/policy statement of the State DOT's goals and guiding principles in making environmental decisions. TxDOT commented that it is unclear what would constitute an appropriate philosophical/policy statement and how the statement would be evaluated by the FHWA in considering the application. ADOT&PF commented that the purpose of the philosophical/policy statement is unclear and it should be sufficient for the State DOTs to simply follow the policies and procedural requirements applicable to the FHWA. Designated Pilot States commented that the statement itself could be viewed as a regulatory requirement and that the State DOTs should simply be required to comply with the procedural and substantive requirements applicable to the FHWA. SOS commented that the philosophical/policy statement is meaningless unless it is made binding and enforceable.

Since there appears to be substantial confusion over the purpose and utility of the philosophical/policy statement, the FHWA has eliminated this requirement. The purpose of the philosophical/policy statement was not to create a binding, enforceable standard against which the State DOTs' environmental decisions would be judged. Rather, the FHWA was looking for a statement of the State DOTs' commitment to good environmental stewardship, legal compliance, public involvement, and cooperation and consultation with Federal agencies, State and local officials, and Indian tribes. Even though this requirement has been eliminated, the FHWA notes that 23 U.S.C. 327(a)(2)(C) provides that the States participating in the pilot program are subject to the same procedural and substantive requirements as the FHWA under this pilot program, which includes the policies contained in 42 U.S.C. 4331 and 23 CFR 771.105.

Third, ADOT&PF commented that the purpose behind the requirement to identify existing environmental and managerial expertise is unclear and should be revised to only require the State DOTs to identify the staff, management, and procedures that will be used to administer the responsibilities the State DOT assumes. The FHWA agrees with this comment and has eliminated this requirement. Even without this requirement, the regulations require sufficient information be submitted concerning the State DOT's personnel to be used in administering the FHWA's environmental responsibilities. However, in order to ensure that the State DOT identifies the relevant management, the FHWA amended section 773.106(b)(4)(i) to require the State DOT to describe the management positions in addition to the staff positions.

Fourth, ADOT&PF commented on the requirement for the State DOTs to describe how they will identify and address the projects that would normally require FHWA headquarters prior concurrence under 23 CFR 771.125(c). Specifically, ADOT&PF commented that the final rule should waive the applicability of 23 CFR 771.125(c) to the State DOTs participating in this pilot program. The FHWA disagrees with this comment. While this requirement is an internal FHWA processing requirement, the FHWA feels that it is important for the State DOTs to develop processes that would centralize their decisionmaking processes for the types of projects listed at 23 CFR 771.125(c).

Fifth, Designated Pilot States, TxDOT, and EPA all commented on the budget requirements that the State DOTs must submit as part of their applications. Designated Pilot States commented that it is virtually impossible to develop a meaningful litigation budget because these costs are highly unpredictable and that the State DOTs should simply be required to demonstrate that funding would be reasonably available. TxDOT commented that it was concerned about providing a budget for things that may or may not happen, such as litigation costs, and that the State DOT should be required only to demonstrate that funding is reasonably available. TxDOT further commented that it considered it to be sufficient to simply state in its application that TxDOT has a $2.6 billion construction letting budget and a total agency disbursements of $7.5 billion. EPA commented that it would be very difficult for a State DOT to show that it has all the financing for a project in place before the project is undertaken. EPA stated that the State DOTs should be given the flexibility to provide satisfactory evidence that financing will be made available.

The FHWA agrees with these comments and has revised section 773.106(b)(5) to require the State DOTs to submit a summary of financial resources, as opposed to a budget, showing the anticipated financial resources that will be available to carry out the responsibilities and projects assumed under this pilot program. The FHWA recognizes that some costs may be difficult to ascertain and that the State DOTs' funding is contingent on its appropriations processes. Thus, a summary of financial resources that identifies anticipated financial resources and the expected allocation of those resources, as opposed to a budget, will be sufficient. However, while the FHWA does not intend to require a budget of future financial resource, the FHWA notes that the State DOTs must be able to show that they expect to be able to meet the extra needs identified in sections 773.106(b)(3) and (4). The FHWA does not believe that the broad, general assertion by TxDOT stating that the State DOT has a $2.6 billion construction letting budget and a total agency disbursements of $7.5 billion will be sufficient verification of financial resources. Instead, the State DOT must reasonably show how much financial resources are expected to be allocated to carrying out the environmental responsibilities it has assumed.

Sixth, SOS commented on the certification required to be made by the State Attorney General or other State official legally empowered by State law. SOS commented that the certification should be only from the Attorney

General and not some other State official because it is unclear who might actually be legally empowered to make these certifications. The FHWA shares this concern. Only a State official that has authority to consent to Federal court jurisdiction and has the ability to make legal conclusions should make this certification. However, since each State has its own unique laws and departmental structures, the FHWA believes that it is appropriate to leave some flexibility in the regulation as to which official would actually make this certification. In most cases, the State's Attorney General would most likely be the appropriate State official. In other cases, the most appropriate State official could be the chief legal official of the State DOT. Whenever an official other than the State's Attorney General makes these required certifications, the State DOT must show the FHWA that the official is legally empowered under State law to make the certification.

Seventh, Designated Pilot States and TxDOT commented on the public review and comment requirements. Designated Pilot States and TxDOT were concerned that section 773.106(b)(8) could be construed to require a State DOT to publish the entire application in every newspaper in the State. Designated Pilot States and TxDOT state that the size of the application will make this requirement impracticable and wasteful. In developing the NPRM, the FHWA did not intend to prescribe the manner in which the State DOTs publish their applications for public comment. Rather, the FHWA intended for the publication requirement to be determined in accordance with State law, as provided at 23 U.S.C. 327(b)(3). Moreover, the FHWA believes that the intent of the publication requirement of 23 U.S.C. 327(b)(3) is simply to notify the public that the complete application is reasonably available for public review and inspection. Additionally, the access to the complete application provided to the public must enable them to timely review and comment on the application. Thus, the requirements of 23 U.S.C. 327(b)(3) are met if it is sufficient under State law to provide notice and solicit public comment on a document by publishing a notice of the document's availability. The FHWA has added clarifying language in section 773.106(b)(8) to this effect.

Lastly, ACHP and SOS both commented on the public review and comment requirements. ACHP commented that the State DOTs should be required to provide evidence that they have notified and provided an opportunity to comment to Indian tribes and State Historic Preservation Officers (SHPO). The FHWA agrees that the State DOTs should ensure that Indian tribes, SHPOs, and other stakeholders are provided notice and an opportunity to comment on their applications. Moreover, the State DOTs should be mindful that their applications will not only be reviewed by the FHWA, but also other affected Federal agencies, including the ACHP, before their applications are approved. Evidence of adequate public notice and a meaningful opportunity to submit comments will be considered in approving any application. However, the FHWA does not believe that an amendment to the regulations is necessary to ensure that any specific group or stakeholder receives notice and is provided an opportunity to comment.

Also, SOS commented that they have little confidence in the requirement to seek public comment solely in accordance with the public notice law of the State, and that the regulations should be amended to require public outreach and education. However, 23 U.S.C. 327(b)(3) provides that the public notice requirement be determined under the appropriate public notice law of the State. Thus, the method of public notice and solicitation of comments is to be determined by the State DOTs following State law.

Section 773.108 Application Amendments

The ACHP, similar to its comments on the public notice and comment process, commented that the State DOT should be required to notify affected Indian tribes and SHPOs of its intent to amend its application. As stated above in response to the ACHP's comments on the public notice and comment process, the FHWA agrees that the State DOTs should ensure that Indian tribes, SHPOs, and other stakeholders are provided notice and an opportunity to comment on amendments to their applications involving requests for additional projects or responsibilities. However, the FHWA does not believe that an amendment to the regulations is necessary to ensure that any specific group or stakeholder receives notice and is provided an opportunity to comment.

Also, the FHWA amended section 773.108 to clarify that the State DOT does not need to provide notice and solicit public comments for amendment not involving requests to assume additional highway projects, classes of highway projects, or more environmental responsibilities.

Appendix A

There were several comments on Appendix A. First, ADOT&PF, ACHP, Designated Pilot States, and TxDOT commented on the government-to-government tribal consultation responsibilities. ADOT&PF commented that the FHWA should reevaluate its proposal in the NPRM to exclude government-to-government consultations with the Indian tribes. The ACHP commented that it agreed that government-to-government tribal consultation responsibilities should only be administered by the State DOT if the Tribe consents through a formally signed consultation agreement. The Designated Pilot States commented that they were concerned that each State DOT would be required to negotiate agreements with dozens or hundreds of separate Indian tribes simply to permit a State DOT to continue its current practice of handling consultation with tribes except in cases where a tribe requests direct FHWA involvement. TxDOT commented that it is appropriate for FHWA to be involved when a tribe requests FHWA involvement.

While the statute does not specifically prohibit the FHWA from assigning its government-to-government consultation responsibilities, the FHWA does not believe that the agency can, or should try to, require a sovereign Indian tribe to consult with the State DOT without a clear Congressional mandate to do so. Additionally, the FHWA is aware that requiring the State DOT to negotiate individual agreements with every Indian tribe could be time consuming and very burdensome administratively. Since the FHWA is not assigning any government-to-government consultation activities, there should be no change in the existing relationships between the State DOTs and the Indian tribes. Thus, the FHWA is deleting this requirement from Appendix A. However, the FHWA notes that some State DOTs currently have executed agreements with the Indian tribes within their borders to coordinate and resolve issues relating to highway projects as part of the FHWA's tribal consultation process. These agreements have generally worked well and the State DOTs are encouraged to follow this practice under this pilot program.

Second, Designated Pilot States and TxDOT commented that the regulation should clarify that, with regard to the laws listed in Appendix A, the FHWA would be assigning only those responsibilities that are carried out as part of the NEPA analysis. TxDOT specifically commented that E.O. 13287 and E.O. 11514 should be deleted from Appendix A because they do not require any consideration in the NEPA process. The FHWA has decided to remove

E.O.'s 11514, 11593, 13007, 13175, and 13287, and 23 U.S.C. 319 to indicate that the FHWA would retain responsibility for implementation of these laws either because they apply only to properties owned and managed by the Federal Government, involve policy decisions, or do not otherwise appear to require the FHWA to undertake any environmental review, consultation, or other action pertaining to the review or approval of highway projects. Also, the FHWA has modified the reference to the Rivers and Harbors Act of 1899 in Appendix A to include only section 10 because the other sections of the Act do not appear to be inherently environmental.

The FHWA notes that the mere inclusion of a law on the list in Appendix A does not mean that the law will be automatically assigned. The laws that are assigned will only be those laws approved by the FHWA and specifically reflected in the MOU between the FHWA and the State DOT. Moreover, the list in Appendix A is not meant to be an exhaustive list, but rather a list of laws the FHWA has predetermined to be inherently environmental. The FHWA further notes that the State DOTs participating in the pilot program must comply with the substantive requirements of all applicable laws regardless of these laws' inclusion or exclusion in an application or MOU.

Other

The EPA commented that the rulemaking should clarify that the review and coordination responsibilities assumed by the State DOTs will not affect or diminish their obligations to other Federal agencies. The EPA also commented that the States should be required to acknowledge their commitment to cooperate with other Federal agencies. While we do not agree that it is necessary to add a regulation to this effect, we agree with the EPA's comment that the State DOTs must cooperate with other Federal agencies in administering the FHWA's responsibilities under this program. These obligations will be made part of the formal MOUs between the FHWA and the State DOTs. In developing their applications, the State DOTs should be mindful that the FHWA is required to consult with other Federal agencies before approving their applications. Demonstrating their commitment to cooperate with other Federal agencies in their applications may help expedite the approval of their applications.

Finally, Designated Pilot States and TxDOT commented that the FHWA should use an acronym other than ''STD'' whenever referring to a State transportation department. The FHWA used the acronym ''STD'' since 23 U.S.C. 101(a)(34) uses the words ''State transportation department'' in referring to the State department charged with the responsibility for highway construction. However, the FHWA agrees that the term ''State DOT'' in an acceptable replacement for the previously used acronym and accordingly, the FHWA has accepted this comment.

Rulemaking Analyses and Notices

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

The FHWA has determined that this action would be a significant rulemaking action within the meaning of Executive Order 12866 and would be significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. This rulemaking proposes application requirements for the Surface Transportation Project Delivery Program as mandated in section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59; 119 Stat. 1144; 23 U.S.C. 327).

This action is considered significant because of the substantial public interest in environmental concerns associated with highway projects. The program to which this proposed application corresponds allows States to assume the Secretary of Transportation's responsibilities under the National Environmental Policy Act of 1969, and for environmental reviews, consultations, and compliance with other Federal environmental laws. This action involves important DOT policy in that it allows participating States to assume limited DOT responsibilities.

These changes are not anticipated to adversely affect, in a material way, any sector of the economy. This rulemaking sets forth application requirements for the Surface Transportation Project Delivery Pilot Program, which will result in only minimal costs to program applicants. In addition, these changes do not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

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

This rule addresses application requirements for States wishing to participate in the Surface Transportation Project Delivery Program. As such, it affects only States and States are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the Regulatory Flexibility Act does not apply, and the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector. Additionally, the definition of ''Federal Mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

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

Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain collection of information requirements for the purposes of the PRA. The FHWA does not anticipate receiving applications from ten or more States because participation in the Surface Transportation Project Delivery Pilot Program has been limited to five, expressly named States in 23 U.S.C. 327.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that the establishment of the application requirements for participation in the Surface Transportation Project Delivery Pilot Program, as required by Congress in 23 U.S.C. 327(b)(2) and the subsequent delegation of responsibilities, would not have any effect on the quality of the environment. Section 327 expressly provides that a State's assumption of the Secretary's responsibilities under this program shall be ''subject to the same procedural and substantive requirements as would apply if that responsibility were carried out by the Secretary.'' 23 U.S.C. 327(a)(2)(C). In addition, this State assumption of responsibility does not preempt or interfere ''with any power, jurisdiction, responsibility, or authority of an agency, other than the Department of Transportation, under applicable law (including regulations) with respect to a project.'' 23 U.S.C. 327(a)(2)(E). Finally, the Secretary is authorized to terminate the participation of any State in this program if the Secretary determines ''that the State is not adequately carrying out the responsibilities assigned to the State.'' 23 U.S.C. 327(i)(2)(A).

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that this action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. The proposed rulemaking addresses application requirements for the Surface Transportation Project Delivery Program and would not impose any direct compliance requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use dated May 18, 2001. We have determined that it is not a significant energy action under that order since it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Regulation Identification Number

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

List of Subjects in 23 CFR Part 773

Environmental protection, Highway project, Highways and roads.

Issued on: February 6, 2007.

J. Richard Capka,

Federal Highway Administrator.

■ In consideration of the foregoing, the FHWA adds a new part 773 to title 23, Code of Federal Regulations to read as follows:

PART 773—SURFACE TRANSPORTATION PROJECT DELIVERY PILOT PROGRAM

Sec.
773.101 Purpose.
773.102 Applicability.
773.103 Definitions.
773.104 Eligibility.
773.105 Statements of Interest.
773.106 Application requirements for participation in the program.
773.107 Application approval.
773.108 Application amendments.
Appendix A to Part 773: FHWA Environmental Responsibilities that may be Assigned Under Section 6005.

Authority: 23 U.S.C. 315 and 327; 49 CFR 1.48.

§ 773.101 Purpose.

The purpose of this part is to establish the requirements, as directed by 23 U.S.C. 327(b)(2), relating to the information which must be contained in an application by a State to participate in the program allowing the Secretary to assign, and a State Department of Transportation (State DOT) to assume, responsibilities for compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347) and other Federal environmental laws pertaining to the review or approval of a highway project(s).

§ 773.102 Applicability.

This part applies to any State DOT eligible under the provisions of 23 U.S.C. 327 that submits an application for participation in the program.

§ 773.103 Definitions.

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

Classes of highway projects means either a defined group of highway projects or all highway projects to which Federal environmental laws apply.

Federal environmental law means any Federal law or Executive Order (EO) under which the Secretary of the United States Department of Transportation has responsibilities for environmental review, consultation, or other action with respect to the review or approval of highway projects. A list of the Federal environmental laws for which a State

DOT may assume the responsibilities of the Secretary under this pilot program include, but are not limited to, the list of laws contained in Appendix A to this Part. But, under 23 U.S.C. 327(a)(2)(B), the Secretary's responsibility for conformity determinations required under section 176 of the Clean Air Act (42 U.S.C. 7506) and the responsibility imposed on the Secretary under 23 U.S.C. 134 and 135 are not included in the program. Also, Federal environmental law includes only laws that are inherently environmental and does not include responsibilities such as Interstate access approvals (23 U.S.C. 111).

Highway project means any undertaking to construct (including initial construction, reconstruction, replacement, rehabilitation, restoration, or other improvements) a highway, bridge, or tunnel, or any portion thereof, including environmental mitigation activities, which is eligible for assistance under title 23 of the United States Code. A highway project may include an undertaking that involves a series of contracts or phases, such as a corridor, and also may include anything that may be constructed in connection with a highway, bridge, or tunnel. However, the term highway project does not include any of the priority projects designated under Executive Order 13274; does not include any Federal Lands Highway project unless such project is to be designed and constructed by the State DOT; and does not include projects that are funded under chapter 53 of title 49, United States Code. Nothing in this part is intended to limit the consideration of any alternative in conducting an environmental analysis under any Federal environmental law, even if the particular alternative would provide for a project that is excluded under this section and may consider and include that alternative within the range of alternatives for a highway project.

Program means the ''Surface Transportation Project Delivery Program'' established under 23 U.S.C. 327, which allows up to five State DOTs to assume all or part of the responsibilities for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review or approval of one or more highway projects.

§ 773.104 Eligibility.

(a) Only a State DOT of a State is eligible to participate in the program.

(b) The program is limited to a maximum five State DOTs, including the State DOTs of Alaska, California, Ohio, Oklahoma and Texas as the five participant States. Should any of these five State DOTs choose not to apply, have its participation terminated, or withdraw from the pilot program, another State DOT may be selected.

§ 773.105 Statements of Interest.

(a) The State DOTs of Alaska, California, Ohio, Oklahoma and Texas are given priority for participation in the program.

(b) Within sixty days of March 14, 2007, the State DOTs of Alaska, California, Ohio, Oklahoma and Texas shall submit a statement of interest to participate in the program. The statement of interest shall declare that the State DOT intends to submit an application to participate in the pilot program.

(c) Should any of the State DOTs of Alaska, California, Ohio, Oklahoma and Texas fail to submit a statement of interest by May 14, 2007 or decline participation in the pilot program, such State DOT shall no longer be given priority consideration for selection in the program and its application will be selected in competition with other State DOTs.

(d) Should any of the State DOTs of Alaska, California, Ohio, Oklahoma and Texas submit a statement of interest declaring their intent to participate in the program, the State shall actively work to develop and submit its application and meet all applicable program criteria (including the enactment of necessary State legal authority).

§ 773.106 Application requirements for participation in the program.

(a) Each State DOT wishing to participate in the program must submit an application to the FHWA.

(b) Each application submitted to the FHWA must contain the following information:

(1) The highway project(s) or classes of highway projects for which the State is requesting to assume FHWA's responsibilities under NEPA. The State DOT must specifically identify, in its application, each project for which a draft environmental impact statement has been issued prior to the submission of its application to the FHWA;

(2) The specific responsibilities for the environmental review, consultation, or other action required under other Federal environmental laws, if any, pertaining to the review or approval of a highway project, or classes of highway projects, that the State DOT wishes to assume under this program. The State DOT must also indicate whether it proposes to phase-in the assumption of these responsibilities;

(3) For each responsibility requested in paragraphs (b)(1) and (b)(2) of this section, the State DOT shall submit a description in the application detailing how it intends to carry out these responsibilities. The description shall include:

(i) A summary of State procedures currently in place to guide the development of documents, analyses and consultations required to fulfill the environmental responsibilities requested. The actual procedures should be submitted with the application, or if available electronically, the Web link must be provided;

(ii) Any changes that have been or will be made in the management of the environmental program to provide the additional staff and training necessary for quality control and assurance, appropriate levels of analysis, adequate expertise in areas where responsibilities have been requested, and expertise in management of the NEPA process;

(iii) A discussion of how the State DOT will verify legal sufficiency for the environmental document it produces; and

(iv) A discussion of how the State DOT will identify and address those projects that would normally require FHWA headquarters prior concurrence of the FEIS under 23 CFR 771.125(c).

(4) A verification of the personnel necessary to carry out the authority that may be granted under the program. The verification shall contain the following information:

(i) A description of the staff positions, including management, that will be dedicated to providing the additional functions needed to accept the delegated responsibilities;

(ii) A description of any changes to the State DOT's organizational structure that are deemed necessary to provide for efficient administration of the responsibilities assumed; and

(iii) A discussion of personnel needs that may be met by the State DOTs use of outside consultants, including legal counsel provided by the State Attorney General or private counsel;

(5) A summary of financial resources showing the anticipated financial resources available to meet the activities and staffing needs identified in (b)(3) and (b)(4) of this part, and a commitment to make adequate financial resources available to meet these needs;

(6) Certification and explanation by State's Attorney General, or other State official legally empowered by State law, that the State DOT can and will assume the responsibilities of the Secretary for the Federal environmental laws and

projects requested and that the State DOT will consent to exclusive Federal court jurisdiction with respect to the responsibilities being assumed. Such consent must be broad enough to include future changes in relevant Federal policies and procedures to which FHWA would be subject or such consent would be amended to include such future changes;

(7) Certification by the State's Attorney General, or other State official legally empowered by State law, that the State has laws that are comparable to the Federal Freedom of Information Act (5 U.S.C. 552), including laws that allow for any decision regarding the public availability of a document under those laws to be reviewed by a court of competent jurisdiction; and

(8) Evidence that the required notice and solicitation of public comment by the State DOT relating to participation in the program has taken place. Requirements for notice and solicitation of public comments are as follows:

(i) not later than 30 days prior to submitting its application, a State must give notice that the State intends to participate in the program and solicit public comment by publishing the complete application of the State in accordance with the appropriate public notice law of the State. If allowed under State law, publishing a notice of availability of the application rather than the application itself may satisfy the requirements of this subparagraph so long as the complete application is made reasonably available to the public for inspection and copying, and

(ii) copies of all comments received shall be submitted with the application. The State should summarize the comments received, and note changes, if any, that were made in the application in response to public comments.

(c) The application shall be signed by the Governor or the head of the State agency having primary jurisdiction over highway matters. The application must also identify a point of contact for questions regarding the application. Applications may be submitted in electronic format.

§ 773.107 Application approval.

If a State DOT's application is approved, then the State DOT will be invited to enter into a written Memorandum of Understanding (MOU) with the FHWA, as provided in 23 U.S.C. 327. None of FHWA's responsibilities under NEPA or other environmental laws may be assumed by the State DOT prior to execution of the MOU.

§ 773.108 Application amendments.

(a) After a State DOT submits its application to the FHWA, but prior to the execution of a MOU, the State DOT may amend its application at any time to request additional highway projects, classes of highway projects, or more environmental responsibilities. However, prior to making any such amendments, the State DOT must provide notice and solicit public comments with respect to the intended amendments. In submitting the amendment to the FHWA, the State DOT must provide copies of all comments received and note the changes, if any, that were made in response to the comments.

(b) A State DOT may amend its application no earlier than one year after a MOU has been executed to request additional highway projects, classes of highway projects, or more environmental responsibilities. However, prior to making any such amendments, the State DOT must provide notice and solicit public comments with respect to the intended amendments. In submitting the amendment to the FHWA, the State DOT must provide copies of all comments received and note the changes, if any, that were made in response to the comments.

Appendix A to Part 773

FHWA Environmental Responsibilities that may be assigned under section 6005

Federal Procedures

National Environmental Policy Act (NEPA), 42 U.S.C. 4321–43351.
FHWA Environmental Regulations at 23 CFR Part 771, 772 and 777
CEQ Regulations at 40 CFR 1500–1508
Clean Air Act, 42 U.S.C. 7401–7671(q). *Any determinations that do not involve conformity.*

Noise

Compliance with the noise regulations at 23 CFR part 772

Wildlife

Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1544, and Section 1536
Marine Mammal Protection Act, 16 U.S.C. 1361
Anadromous Fish Conservation Act, 16 U.S.C. 757(a)–757(g)
Fish and Wildlife Coordination Act, 16 U.S.C. 661–667(d)
Migratory Bird Treaty Act, 16 U.S.C. 703–712
Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.*

Historic and Cultural Resources

Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470(f) *et seq.*
Archeological Resources Protection Act of 1977, 16 U.S.C. 470(aa)–11
Archeological and Historic Preservation Act, 16 U.S.C. 469–469(c)
Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013

Social and Economic Impacts

American Indian Religious Freedom Act, 42 U.S.C. 1996
Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209

Water Resources and Wetlands

Clean Water Act, 33 U.S.C. 1251–1377
Section 404
Section 401
Section 319
Coastal Barrier Resources Act, 16 U.S.C. 3501–3510
Coastal Zone Management Act, 16 U.S.C. 1451–1465
Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j)(6)
Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403
Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287
Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931
TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11)
Flood Disaster Protection Act, 42 U.S.C. 4001–4128

Parklands

Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303
Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604

Hazardous Materials

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675
Superfund Amendments and Reauthorization Act of 1986 (SARA)
Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992(k)

Executive Orders Relating to Highway Projects

E.O. 11990 Protection of Wetlands
E.O. 11988 Floodplain Management
E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
E.O. 13112 Invasive Species

[FR Doc. E7–2375 Filed 2–9–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AB17

Statutory Exemption for Cross-Trading of Securities

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Interim final rule with request for comments.

SUMMARY: This document contains an interim final rule that implements the content requirements for the written cross-trading policies and procedures required under section 408(b)(19)(H) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act). Section 611(g) of the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780, 972, amended section 408(b) of ERISA by adding a new subsection (19) that exempts the purchase and sale of a security between a plan and any other account managed by the same investment manager if certain conditions are satisfied. Among other requirements, section 408(b)(19)(H) stipulates that the investment manager must adopt, and effect cross-trades in accordance with, written cross-trading policies and procedures that are fair and equitable to all accounts participating in the cross-trading program. This interim final rule would affect employee benefit plans, investment managers, plan fiduciaries and plan participants and beneficiaries.

DATES: *Effective Date:* This interim final rule is effective April 13, 2007.

Comment Date: Written comments on this interim final rule should be received by the Department of Labor on or before April 13, 2007.

ADDRESSES: Written comments (preferably, at least three copies) should be addressed to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, Washington, DC 20210, Attention: Cross-Trading Policies and Procedures Interim Final Rule. Commenters are encouraged to submit responses electronically by e-mail to *e-OED@dol.gov,* or by using the Federal eRulemaking portal at *http://www.regulations.gov.* Persons submitting responses electronically should not submit paper copies. All responses will be available to the public at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, and online at *http://www.regulations.gov* and *http://www.dol.gov/ebsa.*

FOR FURTHER INFORMATION CONTACT: G. Christopher Cosby or Brian Buyniski, Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, Washington, DC 20210, telephone (202) 693–8540. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

Section 611(g)(1) of the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780, 972 (PPA), which was enacted on August 17, 2006, amended ERISA by adding a new section 408(b)(19), which exempts from the prohibitions of sections 406(a)(1)(A) and 406(b)(2) of the Act those transactions involving the purchase and sale of a security between a plan and any other account managed by the same investment manager, provided that certain conditions are satisfied.[1] Among other requirements, an investment manager must adopt, and cross-trades must be effected in accordance with, written cross-trading policies and procedures that are fair and equitable to all accounts participating in the cross-trading program. The policies and procedures must include descriptions of (i) the investment manager's policies and procedures relating to pricing, and (ii) the investment manager's policies and procedures for allocating cross-trades in an objective manner among accounts participating in the cross-trading program.

The investment manager also must designate an individual (a compliance officer) who is responsible for periodically reviewing purchases and sales of securities made pursuant to the exemption to ensure compliance with the foregoing policies and procedures. Following such review, the compliance officer must provide, on an annual basis, a written report describing the steps performed during the course of the review, the level of compliance with the foregoing policies and procedures, and any specific instances of noncompliance. The report must be provided to the plan fiduciary who authorized the cross-trading no later than 90 days following the period to which it relates. Additionally, the written report must notify the plan fiduciary of the plan's right to terminate participation in the investment manager's cross-trading program at any time and must be signed by the compliance officer under penalty of perjury.

Section 611(g)(3) of the PPA provides that the Secretary of Labor, after consultation with the Securities and Exchange Commission (SEC), shall, no later than 180 days after the date of the enactment of the PPA, issue regulations regarding the content of the written policies and procedures required to be adopted by an investment manager in order for such manager to qualify for relief under section 408(b)(19) of the Act. Section 611(h) of the PPA provides that the amendments made by section 611 of the PPA shall apply to transactions occurring after the date of enactment of the PPA.

The rule contained in this document is being issued on an interim final basis to provide immediate guidance regarding the contents of the written cross-trading policies and procedures that must be adopted by investment managers in order to comply with the requirements of the statutory exemption. ERISA section 408(b)(19) is effective for transactions occurring after August 17, 2006, and Congress directed the Secretary of Labor to issue regulations by February 13, 2007. Given the current need for regulations and the short period in which the regulations are to be issued, the Department finds for good cause that notice and public procedure before issuance of this regulation is impracticable. Nevertheless, the Department will carefully review the comments received on this regulation and will thereafter issue a final regulation that takes them into consideration.

B. Overview of Interim Final Rule

The interim final rule amends 29 CFR part 2550 by adding a new section, 2550.408b–19. Paragraph (a) of the interim final rule states that the standards set forth in this interim final rule apply solely for purposes of determining whether an investment manager's written policies and procedures satisfy the content requirements of section 408(b)(19)(H) of the Act. Accordingly, such standards shall not apply in determining whether, or to what extent, the investment manager satisfies the other requirements

[1] Section 611(g)92) of the PPA added a parallel provision under the Internal Revenue Code of 1986 (Code), section 4975(d)(22), which provides relief from the prohibitions described in section 4975(c) of the Code in connection with the cross-trading of securities. Under Reorganization Plan No. 4 of 1978, effective December 31, 1978 (5 U.S.C. App. 214 (2000)), the authority of the Secretary of the Treasury to issue interpretations regarding section 4975 of the Code has been transferred, with certain exceptions not here relevant, to the Secretary of Labor, and the Secretary of the Treasury is bound by the interpretations of the Secretary of Labor pursuant to such authority.

for relief under section 408(b)(19) of the Act.

Paragraph (b)(2) requires the content of the written cross-trading policies and procedures to be clear, concise, and written in a manner calculated to be understood by the plan fiduciary authorizing a plan's participation in the manager's cross-trading program. Although no specific format is required for the investment manager's written cross-trading policies and procedures, the information contained in the policies and procedures must be sufficiently detailed to facilitate a periodic review by the compliance officer of the cross-trades.

As discussed below, paragraph (b)(3) of the interim final rule describes the content requirements of the written cross-trading policies and procedures that must be adopted by the investment manager, and provided to the plan fiduciary, prior to the investment manager engaging in any cross-trades under section 408(b)(19) of the Act. The Department of Labor (Department) expects that, following disclosure of the written policies and procedures adopted by the investment manager and any other disclosures required by the exemption,[2] the plan fiduciary will be able to determine whether it is appropriate to authorize the plan's participation in the investment manager's cross-trading program. The definitions of certain terms used in the interim final rule are contained in paragraph (c).

C. Content of Written Cross-Trading Policies and Procedures

Section 408(b)(19)(H) of the Act requires the investment manager to adopt, and effect cross-trades in accordance with, written cross-trading policies and procedures that are fair and equitable to all accounts participating in the cross-trading program, and that include a description of the manager's pricing policies and procedures, and the manager's policies and procedures for allocating cross-trades in an objective manner among accounts participating in the cross-trading program.

Paragraph (b)(3) of the interim final rule sets forth the content requirements for the written cross-trading policies and procedures to be adopted by the investment manager. The Department believes that the policies and procedures must provide sufficient information to enable a plan fiduciary to assess the investment manager's cross-trading program. In this regard, the relief provided by section 408(b)(19) of the Act is subject to satisfaction of a number of conditions by the investment manager, including the designation of a compliance officer to periodically review purchases and sales and prepare an annual report. A number of the content requirements mandated by the interim final rule require the investment manager to describe the method or process that will be employed by the manager to satisfy section 408(b)(19)(H) of the exemption. This information will enable the compliance officer to review securities purchases and sales to ensure compliance with the written policies and procedures. Since the compliance officer's annual report must be issued to plan fiduciaries responsible for authorizing a plan's participation in the investment manager's cross-trading program, it will assist the plan fiduciary in making an informed decision regarding the plan's continued participation in the cross-trading program.

The interim final rule requires the compliance officer to determine whether an investment manager's cross-trading program meets the requirements of section 408(b)(19) (H) of the Act. The Department specifically requests comments from interested persons regarding whether the scope of the compliance officer's responsibilities under the regulation should be expanded to encompass compliance with all of the requirements of the statutory exemption. In this regard, the Department is interested in any information regarding the current practices of compliance officers in determining compliance with applicable statutory or administrative exemptions under ERISA.

In order to assure that plan fiduciaries recognize the scope of compliance reviews conducted under these rules, paragraph (b)(3)(vii) requires the policies and procedures to contain a statement describing whether such review is limited to compliance with the policies and procedures required pursuant to 408(b)(19)(H).

Section 408(b)(19)(H) of the Act specifies that the written cross-trading policies and procedures adopted by the investment manager must include a description of the manager's policies and procedures for determining the price at which securities are cross-traded. The Department expects that the pricing policies and procedures will be described in sufficient detail to enable the compliance officer to independently determine that the cross-trade transaction was effected at the ''independent current market price'' of the security (within the meaning of § 270.17a–7(b) of Title 17, Code of Federal Regulations) as required by section 408(b)(19)(B) of the Act.[3]

Section 408(b)(19)(H) further specifies that such policies and procedures must include the policies and procedures for allocating cross-trades in an objective manner among accounts participating in the cross-trading program. In this regard, the Department notes that frequently the demand for a particular security among the accounts of an investment manager may exceed the supply available to cross-trade. Section 408(b)(19)(D) of the Act requires that the basis for any objective allocation to be used must be disclosed to each plan fiduciary prior to obtaining the required authorization. It is the Department's understanding that managers have relied on different systems, e.g., a pro rata or queue system, to allocate cross-trade opportunities on an objective basis. The Department recognizes that there may be a number of objective systems that are appropriate for the allocation of securities.

Paragraph (b)(3) of the interim final rule specifies that the investment manager's written cross-trading policies and procedures must include:

- A statement of policy which describes the criteria that will be applied by the investment manager in determining that execution of a securities transaction as a cross-trade will be beneficial to both parties to the transaction;[4]

[2] Under section 408(b)(19)(D) of the Act, the authorizing plan fiduciary must receive disclosures regarding the conditions under which cross-trades may take place in a document that is separate from any other agreement or disclosure involving the asset management relationship. Such disclosure must contain a statement that any investment manager participating in a cross-trading program will have a potentially conflicting division of loyalties and responsibilities to the parties involved in any cross-trade transaction. The written cross-trading policies and procedures must explain how the investment manager will mitigate such conflicts. Further, section 408(b)(19)(F) of the Act requires the investment manager to provide the plan fiduciary who authorized cross-trading a quarterly report detailing all the cross-trades executed by the investment manager in which the plan participated during such quarter.

[3] The Department notes that the SEC has issued several no-action and interpretive letters under 17 CFR 270.17a–7(b). The Department is of the view that investment managers who comply with 17 CFR 270.17a–7(b) and SEC no-action and interpretative letters thereunder will satisfy the requirements of section 408(b)(19)(B) of the Act.

[4] Notwithstanding the relief provided in section 408(b)(19) of the Act, the Department notes that the Act's general standards of fiduciary conduct also would apply to the investment manager's determination to cross-trade securities on behalf of a plan. In this regard, section 404 of the Act requires, among other things, a fiduciary to discharge his duties respecting the plan solely in the interests of the participants and beneficiaries and in a prudent manner. Accordingly, an investment manager must act prudently and solely in the interest of the participants and beneficiaries of the plans on whose behalf they are acting with

• A description of how the investment manager will determine that cross-trades are effected at the ''independent current market price'' of the security (within the meaning of section 270.17a–7(b) of Title 17, Code of Federal Regulations and SEC no-action and interpretative letters thereunder) as required by section 408(b)(19)(B) of the Act, including the identity of sources used to establish such price;

• A description of the procedures for ensuring compliance with the $100,000,000 minimum asset size requirement of section 408(b)(19); [5]

• A description of how the investment manager will mitigate any potentially conflicting division of loyalties and responsibilities to the parties involved in any cross-trade transaction;

• A requirement that the investment manager allocate cross-trades among accounts participating in the cross-trading program in an objective and equitable manner and a description of the allocation method(s) that will be available to and used by the investment manager;

• The identity of the compliance officer responsible for reviewing the investment manager's compliance with its written cross-trading policies and procedures, and the compliance officer's qualifications for this position; and

• A statement which describes the scope of the review conducted by the compliance officer, specifically noting whether such review is limited to compliance with the policies and procedures required by 408(b)(19)(H), or whether such review extends to any determinations regarding the overall level of compliance with the other requirements of section 408(b)(19) of ERISA.

D. Request for Comments

The Department invites comments from interested persons on all aspects of the interim final rule. Comments should be addressed to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, Washington, DC 20210, Attention: Cross-Trading Policies and Procedures Interim Final Rule. All responses will be available for public inspection at the Public Disclosure Room, Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, Washington, DC 20210. Electronic responses should contain ''Cross-Trading Policies and Procedures Interim Final Rule'' in the subject line and be addressed to *e-OED@dol.gov.*

E. Good Cause Finding That Proposed Rulemaking Unnecessary

Rulemaking under section 553 of the Administrative Procedure Act (APA) ordinarily involves publication of a notice of proposed rulemaking in the **Federal Register** and the public is given an opportunity to comment on the proposed rule. The APA authorizes agencies to dispense with proposed rulemaking procedures, however, if they find both good cause that such procedures are impracticable, unnecessary, or contrary to the public interest, and incorporate a statement of the finding with the underlying reasons in the interim final rule issued.

In this case, the Department finds that it is impracticable to undertake proposed rulemaking with regard to the content of the cross-trading policies and procedures. The Department believes such rulemaking is impracticable because, prior to the issuance of the Department's regulation, investment managers who engage in cross-trading on behalf of plans do so are at risk that their cross-trading programs will run afoul of the statutory exemption if their policies and procedures do not meet the requirements of the Department's regulation. The Department understands that the lack of guidance has had a ''chilling effect'' on the willingness of investment managers and plans to take advantage of the statutory exemption. Therefore, the Department made a policy determination to issue the regulation as an interim final regulation to allow plans to take advantage of the cost-savings derived from cross-trades as soon as possible. The Department therefore finds that notice and public procedure is impracticable and is publishing the rule as an interim final rule and is including a request for comment.

The Department has limited the comment period to 60 days in order to enable the Department to adopt changes to the interim final rule at the earliest possible date, taking into account Congress' expectation that regulations would be issued not later than 180 days from enactment of the PPA on August 17, 2006. The Department believes that, in light of the limited number of issues presented for consideration by the interim final rule, the provided 60-day comment period affords interested persons an adequate amount of time to analyze the rule and submit comments.

F. Regulatory Impact Analysis

Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Although the Department believes that this regulatory action is not economically significant within the meaning of section 3(f)(1) the Executive Order, the action has been determined to be significant within the meaning of section 3(f)(4) of the Executive Order, and the Department accordingly provides the following assessment of its potential costs and benefits. As elaborated below, the Department believes that the benefits of the interim final rule will be substantial and will justify its costs.

In assessing the costs and benefits of the interim final rule and associated provisions of the Act, the Department endeavored to consider all of the major activities that will be carried out pursuant to them. For example, investment managers will adopt, and effect cross-trades in accordance with, policies and procedures that clearly describe the criteria governing fair and equitable cross-trading, including the pricing of securities when cross-traded and the methods for allocating cross-trades among accounts. Investment managers will also appoint compliance officers responsible for determining and notifying participating plans' fiduciaries whether the applicable policies and procedures have been followed. These activities will help equip plan fiduciaries to evaluate cross-trading programs, and will help ensure that the cross-trades executed under such programs benefit all parties whose

respect to: (1) The decision to enter into a cross-trade; and (2) the terms of such cross-trade.

[5] A plan or mater trust will satisfy this minimum asset size requirement as to a transaction if it satisfies the requirement upon its initial participation in the cross-trading program and on a quarterly basis thereafter.

assets are cross-traded, including participating plans.

These activities will entail some cost (a part of which is quantified later in this preamble in connection with the Department's information collection request). The Department believes that many of these activities are already common practice among investment managers that operate high-quality, successful cross-trading programs. As such, much of the cost of these activities is not properly classified as a cost of the interim final rule or associated provisions of the Act.

The Department also believes that all of these activities are a necessary and efficient means of safeguarding plan assets invested in accounts subject to cross-trading programs.

The activities are necessary because plans' investments, and the retirement benefits they will provide for participants and beneficiaries, might otherwise be at avoidable risk. Investment managers operating cross-trading programs owe loyalty to both parties to any cross-trade (as well as to all prospective parties to any cross-trade). Such parties' interests in relation to the cross-trades often conflict. Accordingly, the Department believes that the transparency and protections provided by the interim final rule and associated provisions of the Act are essential to reducing the risks to the security of pension plan investments that are inherent in allowing cross-trading involving plans.

The activities are efficient insofar as they exploit investment managers' and compliance officers' comparative advantage at performing certain functions that help fiduciaries protect participants' interests. Investment managers, as the designers and operators of cross-trading programs, are well positioned to evaluate the economic merits of alternative permissible approaches. Compliance officers are well situated to monitor programs' adherence to established policies and procedures. The interim final rule and associated provisions of the Act exploit these efficiencies to protect participants' interests both directly (by creating better conditions for cross-trading) and indirectly (by more efficiently delivering relevant information to participating plans' fiduciaries). By assigning duties of designing, operating, and monitoring cross-trading programs to investment managers and compliance officers, and by ensuring that plan fiduciaries will receive timely and relevant information on adherence to established policies and procedures, the interim final rule will improve the ability of plan fiduciaries to satisfy their fiduciary duties in determining the appropriateness of a plan's investment in an account subject to cross-trading.

On this basis of this assessment, the Department concludes that the benefits of the interim final rule justify its cost. The Department invites comments on this assessment and conclusion.

The Department is considering whether in the future to pursue additional regulatory action under section 408(b)(19) of the Act. For example, should cross-trading programs' policies and procedures be required to include elements that would ensure the programs' compliance with all of the conditions of the exemption enumerated under section 408(b)(19) of the Act? Should compliance officers be responsible for reviewing and reporting on compliance with all such conditions? Expanding the content requirements might add to the cost of developing, distributing, and adhering to them. Expanding compliance officers' responsibilities might increase their costs to carry out those responsibilities. But, as with the requirements of the interim final rule and associated provisions of the Act, such expanded requirements also might favorably leverage investment managers' and compliance officers' comparative advantage at performing certain functions that help fiduciaries protect participants' interests. The Department invites comment on the desirability of additional regulatory action in this area.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rule-making describing the impact of the rule on small entities and seeking public comment on such impact. Because this rule is being issued as an interim final rule, the RFA does not apply and the Department is not required to either certify that the rule will not have a significant impact on a substantial number of small businesses or conduct an initial regulatory flexibility analysis. Nevertheless, the Department has considered the likely impact of the interim rule on small entities in connection with its assessment under Executive Order 12866, described above, and believes this rule will not have a significant impact on a substantial number of small entities. For purposes of this discussion, the Department deemed a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, the reporting burden (time and financial resources) is minimized, and the Department can properly assess the impact of collection requirements on respondents.

Currently, the Department is soliciting comments concerning the information collection request (ICR) included in the Interim Final Regulation on Statutory Exemption for Cross-Trading. A copy of the ICR may be obtained by contacting the person listed in the PRA Addressee section below.

The Department has submitted a copy of the interim final regulation to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate 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;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, by permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. Although comments may be submitted through April 13, 2007, OMB requests that comments be received within 30 days of publication of the Notice of Interim Final Rulemaking to ensure their consideration.

PRA Addressee: Address requests for copies of the ICR to Susan G. Lahne, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers.

This regulation implements the content requirements for the written cross-trading policies and procedures required under section 408(b)(19)(H) of ERISA, as added by section 611(g) of the PPA. As described earlier in this preamble, section 611(g)(1) of the PPA created a new statutory exemption, added to section 408(b) of ERISA as subsection 408(b)(19), that exempts from the prohibitions of sections 406(a)(1)(A) and 406(b)(2) of ERISA cross-trading transactions involving the purchase and sale of a security between an account holding assets of a pension plan and any other account managed by the same investment manager, provided that certain conditions are satisfied.

The information collection provisions of the regulation safeguard plan assets by ensuring that important information about an investment manager's cross-trading program is provided to plan fiduciaries prior to their decision whether to begin or continue participation in the cross-trading program. The information collections also assist in ensuring that investment managers relying on the statutory exemption effect cross-trades in accordance with the criteria described in the policies and procedures.

Under the interim final regulation, an investment manager would be required to develop written cross-trading policies and procedures that meet the regulation's content requirements and to disclose them to plan fiduciaries prior to their deciding whether to invest plan assets in an account managed under the cross-trading program. The regulation would provide that the policies and procedures for cross-trading under the new statutory exemption must include detailed explanations and descriptions of certain aspects of the investment manager's cross-trading program, as explained earlier in this preamble. These information collections, therefore, constitute third-party disclosures between an investment manager and plan fiduciaries.

Annual Hour Burden

Based on data derived primarily from the Form 5500 Series filings for the 2001 to 2003 plan years, which is the most recent reliable data available, the Department estimates that approximately 2,100[6] plans would be eligible to, and would likely, participate in cross-trading programs.[7] Further, the Department estimates that approximately 1,600 investment managers would serve as investment managers for the assets of such eligible plans.[8] On average, the Department estimates that each of the 1,600 investment managers will manage assets of nine plans. Assuming that 90 percent of the 1,600 investment managers have cross-trading programs, investment managers would be required to provide about 13,000 initial disclosures of cross-trading policies and procedures to plan fiduciaries (1,600 investment managers × 9 plans each × 90 percent = 13,000 initial disclosures). The Department assumes that each investment manager would require 10 hours of a financial analyst's time to develop written policies and procedures in the first year.[9] For the 90 percent of the 1,600 investment managers that develop cross-trading programs, the Department estimates an initial annual hour burden of a little over 14,000 hours.

Each investment manager would be required to provide the cross-trading policies and procedures as an initial disclosure to each plan. The Department assumes that the initial disclosure will be provided in writing to provide a desired formality of compliance. Thus, the Department estimates that investment managers will be required to provide about 13,000 initial plan disclosures to plan fiduciaries (90 percent of 1,600 investment managers, times nine plans) in the first year in which the exemption is effective. The Department assumes that 3 (three) minutes of clerical time per plan disclosure will be needed to gather the required information, collate and package the information for distribution, and ensure that the information is distributed, for a total of 650 hours of clerical time.

In years subsequent to the first year of applicability, the Department estimates that new policies and procedures will be written by investment managers whose policies and procedures have changed and by investment managers that inaugurate new cross-trading programs. For purposes of burden analysis, the Department has assumed that the number of investment managers that either change or newly adopt cross-trading policies and procedures in a subsequent year will equal 14 percent of the investment managers that currently have cross-trading policies and procedures, or about 200 managers. These 200 investment managers will each spend 10 hours of a financial analyst's time to develop new written policies and procedures, for a total of about 2,000 hours each year. These investment managers are also estimated to distribute their new written policies and procedures to 1,800 plan fiduciaries. This would require 90 hours of clerical time.

In total, the initial disclosure of cross-trading policies and procedures is estimated to require about 15,000 hours in the first year (14,000 hours of financial analysts' time + 650 hours of clerical time = 14,650 hours total) and about 2,100 hours in each subsequent year (2,000 hours of financial analysts' time + 90 hours of clerical time = 2,090 hours total). The equivalent costs of these hours are $779,000 and $109,000, respectively.[10]

[6] All numbers in this burden analysis, apart from the hourly wage rates, have been rounded either to the nearest thousand or the nearest hundred, as appropriate.

[7] Under the statutory exemption, ''each plan participating in a cross-trading transaction must have assets of at least $100,000,000, except that if the assets of a plan are invested in a master trust containing the assets of plans maintained by employers in the same controlled group (as defined in section 407(d)(7)), the master trust has assets of at least $100,000,000.''

[8] Because of a plan of this size likely to use the services of more than one investment manager to invest its assets, the Department has assumed that some of the eligible plans will have assets invested under more than one cross-trading program.

[9] The Department assumed that investment managers, which are large, sophisticated financial institutions, will use existing in-house resources to prepare the information and disclosures.

[10] Hourly wage estimates, for purposes of deriving cost equivalents, were based on data from the Bureau of Labor Statistics Occupational Employment Survey (November 30, 2004) and the 2005 Employment Cost Trends. Clerical wage and benefits estimates were based on metropolitan wage rates for Executive Secretaries and Administrative Assistants. Professional wage and benefits estimates were based on metropolitan wage estimates for Financial Analysis. The resulting hourly wage rates were $53, including both wages and benefits, for professional financial analysts and $25, similarly

Continued

Annual Cost Burden

The only additional costs arising from this information collection derive from the direct costs of distribution.

The Department believes that initial disclosure of the investment manager's written policies and procedures to plan fiduciaries eligible to participate in the investment manager's cross-trading program will be prepared in paper form and distributed by mail delivery service, courier or some other means of distribution that will create a record of delivery. For the initial disclosures to the plan fiduciaries assumed to receive such disclosure, the Department assumes a distribution cost of $4.00 per plan. This includes the actual cost of distribution, plus any overhead costs associated with printing the documentation. Given that about 90% of the approximately 1,600 investment managers are estimated to engage in cross-trading and that each of them manages on average nine plans, investment managers would have to prepare about 13,000 disclosures to plan fiduciaries. The total initial annual cost burden for distributing the required notice amounts to $52,000.

In years subsequent to the first year of applicability, policies and procedures will only have to be distributed by investment managers that develop new policies and procedures. For purposes of burden analysis, the Department has assumed that the number of investment managers that will do so in a subsequent year will be equal to 14 percent of existing investment managers with cross-trading programs, or about 200 managers.

The distribution of these new written policies and procedures in a subsequent year to plan fiduciaries will require material and postage costs of $4.00 per plan. Assuming that, on average, the assets of about nine plans are managed by each investment manager, this would require a little more than 1,800 disclosures annually and about $7,300 annually in materials and postage costs.

In total, the initial disclosure of policies and procedures is estimated to require about $52,000 for materials and postage in the first year and about $7,300 in each subsequent year.

These paperwork burden estimates are summarized as follows:

Type of Review: New collection.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Statutory Exemption for Cross-Trading of Securities.

OMB Number: 1210–NEW.

Affected Public: Business or other for-profit; not-for-profit institutions.

Respondents: 1,440.

Responses: 13,000.

Frequency of Response: Occasionally.

Estimated Total Annual Burden Hours: 15,000 (first year); 2,100 (subsequent years).

Estimated Total Annual Burden Cost: $52,000 (first year); $7,300 (subsequent years).

Congressional Review Act

The interim final rule being issued here is subject to the provisions of the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Comptroller General for review. The interim final rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it does not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the interim final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or impose an annual burden exceeding $100 million on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires Federal agencies to adhere to specific criteria in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This interim final rule does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the interim rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Employee Retirement Income Security Act, Employee stock ownership plans, Exemptions, Fiduciaries, Investments, Investments foreign, Party in interest, Pensions, Pension and Welfare Benefit Programs Office, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and trustees.

Cross-Trading Policies and Procedures Regulation

■ For the reasons set forth in the preamble, subchapter F, part 2550 of title 29 of the Code of Federal Regulations is amended as follows:

SUBCHAPTER F—FIDUCIARY RESPONSIBILITY UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 1. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135; sec. 657, Pub. L. 107–16, 115 Stat. 38; sec. 611, Pub. L. 109–280, 120 Stat. 780; and Secretary of Labor's Order No. 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sec. 2550.404c–1 also issued under 29 U.S.C. 1104. Sec. 2550.407c–3 also issued under 29 U.S.C. 1107. Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1) and sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp., p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp., p. 332. Sec. 2550.408b–19 also issued under sec. 611, Pub. L. 109–280, 120 Stat. 780, 972, and sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp., p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1979), and 3 CFR, 1978 Comp., p. 332. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

■ 2. Add § 2550.408b–19 to read as follows:

§ 2550.408b–19 Statutory exemption for cross-trading of securities.

(a) *In General.* (1) Section 408(b)(19) of the Employee Retirement Income Security Act of 1974 (the Act) exempts from the prohibitions of section

including both wages and benefits, for clerical personnel.

406(a)(1)(A) and 406(b)(2) of the Act any cross-trade of securities if certain conditions are satisfied. Among other conditions, the exemption requires that the investment manager adopt, and effect cross-trades in accordance with, written cross-trading policies and procedures that are fair and equitable to all accounts participating in the cross-trading program, and that include:

(i) A description of the investment manager's pricing policies and procedures, and

(ii) The investment manager's policies and procedures for allocating cross-trades in an objective manner among accounts participating in the cross-trading program.

(2) Section 4975(d)(22) of the Internal Revenue Code of 1986 (the Code) contains parallel provisions to section 408(b)(19) of the Act. Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 214 (2000 ed.), transferred the authority of the Secretary of the Treasury to promulgate regulations of the type published herein to the Secretary of Labor. Therefore, all references herein to section 408(b)(19) of the Act should be read to include reference to the parallel provisions of section 4975(d)(22) of the Code.

(3) Section 408(b)(19)(D) of the Act requires that a plan fiduciary for each plan participating in the cross-trades receive in advance of any cross-trades disclosure regarding the conditions under which the cross-trades may take place. This disclosure must be in a document that is separate from any other agreement or disclosure involving the asset management relationship. The disclosure must contain a statement that any investment manager participating in a cross-trading program will have a potentially conflicting division of loyalties and responsibilities to the parties involved in any cross-trade transaction.

(4) The standards set forth in this section apply solely for purposes of determining whether an investment manager's written policies and procedures satisfy the content requirements of section 408(b)(19)(H) of the Act. Accordingly, such standards do not determine whether the investment manager satisfies the other requirements for relief under section 408(b)(19) of the Act.

(b) *Policies and Procedures.*

(1) *In General.* This paragraph specifies the content of the written policies and procedures required to be adopted by an investment manager and disclosed to the plan fiduciary prior to authorizing cross-trading in order for transactions to qualify for relief under section 408(b)(19) of the Act.

(2) *Style and Format.* The content of the policies and procedures required by this paragraph must be clear and concise and written in a manner calculated to be understood by the plan fiduciary authorizing cross-trading. Although no specific format is required for the investment manager's written policies and procedures, the information contained in the policies and procedures must be sufficiently detailed to facilitate a periodic review by the compliance officer of the cross-trades and a determination by such compliance officer that the cross-trades comply with the investment manager's written cross-trading policies and procedures.

(3) *Content.* (i) An investment manager's policies and procedures must be fair and equitable to all accounts participating in its cross-trading program and reasonably designed to ensure compliance with the requirements of section 408(b)(19)(H) of the Act. Such policies and procedures must include:

(A) A statement of policy which describes the criteria that will be applied by the investment manager in determining that execution of a securities transaction as a cross-trade will be beneficial to both parties to the transaction;

(B) A description of how the investment manager will determine that cross-trades are effected at the ''independent current market price'' of the security (within the meaning of § 270.17a–7(b) of Title 17, Code of Federal Regulations and SEC no-action and interpretative letters thereunder) as required by section 408(b)(19)(B) of the Act, including the identity of sources used to establish such price;

(C) A description of the procedures for ensuring compliance with the $100,000,000 minimum asset size requirement of section 408(b)(19). A plan or master trust will satisfy the minimum asset size requirement as to a transaction if it satisfies the requirement upon its initial participation in the cross-trading program and on a quarterly basis thereafter;

(D) A description of how the investment manager will mitigate any potentially conflicting division of loyalties and responsibilities to the parties involved in any cross-trade transaction;

(E) A requirement that the investment manager allocate cross-trades among accounts in an objective and equitable manner and a description of the allocation method(s) available to and used by the investment manager for assuring an objective allocation among accounts participating in the cross-trading program. If more than one allocation methodology may be used by the investment manager, a description of what circumstances will dictate the use of a particular methodology;

(F) Identification of the compliance officer responsible for periodically reviewing the investment manager's compliance with section 408(b)(19)(H) of the Act and a statement of the compliance officer's qualifications for this position; and

(G) A statement which describes the scope of the review conducted by the compliance officer, specifically noting whether such review is limited to compliance with the policies and procedures required by 408(b)(19)(H), or whether such review extends to any determinations regarding the overall level of compliance with the other requirements of section 408(b)(19) of the Act.

(ii) Nothing herein is intended to preclude an investment manager from including such other policies and procedures not required by this regulation as the investment manager may determine appropriate to comply with the requirements of section 408(b)(19).

(c) *Definitions.* For purposes of this section:

(1) The term ''account'' includes any single customer or pooled fund or account.

(2) The term ''compliance officer'' means an individual designated by the investment manager who is responsible for periodically reviewing the cross-trades made for the plan to ensure compliance with the investment manager's written cross-trading policies and procedures and the requirements of section 408(b)(19)(H) of the Act.

(3) The term ''plan fiduciary'' means a person described in section 3(21)(A) of the Act with respect to a plan (other than the investment manager engaging in the cross-trades or an affiliate) who has the authority to authorize a plan's participation in an investment manager's cross-trading program.

(4) The term ''investment manager'' means a person described in section 3(38) of the Act.

(5) The term ''plan'' means any employee benefit plan as described in section 3(3) of the Act to which Title I of the Act applies or any plan defined in section 4975(e)(1) of the Code.

(6) The term ''cross-trade'' means the purchase and sale of a security between a plan and any other account managed by the same investment manager.

Signed at Washington, DC, this 6th day of February, 2007.

Bradford P. Campbell,

Acting Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. E7–2290 Filed 2–9–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[WO–850–1820–XZ–24–1A]

RIN 1004–AD34

Application Procedures, Execution and Filing of Forms: Correction of State Office Address for Filings and Recordings, Proper Offices for Recording of Mining Claims

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule; correcting amendment.

SUMMARY: This correcting amendment amends the regulations pertaining to execution and filing of forms in order to correct the post office box number in the address of the Nevada State Office of the Bureau of Land Management (BLM) in the list of State Office addresses.

EFFECTIVE DATE: February 12, 2007.

FOR FURTHER INFORMATION CONTACT: Chandra C. Little, Regulatory Affairs Division, (202) 452–5030. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

ADDRESSES: You may send inquiries or suggestions to U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 401 LS, 1849 C Street, NW., Washington, DC 20240; *Attention:* RIN–1004–AD34.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule reflects the administrative action of correcting the address of the Nevada State Office of the BLM. The post office box number was incorrectly stated in the final rule published in the **Federal Register** on April 16, 2003 (68 FR 18554). The street address for the personal filing of documents relating to public lands in Nevada remains the same, and this correcting amendment makes no other changes in filing requirements.

Need for Correction

As published, the final regulations contain an error which may prove to be misleading and needs to be clarified.

List of Subjects in 43 CFR Part 1820

Administrative practice and procedure; Archives and records; Public lands.

Dated: February 2, 2007.

Ted R. Hudson,

Acting Division Chief, Regulatory Affairs.

■ For the reasons discussed in the preamble, the Bureau of Land Management amends 43 CFR part 1820 as follows:

PART 1820—APPLICATION PROCEDURES

■ 1. The authority citation for part 1820 continues to read as follows:

Authority: 5 U.S.C. 552, 43 U.S.C. 2, 1201, 1733, and 1740.

Subpart 1821—General Information

■ 2. Correct § 1821.10 by amending paragraph (a) by revising the address of the Bureau of Land Management, Nevada State Office, in paragraph (a) to read as follows:

§ 1821.10 Where are BLM offices located?

(a) * * *

State Offices and Areas of Jurisdiction

* * * * *

Nevada State Office, 1340 Financial Boulevard, Reno, Nevada 89502–7147, P.O. Box 12000, Reno, Nevada 89520–0006—Nevada.

* * * * *

[FR Doc. E7–2108 Filed 2–9–07; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211 and 252

RIN 0750–AF31

Defense Federal Acquisition Regulation Supplement; Radio Frequency Identification (DFARS Case 2006–D002)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to include additional commodities and locations that require package marking with passive radio frequency identification (RFID) tags. The rule requires contractors to affix passive RFID tags at the case and palletized unit load levels when shipping packaged petroleum, lubricants, oils, preservatives, chemicals, additives, construction and barrier materials, and medical materials to specified DoD locations.

EFFECTIVE DATE: February 12, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2006–D002.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 71 FR 29084 on May 19, 2006, to implement the second year of DoD's three-year roll-out plan for supplier implementation of RFID. The rule added requirements for contractors supplying materiel to DoD to affix passive RFID tags at the case and palletized unit load levels when shipping packaged petroleum, lubricants, oils, preservatives, chemicals, additives, construction and barrier materials, and medical materials to specified locations. Ten respondents submitted comments on the interim rule. A discussion of the comments is provided below.

1. *Comment:* The DoD Suppliers' Passive RFID Information Guide states that the Air Mobility Command Terminals at Charleston, Dover, and Travis Air Force Bases will be added to the locations that require passive RFID tags in 2006. Instead of Dover Air Force Base, the rule adds the Naval Air Station in Norfolk.

DoD Response: The locations identified in the DFARS rule are correct. DoD is updating the Suppliers' Passive RFID Information Guide to incorporate these changes.

2. *Comment:* The Air Mobility Commands should be excluded until 2007, when all ship-to locations will require RFID tags. For contracts with transshipment points, such as the Air Mobility Commands, vendors do not know whether or not the ship-to location requires RFID tags when they respond to the solicitation. Vendors are required to contact the Transportation Office for shipping instructions at time of shipment.

DoD Response: DoD has amended the rule to require RFID tags for all high-

priority shipments (Transportation Priority 1). Therefore, vendors do not need to know the aerial shipping port. DoD also has amended the rule to exempt shipments to locations other than Defense Distribution Depots when the contract includes the clause at FAR 52.213–1, Fast Payment Procedure, because of limitations in the Wide Area WorkFlow-Receipt and Acceptance electronic system.

3. *Comment:* DoD should extend the ending date for use of Generation 1 tags, from October 1, 2006, to January or May 2007, or should consider an attrition-based alternative to phase out the Generation 1 tags. In the first year of DoD's supplier implementations of RFID, DoD encouraged vendors to buy large quantities of Generation 1 tags to help keep costs down. If the Generation 1 tags are not accepted after October 1, 2006, vendors who followed DoD's advice will have large inventories of the Generation 1 tags that are no longer acceptable.

DoD Response: DoD has amended the rule to make the Generation 1 tags acceptable under all new contracts until March 1, 2007. DoD's July 30, 2004, policy statement on RFID (available at *http://www.acq.osd.mil/log/rfid/rfid_policy.htm*) provided that the Generation 1 technology would no longer be accepted 2 years after the ratification of the UHF Generation 2 Standard. The UHF Generation 2 Standard was ratified in December 2004. DoD has extended the date an additional 5 months to ensure that vendors are not left with large, obsolete inventories of the Generation 1 tags. In addition, DoD will continue to accept Class 0 and Class 1 Generation 1 and Class 1 Generation 2 tags for all shipments under contracts awarded prior to the effective date of the interim rule, May 19, 2006.

4. *Comment:* The contract clause should reference the specific version or effective date of the applicable EPC Tag Data Standard instead of ''the most recent EPC Tag Data Standards document,'' because an open-ended requirement is inappropriate. Also, the clause should reference the specific versions or effective dates for the tag identity type instructions and receiving reports procedures, instead of the instructions and procedures at the cited Web sites.

DoD Response: DoD has amended the clause to specify that the contractor must use the tag data standards in effect at the time of contract award. Incorporating the version number or effective date of the standard, instructions, and procedures in the DFARS clause would not be practicable, since these requirements may change.

5. *Comment:* The rule should clarify whether RFID tags are required if a shipment contains both medical materials that require RFID tags and other products that do not require RFID tags.

DoD Response: If an individual case contains an exempted item, or if an individual pallet contains an exempted case, RFID tags are not required. The rule has been amended to clarify that suppliers should limit mixing of exempted and non-exempted materials.

6. *Comment:* DoD should retain the provision of the original clause that required the passive tag to be ''readable at the time of shipment in accordance with MIL–STD–129 (Section 4.9.1.1) readability performance requirements,'' instead of the current clause provision that only requires the tag to be ''readable,'' to ensure the requirement is appropriately bounded.

DoD Response: Suppliers must apply a readable tag before shipping products to DoD. The clause has been amended to allow suppliers more flexibility in meeting this requirement.

7. *Comment:* Contractors are required to ensure that each passive tag is ''readable,'' but the rule does not define ''readable.'' We understand ''readable'' to mean that the contents of the RFID tag can be read by an EPCglobal-compliant passive RFID reader.

DoD Response: The respondent's understanding is correct. Suppliers must apply a readable tag before shipping products to DoD.

8. *Comment:* DoD should establish a mechanism to address tags that are readable prior to shipment but non-readable at the point of receipt. A number of factors may affect tag readability during the shipping and receiving process (e.g., damage in transit, reader failure).

DoD Response: Suppliers are required to affix a readable tag before shipment. DoD maintains a collaborative approach to working with its suppliers. If a trend of non-readable tags is noted for a specific supplier, DoD will work with that supplier to develop a mutually agreeable resolution.

9. *Comment:* DoD should allow use of all ISO-approved RFID tag formats, instead of limiting the tag formats to either EPCglobal or the DoD tagging format utilizing the CAGE codes. Current product cases for medical materials utilize industry standard product bar codes. Medical material suppliers utilize two different consensus standards for bar code identification of their product cases, based on either Health Industry Business Council or GS1 (formerly the Uniform Code Council) formats. One format is predominately used to identify drug products (using the National Drug Code) and the other is used for medical devices or supplies. Each format has unique labeler codes assigned to each company. The data contained in the bar codes is currently used to identify the packages and their contents throughout the supply chain. DoD should allow the use of ISO-approved Issuing Agency Codes (IAC) instead of limiting supplier identification to the EPCglobal or CAGE code. The use of ISO-approved IACs is currently supported by DoD in its unique identification (UID) requirements. Allowing for this in the RFID would be consistent with other standards supported by DoD.

DoD Response: The acceptable tag encoding schemes are those identified in the version of the EPCglobal Tag Data Standard in effect at the time of contract award. These tag data standards include the DoD tag identity which utilizes the CAGE code.

10. *Comment:* DoD should allow RFID tag capacity of 128 Bit and higher. High capacity tags are now common, and are more likely to be used by suppliers. Many RFID tags have capacity of several kilobits.

DoD Response: Under the DFARS rule, DoD will only accept tags encoded according to the tag data standards defined in the EPCglobal Tag Data Standards documents available at *http://www.epcglobalinc.org/standards/*. DoD will review the potential for accepting higher capacity tag data types as the standards for those tags are ratified.

11. *Comment:* The RFID frequency specified in the DoD documents is 915 MHz. Electromagnetic interference can cause medical device failures and malfunctions. 915 MHz is within the frequency band that medical devices are tested and have been shown to function during and after exposure. Medical devices are immune to 915 MHz signals at FCC regulated levels.

DoD Response: DoD requires passive tags on the packaging of items, not on the item itself. The tags themselves do not emit any electromagnetic signal unless interrogated by an RF reader.

12. *Comment:* DoD should work with the U.S. Food and Drug Administration (FDA) and compare its Medical Federal Supply Classes to the FDA combination product codes. DoD's RFID program calls for tagging of medical devices but not pharmaceuticals, biological, or in vitro diagnostics. Drug, biologics, and devices can be used in combination to potentially enhance the safety and/or effectiveness of either product used

alone. The appropriate classification of these combination products is sometimes unclear. FDA's Office of Combination Products addresses concerns with drug-device, drug-biologic, and device-biologic combination products. FDA is investigating the use of unique device identification to improve patient safety, by reducing medical errors, facilitating device recalls, and improving medical device adverse event reporting. No standard has been developed as of yet.

DoD Response: DoD is working with the FDA to ensure that the RFID requirements are clearly defined and appropriate. In addition, DoD is sharing lessons learned from its work with uniquely identifying items with the FDA.

13. *Comment:* Adding repairable and consumable items to the supplies that require passive RFID tags will add time and costs to low-dollar items. Small businesses are already burdened with the unique item identification (UID) requirements for certain items under $5,000. The RFID threshold is even lower. Is there any value added and cost trade-off to keep track of low-dollar DoD inventory on a resistor or relay, etc?

DoD Response: The benefits of applying RFID outweigh the costs. The dollar value of an item is not an accurate measure of its mission criticality (e.g., an inexpensive part that could keep a plane from flying its mission would be considered mission critical). Repair parts and components, including repairables and consumables, must be tagged for shipments to one of the specified locations. RFID technology is simply a faster, better way to acquire data for logistics and financial systems and will be a benefit for all items DoD manages.

14. *Comment:* The rule should exempt limited volume suppliers from RFID requirements, because implementation and operation of an RFID system can be costly. Also, many suppliers do not currently have RFID capability and do not have requirements for RFID tagging for other customers. The cost to implement an initial system in one shipping location is approximately $100,000. The cost for additional shipping locations is approximately $65,000. Additional implementation costs would be incurred for automatically generated advance shipment notices, or significant operational costs would be incurred for manually inputted advance shipment notices. Measurable benefits of RFID do not exceed the costs for small businesses. With only one contract that requires RFID tags, we are using a contract labeler to make the tags instead of investing significant amounts of money ($12,000 or more) in cutting edge technology. We are hesitant to invest in the technology, because we have no idea of the volume of future requirements. We have to price each tag to recoup our costs.

DoD Response: Outfitting an entire shipping location with RFID capability could be expensive. However, compliance with DoD's requirement is significantly less complex. The basic requirement is that materiel shipped to DoD must be tagged. A variety of low-cost solutions that enable suppliers to comply with DoD's requirement are available in the marketplace. A supplier can buy an RFID reader that reads and writes the tags for approximately $2,000 and can purchase pre-printed tags for as little as $0.70 per tag.

15. *Comment:* DoD should streamline the contract clause by referencing the locations that require RFID tags in an attachment to the contract instead of listing the locations in the clause, to be consistent with DoD's DFARS transformation initiative and to eliminate the need for additional changes to the clause to add additional ship-to locations.

DoD Response: In 2007, DoD plans to add the remaining locations that will require RFID tags and will consider a more generic clause that allows the contracting officer to specify the locations that require RFID tags. This change will be vetted through the rulemaking process.

16. *Comment:* DoD should add language to encourage the use of a Single Process Initiative (SPI) where practicable.

DoD Response: Suppliers can use an SPI, provided the single process meets contract requirements.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

DoD has developed a three-year roll-out plan for supplier implementation of RFID. This rule finalizes the interim rule published in the **Federal Register** at 71 FR 29084 on May 19, 2006, to address the second year of the plan. The rule amends the clause at DFARS 252.211–7006, Radio Frequency Identification. The rule contains requirements for DoD contractors supplying materiel to DoD to affix passive RFID tags at the case and palletized unit load levels when shipping packaged petroleum, lubricants, oils, preservatives, chemicals, additives, construction and barrier materials, and medical materials to specified DoD locations. Prior to this rule, DoD contractors were already required to print and affix military shipping labels to every package delivered to DoD. For packaged operational rations, clothing, individual equipment, tools, personal demand items, and weapon system repair parts shipped to the Defense Distribution Depot in Susquehanna, PA, or the Defense Distribution Depot in San Joaquin, CA, DoD contractors also were already required to affix passive RFID tags at the case and palletized unit load levels.

To create an automated and sophisticated end-to-end supply chain, DoD is dependent upon initiating the technology at the point of origin, the DoD commercial suppliers. Without the assistance of the DoD supplier base to begin populating the DoD supply chain with passive RFID tags, a fully integrated, highly visible, automated end-to-end supply chain is untenable.

As a result of comments received on the interim rule, the final rule extends the date for the acceptability of the EPC Class 0 and Class 1 Generation 1 tags until March 1, 2007, clarifies the shipments that require RFID tags, and exempts shipments to locations other than Defense Distribution Depots when the contract includes the clause at FAR 52.213–1, Fast Payment Procedures.

The rule may affect businesses interested in receiving contracts for packaged petroleum, lubricants, oils, preservatives, chemical, additives, construction and barrier materials, and medical materials that will be shipped to specified DoD locations. Options to comply with the requirements of the rule can be as simple as replacing existing military shipping label printers with RFID-enabled printers. This will allow DoD contractors to print military shipping labels with embedded RFID tags. The regulatory flexibility analysis DoD prepared for the three-year roll-out plan for supplier implementation of RFID at *http://www.acq.osd.mil/log/rfid/regflex.htm* details other options and approximate costs to comply.

C. Paperwork Reduction Act

The rule increases the information collection requirements approved under Office of Management and Budget (OMB) Control Number 0704–0434. The rule requires contractors to provide an electronic advance shipment notice in

accordance with the procedures at *http://www.acq.osd.mil/log/rfid/advance_shipment_ntc.htm,* to associate RFID tag data with the corresponding shipment. OMB has approved the increased information collection requirements for use through December 31, 2009.

List of Subjects in 48 CFR Parts 211 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR Parts 211 and 252, which was published at 71 FR 29084 on May 19, 2006, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR Parts 211 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

■ 2. Section 211.275–2 is revised to read as follows:

211.275–2 Policy.

(a) Except as provided in paragraph (b) of this subsection, radio frequency identification (RFID), in the form of a passive RFID tag, is required for individual cases and palletized unit loads that—

(1) Contain items in any of the following classes of supply, as defined in DoD 4140.1–R, DoD Supply Chain Materiel Management Regulation, AP1.1.11:

(i) Subclass of Class I—Packaged operational rations.

(ii) Class II—Clothing, individual equipment, tentage, organizational tool kits, hand tools, and administrative and housekeeping supplies and equipment.

(iii) Class IIIP—Packaged petroleum, lubricants, oils, preservatives, chemicals, and additives.

(iv) Class IV—Construction and barrier materials.

(v) Class VI—Personal demand items (non-military sales items).

(vi) Subclass of Class VIII—Medical materials (excluding pharmaceuticals, biologicals, and reagents—suppliers should limit the mixing of excluded and non-excluded materials).

(vii) Class IX—Repair parts and components including kits, assemblies and subassemblies, reparable and consumable items required for maintenance support of all equipment, excluding medical-peculiar repair parts; and

(2) Will be shipped to one of the following locations:

(i) Defense Distribution Depot, Susquehanna, PA: DoDAAC W25G1U or SW3124.

(ii) Defense Distribution Depot, San Joaquin, CA: DoDAAC W62G2T or SW3224.

(iii) Defense Distribution Depot, Albany, GA: DoDAAC SW3121.

(iv) Defense Distribution Depot, Anniston, AL: DoDAAC W31G1Z or SW3120.

(v) Defense Distribution Depot, Barstow, CA: DoDAAC SW3215.

(vi) Defense Distribution Depot, Cherry Point, NC: DoDAAC SW3113.

(vii) Defense Distribution Depot, Columbus, OH: DoDAAC SW0700.

(viii) Defense Distribution Depot, Corpus Christi, TX: DoDAAC W45H08 or SW3222.

(ix) Defense Distribution Depot, Hill, UT: DoDAAC SW3210.

(x) Defense Distribution Depot, Jacksonville, FL: DoDAAC SW3122.

(xi) Defense Distribution Depot, Oklahoma City, OK: DoDAAC SW3211.

(xii) Defense Distribution Depot, Norfolk, VA: DoDAAC SW3117.

(xiii) Defense Distribution Depot, Puget Sound, WA: DoDAAC SW3216.

(xiv) Defense Distribution Depot, Red River, TX: DoDAAC W45G19 or SW3227.

(xv) Defense Distribution Depot, Richmond, VA: DoDAAC SW0400.

(xvi) Defense Distribution Depot, San Diego, CA: DoDAAC SW3218.

(xvii) Defense Distribution Depot, Tobyhanna, PA: DoDAAC W25G1W or SW3114.

(xviii) Defense Distribution Depot, Warner Robins, GA: DoDAAC SW3119.

(xix) Air Mobility Command Terminal, Charleston Air Force Base, Charleston, SC: Air Terminal Identifier Code CHS.

(xx) Air Mobility Command Terminal, Naval Air Station, Norfolk, VA: Air Terminal Identifier Code NGU.

(xxi) Air Mobility Command Terminal, Travis Air Force Base, Fairfield, CA: Air Terminal Identifier Code SUU.

(xxii) A location outside the contiguous United States when the shipment has been assigned Transportation Priority 1.

(b) The following are excluded from the requirements of paragraph (a) of this subsection:

(1) Shipments of bulk commodities.

(2) Shipments to locations other than Defense Distribution Depots when the contract includes the clause at FAR 52.213–1, Fast Payment Procedures.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.211–7006 is amended as follows:

■ a. By revising the clause date;

■ b. In paragraph (a) by revising the definition of ''Passive RFID tag'';

■ c. By revising paragraph (b)(1)(i)(F);

■ d. By adding paragraph (b)(1)(ii)(V); and

■ e. By revising paragraphs (b)(2) and (c) and paragraph (d) introductory text to read as follows:

252.211–7006 Radio Frequency Identification.

* * * * *

RADIO FREQUENCY IDENTIFICATION (FEB 2007)

(a) * * *

Passive RFID tag means a tag that reflects energy from the reader/interrogator or that receives and temporarily stores a small amount of energy from the reader/interrogator signal in order to generate the tag response.

(1) Until February 28, 2007, the acceptable tags are—

(i) EPC Class 0 passive RFID tags that meet the EPCglobal Class 0 specification; and

(ii) EPC Class 1 passive RFID tags that meet the EPCglobal Class 1 specification. This includes both the Generation 1 and Generation 2 Class 1 specifications.

(2) Beginning March 1, 2007, the only acceptable tags are EPC Class 1 passive RFID tags that meet the EPCglobal Class 1 Generation 2 specification. Class 0 and Class 1 Generation 1 tags will no longer be accepted after February 28, 2007.

* * * * *

(b)(1) * * *

(i) * * *

(F) Subclass of Class VIII—Medical materials (excluding pharmaceuticals, biologicals, and reagents—suppliers should limit the mixing of excluded and non-excluded materials).

* * * * *

(ii) * * *

(V) A location outside the contiguous United States when the shipment has been assigned Transportation Priority 1.

(2) The following are excluded from the requirements of paragraph (b)(1) of this clause:

(i) Shipments of bulk commodities.

(ii) Shipments to locations other than Defense Distribution Depots when the contract includes the clause at FAR 52.213–1, Fast Payment Procedures.

(c) The Contractor shall—

(1) Ensure that the data encoded on each passive RFID tag are unique (i.e.,

the binary number is never repeated on any and all contracts) and conforms to the requirements in paragraph (d) of this clause;

(2) Use passive tags that are readable; and

(3) Ensure that the passive tag is affixed at the appropriate location on the specific level of packaging, in accordance with MIL–STD–129 (Section 4.9.2) tag placement specifications.

(d) *Data syntax and standards.* The Contractor shall encode an approved RFID tag using the instructions provided in the EPC™ Tag Data Standards in effect at the time of contract award. The EPC™ Tag Data Standards are available at *http://www.epcglobalinc.org/standards/.*

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[FR Doc. E7–2209 Filed 2–9–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 213

RIN 0750–AF42

Defense Federal Acquisition Regulation Supplement; Aviation Into-Plane Reimbursement Card (DFARS Case 2006-D017)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to DoD fuel card programs. The rule addresses use of the Aviation Into-plane Reimbursement card for purchases of aviation fuel and oil.

EFFECTIVE DATE: February 12, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Delaney, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–8384; facsimile (703) 602–0350. Please cite DFARS Case 2006–D017.

SUPPLEMENTARY INFORMATION:

A. Background

DoD uses the Aviation Into-plane Reimbursement (AIR) card for purchases of aviation fuel and oil at commercial airport facilities. The AIR card is a centrally-billed, Government commercial purchase card that is an alternative to use of the Standard Form 44, Purchase Order-Invoice-Voucher. This final rule amends DFARS 213.306 to address use of the AIR card. In addition, the rule amends DFARS 213.301 to clarify that DoD has multiple fuel card programs.

DoD published a proposed rule at 71 FR 34867 on June 16, 2006. DoD received no comments on the proposed rule and has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies 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 the Aviation Into-plane Reimbursement card is an alternative to use of the Standard Form 44, Purchase Order-Invoice-Voucher, designed primarily for on-the-spot, over-the-counter purchases while away from the purchasing office or at isolated activities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any 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 Part 213

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 213 is amended as follows:

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

■ 1. The authority citation for 48 CFR Part 213 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

213.301 [Amended]

■ 2. Section 213.301 is amended in paragraph (4), in the second sentence, by removing ''program'' and adding in its place ''programs''.

■ 3. Section 213.306 is amended by revising paragraph (a)(1)(A) to read as follows:

213.306 SF 44, Purchase Order-Invoice-Voucher.

(a)(1) * * *

(A) Aviation fuel and oil. The Aviation Into-plane Reimbursement (AIR) card may be used instead of an SF 44 for aviation fuel and oil (see *http://www.desc.dla.mil*);

* * * * *

[FR Doc. E7–2210 Filed 2–9–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

RIN 0750–AF32

Defense Federal Acquisition Regulation Supplement; Berry Amendment Exceptions—Acquisition of Perishable Food and Fish, Shellfish, or Seafood (DFARS Case 2006–D005)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 831 of the National Defense Authorization Act for Fiscal Year 2006 and Section 8118 of the Defense Appropriations Act for Fiscal Year 2005. These statutes relate to the acquisition of perishable foods for DoD activities located outside the United States, and the acquisition of domestic fish, shellfish, and seafood.

EFFECTIVE DATE: February 12, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2006–D005.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 71 FR 34832 on June 16, 2006, to implement Section 831 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163) and Section 8118 of the Defense Appropriations Act for Fiscal Year 2005 (Pub. L. 108–287). Section 831 of Public Law 109–163 amended 10 U.S.C. 2533a(d)(3) to expand the exception that permits the acquisition of non-domestic perishable foods by activities located outside the United States, to also permit the acquisition of such foods by activities

that are making purchases on behalf of activities located outside the United States. Section 8118 of Public Law 108–287 established a permanent requirement for the acquisition of domestic fish, shellfish, and seafood, including fish, shellfish, and seafood contained in foods manufactured or processed in the United States. This requirement previously had been included in Defense Appropriations Acts on an annual basis.

DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies 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 the rule applies only to: (1) The acquisition of perishable foods for DoD activities located outside the United States, and (2) continuation of the existing requirement for the acquisition of domestic fish, shellfish, and seafood.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any 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 Part 225

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR Part 225, which was published at 71 FR 34832 on June 16, 2006, is adopted as a final rule without change.

[FR Doc. E7–2206 Filed 2–9–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 233

RIN 0750–AE01

Defense Federal Acquisition Regulation Supplement; Protests, Disputes, and Appeals (DFARS Case 2003–D010)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text addressing procedures for processing of contractor claims submitted under DoD contracts. The rule removes obsolete text and relocates text to the DFARS companion resource, Procedures, Guidance, and Information.

EFFECTIVE DATE: February 12, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Felisha Hitt, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0310; facsimile (703) 602–0350. Please cite DFARS Case 2003–D010.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule—

• Removes text at DFARS 233.204 regarding research of a contractor's history of filing claims during a contracting officer's review of a current claim. Text on this subject has been relocated to the DFARS companion resource, Procedures, Guidance, and Information (PGI) at *http://www.acq.osd.mil/dpap/dars/pgi;* and

• Revises DFARS 233.210 to remove an obsolete cross-reference and to add a reference to the guidance added to PGI regarding review of a contractor's claim.

DoD published a proposed rule at 71 FR 34867 on June 16, 2006. The proposed rule had provided for total elimination of the text at DFARS 233.204 and 233.210. One source submitted comments on the proposed rule, recommending that, instead of total elimination, the text at DFARS 233.204 should be relocated to PGI. DoD has adopted this recommendation and has included the corresponding changes in the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies 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 the rule makes no significant change to DoD policy regarding consideration of claims submitted by contractors.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any 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 Part 233

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 233 is amended as follows:

PART 233—PROTESTS, DISPUTES, AND APPEALS

■ 1. The authority citation for 48 CFR Part 233 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

233.204 [Removed]

■ 2. Section 233.204 is removed.

■ 3. Section 233.210 is revised to read as follows:

233.210 Contracting officer's authority.

See PGI 233.210 for guidance on reviewing a contractor's claim.

[FR Doc. E7–2211 Filed 2–9–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 237

RIN 0750–AF37

Defense Federal Acquisition Regulation Supplement; Security-Guard Services Contracts (DFARS Case 2006–D011)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 344 of the National Defense Authorization Act for Fiscal Year 2006. Section 344 extends, through September 30, 2007, the period during which contractor performance of security-guard functions at military installations or facilities is authorized to fulfill additional requirements resulting from the terrorist attacks on the United States on September 11, 2001.

EFFECTIVE DATE: February 12, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Delaney, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–8384; facsimile (703) 602–0350. Please cite DFARS Case 2006–D011.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 71 FR 34833 on June 16, 2006, to implement Section 344 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163). Section 344 extends, through September 30, 2007, the period during which contractor performance of security-guard functions at military installations or facilities is authorized to fulfill additional requirements resulting from the terrorist attacks on the United States on September 11, 2001.

DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies 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 may provide opportunities for small business concerns to receive contracts for the performance of security-guard functions at military installations or facilities, the economic impact is not expected to be substantial.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any 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 Part 237

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR Part 237, which was published at 71 FR 34833 on June 16, 2006, is adopted as a final rule without change.

[FR Doc. E7–2208 Filed 2–9–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750–AF43

Defense Federal Acquisition Regulation Supplement; Free Trade Agreement—El Salvador, Honduras, and Nicaragua DFARS Case 2006–D019

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the Dominican Republic-Central America-United States Free Trade Agreement with respect to El Salvador, Honduras, and Nicaragua. The Free Trade Agreement waives the applicability of the Buy American Act for some foreign supplies and construction materials and specifies procurement procedures designed to ensure fairness.

EFFECTIVE DATE: February 12, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2006–D019.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 71 FR 34834 on June 16, 2006, to implement the Dominican Republic-Central America-United States Free Trade Agreement with respect to El Salvador, Honduras, and Nicaragua. The rule amended the appropriate DFARS provisions and clauses to reflect the addition of El Salvador, Honduras, and Nicaragua as Free Trade Agreement countries.

DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies 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 DoD procurement to the products of El Salvador, Honduras, and Nicaragua, DoD does not believe there will be a significant economic impact on U.S. small businesses. DoD applies the trade agreements to only those non-defense items listed at DFARS 225.401–70, and procurements that are set aside for small businesses are exempt from application of the trade agreements.

C. Paperwork Reduction Act

This rule affects the certification and information collection requirements in the provisions at DFARS 252.225–7020 and 252.225–7035, currently approved under Office of Management and Budget Control Number 0704–0229. The impact, however, is negligible.

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR Part 252, which was published at 71 FR 34834 on June 16, 2006, is adopted as a final rule without change.

[FR Doc. E7–2207 Filed 2–9–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 91

[1018–AU94]

Revision of Migratory Bird Hunting and Conservation Stamp Contest Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service, or we), revise the regulations governing the annual Migratory Bird Hunting and Conservation Stamp Contest [also known as the Federal Duck Stamp Contest (contest)]. We now provide a special exemption that allows recent winning artists to submit entries for the 2007 contest only. We also clarify in our regulations our longstanding practice to include artwork from the third round of judging in an art tour for 1 year; early return of the artwork to the artist will make the artist ineligible for the next three contests. Finally, we correct minor grammatical errors in the contest procedures.

DATES: This rule is effective on March 14, 2007.

FOR FURTHER INFORMATION CONTACT: Patricia Fisher, Chief, Federal Duck Stamp Office, (703) 358–2000 (phone), *duckstamps@fws.gov* (e-mail), or (703) 358–2009 (fax).

SUPPLEMENTARY INFORMATION: On September 27, 2006, we published in the **Federal Register** (71 FR 56443) a proposed rule to amend the regulations governing the annual Migratory Bird Hunting and Conservation Stamp Contest [also known as the Federal Duck Stamp Contest (contest)]. In brief, this rule adopts those proposed changes in full, as described below.

Changes to the Regulations at 50 CFR Part 91

We are making all the changes detailed in our proposed rule (September 27, 2006, 71 FR 56443). The changes affect the regulations governing the contest in the Code of Federal Regulations (CFR) at 50 CFR 91.

Exemption for Winning Artists

Section 91.12 contains a 3-year prohibition against winning artists participating in the three successive contests. We put this rule into place as a way to ensure that a variety of artists can compete fairly and to avoid allowing a single individual to repeatedly win the contest. However, we are exempting the 2007 contest from this rule, because the 2007 contest marks an important milestone, since it will choose the 75th Federal Duck Stamp. This significant event is very important for all wildlife artists, and we therefore allow everyone an equal chance to compete. We lift this prohibition for the 2007 contest only. We further clarify that this exemption will not be counted towards the remainder of the waiting period for 2004–06 winning artists. These recent winning artists must complete their 3-year waiting periods in full and will have to serve the remainder of their terms after the 2007 contest. Two examples follow:

(1) Ann wins the 2006 contest. She may enter the special 2007 contest. Regardless of whether she wins 2007 or not, she is ineligible to enter in 2008, 2009, or 2010. She may enter in 2011.

(2) Bob wins the 2005 contest. He was ineligible to enter the 2006 contest. He may enter the special 2007 contest. Regardless of whether he wins 2007 or not, he is ineligible to enter in 2008 or 2009, but he may enter in 2010.

Contest Procedures

Section 91.24 paragraphs (g) and (h) have typographical errors. We correct the errors in our presentation of the possible numerical scores that can be awarded by judges.

Post-Contest Finalists' Tour

Section 91.31 specifies the return of artwork after the contest has concluded. We clarify the portion of the regulations that mentions the possibility of the artwork being sent on a tour to appear at one or more wildlife art exhibitions. Recently artists believed that the 120-day limit was all that had to be honored. We clarify this requirement.

The art tour is a chance for the public to see the finalists in the Federal Duck Stamp Contest. These are the entries that made it to the third and final round of judging. The tour travels to various locations across the country and allows the public to see some of the best examples of wildlife art. With the tour, we engage new artists to enter the contest and encourage the general public to purchase more stamps. Unfortunately, some artists have chosen to sell their pieces before or during the art tour and have requested to remove them from the tour. This lessens the quality of the paintings available for the public to view and is against the spirit of the tour. We clarify that the tour lasts for 1 year after the date on which the winner is judged, and entries will be returned after that year. We also codify that artists who remove their artwork before the tour is complete will be ineligible to participate in the next three contests.

Background

For the history of the Federal Duck Stamp Program and the contest, please see our proposed rule for a previous unrelated change to the duck stamp regulations (April 12, 2006, 71 FR 18697).

Comments on and Change From the Proposed Rule

We received comments on the proposed rule regarding the section addressing the number of times a Judge may serve. The Federal Duck Stamp Office will reconsider that section and if warranted, include changes in future rules.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order (E.O.) 12866.

1. This rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

2. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule deals solely with the contest. No other Federal agency has any role in regulating this endeavor.

3. This rule does not alter budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. There are no entitlements, grants, user fees, or loan programs associated with the regulation of the contest.

4. This rule does not raise novel legal or policy issues. This rule is primarily a reorganization and clarification of existing regulations. New provisions proposed in the rule are in compliance with other laws, policies, and regulations.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The changes are intended primarily to clarify the requirements for the contest.

In addition, these changes do not affect the information collected. These changes will affect individuals, not businesses or other small entities as defined in the RFA.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

1. Does not have an annual effect on the economy of $100 million or more.
2. Does not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.
3. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with E.O. 13132, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This rule does not contain new or revised information collections for which Office of Management and Budget approval is required under the Paperwork Reduction Act. 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

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4371 *et seq.*) is therefore not required.

Government-to-Government Relationship With Tribes

Under the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), and 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule revises the current regulations in 50 CFR part 91 that govern the contest. This rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 91

Hunting, Wildlife.

Regulation Promulgation

■ Accordingly, we amend part 91, subchapter G of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 91—[AMENDED]

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

Authority: 5 U.S.C. 301; 16 U.S.C. 718j; 31 U.S.C. 9701.

■ 2. Revise § 91.12 to read as follows:

§ 91.12 Contest eligibility.

(a) U.S. citizens, nationals, or resident aliens are eligible to participate in the contest.

(b) Any person who has won the contest during the preceding 3 years is ineligible to submit an entry in the current year's contest. For the 75th contest (2007) only, any artist, even those who won the 2004, 2005, and 2006 contests may enter. However, 2004, 2005, and 2006 winners must still fulfill their 3-year ineligibility terms after the 2007 contest. The 2007 contest will not count toward fulfilling ineligibility terms of 2004, 2005, or 2006 winners.

(c) All entrants must be at least 18 years of age by the contest opening date (see § 91.11) to participate in the contest.

(d) Contest judges and their relatives are ineligible to submit an entry.

(e) All entrants must submit a nonrefundable fee of $125.00 by cashier's check, certified check, or money order made payable to U.S. Fish and Wildlife Service. Personal checks will not be accepted.

(f) All entrants must submit a signed Reproduction Rights Agreement and a signed Display and Participation Agreement.

■ 3. In § 91.24, revise paragraphs (g) and (h) to read as follows:

§ 91.24 Contest procedures.

* * * * *

(g) In the second round of judging, each entry selected in the first round, plus the additional entries selected by judges per paragraph (d) of this section, will be shown one at a time to the judges by the Contest Coordinator or by a contest staff member. Each judge will vote by indicating a numerical score of one (1), two (2), three (3), four (4), or five (5) for each entry. The scores will be totaled to provide each entry's score. The five entries receiving the five highest scores will be advanced to the third round of judging.

(h) In the third round of judging, the judges will vote on the remaining entries using the same method as in round two, except that they will indicate a numerical score of three (3), four (4), or five (5) for each entry. The Contest Coordinator will tabulate the final votes and present them to the Director, U.S. Fish and Wildlife Service, who will announce the winning entry as well as the entries that placed second and third.

* * * * *

■ 4. Revise § 91.31 to read as follows:

§ 91.31 Return of entries after contest.

(a) All entries will be returned by certified mail to the participating artists within 120 days after the contest, unless the artwork is selected to appear at one or more wildlife art expositions. If artwork is returned to the Service because it is undelivered or unclaimed (this may happen if an artist changes address), the Service will not be obligated to trace the location of the artist to return the artwork. Any artist who changes his or her address is responsible for notifying the Service of the change. All unclaimed entries will be destroyed 1 year after the date of the contest.

(b) Artists in the third round of judging will be chosen to appear in a

national art tour that will last 1 year. The artwork will be returned to the artists after that period in accordance with the signed participation agreement.

(c) An artist may choose to remove his or her artwork from the tour, but will forfeit contest eligibility for three successive contests.

Dated: January 31, 2007.

David Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7–2219 Filed 2–9–07; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 72, No. 28
Monday, February 12, 2007

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 92, 93, 94, and 98

[Docket No. APHIS–2006–0106]

RIN 0579–AC33

Importation of Live Swine, Swine Semen, Pork, and Pork Products From the Czech Republic, Latvia, Lithuania, and Poland

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of animals and animal products to add the Czech Republic, Latvia, Lithuania, and Poland to the region of the European Union that we recognize as low risk for classical swine fever (CSF). We are also proposing to add the Czech Republic, Latvia, Lithuania, and Poland to the list of regions we consider free from swine vesicular disease (SVD) and to add Latvia and Lithuania to the list of regions considered free from foot-and-mouth disease (FMD) and rinderpest. These proposed actions would relieve some restrictions on the importation into the United States of certain animals and animal products from those regions, while continuing to protect against the introduction of CSF, SVD, and FMD, and rinderpest into the United States.

DATES: We will consider all comments that we receive on or before April 13, 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–2006–0106 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–2006–0106, 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–2006–0106.

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. Kelly Rhodes, Regionalization and Evaluation Services, Import, Sanitary Trade Issues Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including classical swine fever (CSF), foot-and-mouth disease (FMD), and swine vesicular disease (SVD). These are dangerous and destructive communicable diseases of ruminants and swine.

In a final rule published in the **Federal Register** on May 19, 2006 (71 FR 29061–29072, Docket No. 02–046–2), we amended the regulations to recognize a region consisting of the 15 Member States of the European Union (EU) that comprised the EU as of April 30, 2004 (the EU–15), as a single region of low risk for CSF. The EU–15 consists of those Member States that we had recognized as a single region regarding CSF in a final rule published in the **Federal Register** on April 7, 2003 (68 FR 16922–16941, Docket No. 98–090–5), plus additional Member States. The May 19, 2006, final rule established a uniform set of importation requirements related to CSF for the EU–15.

Sections 94.9 and 94.10 of the regulations list regions of the world that are declared free of or low-risk for CSF. The EU–15 is currently the only region considered low-risk for CSF; §§ 94.24 and 98.38 specify restrictions necessary to mitigate the risk of introducing CSF into the United States via pork, pork products, live swine, and swine semen from the EU–15.

Section 94.12 of the regulations lists regions that are declared free of SVD. Section 94.13 of the regulations lists regions that have been determined to be free of SVD, but that are subject to certain restrictions because of their proximity to or trading relationships with SVD-affected regions.

Section 94.1 of the regulations lists regions of the world that are declared free of rinderpest or free of both rinderpest and FMD. Section 94.11 of the regulations lists regions that have been determined to be free of rinderpest and FMD, but that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected regions.

On May 1, 2004, the Czech Republic, Latvia, Lithuania, and Poland, along with six other countries, became new Member States of the EU. As part of the accession process, these new EU Member States adopted the legislation of the European Commission (EC) [1] regarding animal health, welfare, and identification, including legislation

[1] The EC is the EU institution responsible for representing the EU as a whole. It proposes legislation, policies, and programs of acton and implements decisions of the EU Parliament and Council.

pertaining to CSF, FMD, and SVD. This legislation became the basis for new standard operating procedures for domestic animal health matters in the Czech Republic, Latvia, Lithuania, and Poland by the time of their accession. The Czech Republic, Latvia, Lithuania, and Poland also adopted the harmonized EC legislation regarding sanitary measures applicable to import and trade in live animals and animal products.

In 2003, the Governments of Lithuania and Poland requested that APHIS evaluate their animal health status with respect to CSF and SVD and provided information in support of these requests in accordance with 9 CFR part 92, ''Importation of Animals and Animal Products; Procedures for Requesting Recognition of Regions.'' In addition, the Government of Lithuania requested that APHIS evaluate Lithuania's animal health status with respect to FMD. In 2004 and 2005, the Governments of Latvia and the Czech Republic also requested that APHIS evaluate their animal health status with respect to CSF and SVD. In addition, the Government of Latvia requested that APHIS evaluate Latvia's animal health status with respect to FMD. Because rinderpest has not been diagnosed in Latvia since 1921 and has never been reported in Lithuania, we are proposing to recognize these countries as free of rinderpest.

As part of our evaluation of their disease status, APHIS identified the smallest administrative units (AUs) within each of these EU Member States that we would consider ''regions'' in the event of future animal disease outbreaks. See the discussion of those AUs under the section entitled ''Administrative Units.''

Our determinations concerning these requests with regard to CSF and SVD in the Czech Republic, Latvia, Lithuania, and Poland, and FMD in Latvia and Lithuania are set forth below.

Summary of Proposed Changes

In this document, we are proposing to add the Czech Republic, Latvia, Lithuania, and Poland to the region of the EU (currently referred to in the regulations as the EU–15) that we currently recognize as a low-risk region for CSF and from which breeding swine, swine semen, and pork and pork products may be imported into the United States under certain conditions. In order to provide flexibility in the event that additional Member States may be added to this region in the future, we would amend the regulations to refer to this region as the ''APHIS-defined EU CSF region.''

We are also proposing to add the Czech Republic, Latvia, Lithuania, and Poland to the list of regions recognized as free of SVD, and to the list of SVD-free regions whose exports of pork and pork products to the United States are subject to certain restrictions to prevent the introduction of SVD into this country.

Additionally, we are proposing to add Latvia and Lithuania to the list of regions recognized as free of FMD and rinderpest. We are also proposing to add Latvia and Lithuania to the list of FMD and rinderpest-free regions whose exports of ruminant and swine meat and products to the United States are subject to certain restrictions to prevent the introduction of FMD and rinderpest into this country.

Risk Analyses

APHIS conducted risk analyses to examine the risk of introducing CSF or SVD from the importation of swine and swine products from the Czech Republic, Latvia, Lithuania, and Poland and the risk of introducing FMD from the importation of swine, ruminants, and swine and ruminant products from Latvia and Lithuania. These risk analyses were completed early in 2006 and may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) The risk analyses may also be viewed at *http://www.aphis.usda.gov/vs/ncie/reg-request.html* by following the link for ''Information previously submitted by Regions requesting export approval and their supporting documentation.'' In the following paragraphs, we summarize our findings for each of the 11 factors set out in our procedures for requesting recognition of regions in 9 CFR 92.2 and summarize our risk considerations of these findings following our discussion of the factors.

Authority, Organization, and Veterinary Infrastructure

As stated above, the Czech Republic, Latvia, Lithuania, and Poland adopted the legislation of the EC regarding animal health, welfare, and identification, as well as sanitary measures applicable to import and trade in live animals and animal products. At the time of accession, Commission Decisions and Regulations concerning CSF, SVD, and FMD became directly applicable in the new EU Member States, whereas Council Directives were implemented in national legislation. During APHIS site visits, it appeared that official veterinarians of each country were familiar with and able to effectively implement the provisions of pertinent EC and national legislation.

APHIS concluded that the official veterinary services of these new EU Member States have sufficient legal authority, personnel, and financial resources to carry out animal health activities quickly and efficiently. Regular training is conducted for official veterinarians. In addition, all offices visited by APHIS site visit teams were generally in good condition, with some undergoing renovations, and were outfitted with computers with both Internet and Intranet connections. The official veterinary services are hierarchically organized and appear to have clear lines of command and reporting, with sufficient autonomy at the local level to carry out the tasks assigned. Internal and external auditing practices are adequate to ensure compliance with the provisions of pertinent animal health legislation.

Disease History

CSF: CSF was last reported in domestic swine in the Czech Republic in 1997, in Latvia in 1996, in Lithuania in 1992, and in Poland in 1994. No CSF outbreaks have occurred in wild boar in recent years in Latvia, Lithuania, or Poland. CSF virus was last detected in wild boar in the Czech Republic in November 1999. Serologic surveillance indicates that the virus is present in segments of the wild boar population in the Czech Republic along its borders with Austria and Slovakia, albeit at very low and decreasing levels.

In addition, veterinary officials indicated that most small swine producers keep pigs indoors, which limits potential exposure to CSF in wild boar populations, and that most of the larger farms are confinement operations with restricted access. Biosecurity practices on large swine confinement operations, from which exports to the United States from the Czech Republic would most likely be derived, are sufficient to prevent direct or indirect exposure of domestic swine to wild boar.

SVD: SVD has never been reported in the Czech Republic, Latvia, or Lithuania. The last reported case of SVD in Poland occurred in 1972 in domestic swine (SVD has never been reported in wild boar in Poland).

FMD: FMD was last reported in Latvia and Lithuania in 1987 and 1982, respectively.

Disease Status of Adjacent Regions

CSF: Latvia, Lithuania, and Poland all share land borders with non-EU countries that APHIS considers affected with CSF, namely Russia, Belarus, and/or Ukraine. (APHIS considers all countries affected until the disease status of a specific country is evaluated at the request of that foreign country and we determine otherwise. The governments of Russia, Belarus, and Ukraine have not requested such evaluation.) Belarus last reported a CSF outbreak in August 1995 and Ukraine in July 2001; CSF is endemic in parts of Russia and outbreaks continue to occur.

The Czech Republic and Poland also border other EU Member States such as Germany, Estonia, and Slovakia. Germany is part of the EU region that APHIS considers low risk for CSF under §§ 94.9 and 94.10, but CSF is endemic in segments of its wild boar population. CSF is also endemic in wild boar in regions of Slovakia that border the Czech Republic. APHIS is currently evaluating the CSF status of Slovakia and Estonia (which borders Latvia).

Due to the proximity of affected or potentially affected regions, the risk analyses concluded that the potential exists for introduction of CSF into the Czech Republic, Latvia, Lithuania, or Poland via wild boar, incoming vehicular or human traffic, smuggled swine products, or other routes discussed below.

SVD: APHIS considers SVD to exist in Russia, Belarus, and Ukraine since we have not evaluated their status with regard to this disease. However, SVD has never been reported in Russia or Belarus, and was last reported in Ukraine in 1977. The Czech Republic, Latvia, and Poland each border either Slovakia or Estonia, which APHIS is currently evaluating for SVD status, but which have never reported an SVD outbreak. The Czech Republic, Latvia, Lithuania, and Poland also share borders with one another, with each bordering at least one of the other three. The risk analyses concluded that the likelihood of introduction of SVD into these four Member States from neighboring regions is low.

FMD: Latvia and Lithuania border Russia and Belarus, which APHIS does not consider free of FMD. Belarus last reported an FMD outbreak in 1982; sporadic FMD outbreaks continue to occur in Russia. Latvia and Lithuania also border each other. Due to the proximity of affected or potentially affected regions, the risk analyses concluded that the potential exists for introduction of FMD into Latvia or Lithuania via wild animals, incoming vehicular or human traffic, smuggled animal products, or other routes discussed below.

Degree of Separation From Adjacent Regions

The Czech Republic is entirely surrounded by other EU Member States. In addition, although parts of Latvia, Lithuania, and Poland border the Baltic Sea, they are not separated from regions of higher risk by a uniform physical barrier, therefore few impediments exist to introduction of CSF, SVD, or FMD via natural movement of wild animals or human traffic.

The primary wild animals within these four EU Member States and neighboring countries that are susceptible to CSF and SVD are wild boar. In addition, wild boar and ruminants such as deer are also susceptible to FMD. These species are not considered to be migratory in nature, but individual animals are known to travel substantial distances in search of food, during mating season, or in response to hunting or other habitat disruptions.

Extent of an Active Disease Control Program

None of the four countries have active disease control programs in place for CSF or SVD, and Latvia and Lithuania do not have active disease control programs in place for FMD, since these diseases have not been reported for many years. Surveillance for these diseases is discussed in more detail below.

Vaccination

The last vaccination against CSF occurred in the Czech Republic in 1992, in Latvia in 1998, in Lithuania in 2000, and in Poland in 1996. Vaccination against CSF is now prohibited in all four countries, although official contingency plans allow for emergency vaccination against CSF. None of these countries has ever vaccinated against SVD and such vaccination is also now prohibited. In addition, vaccination against FMD is prohibited in Latvia and Lithuania, although as with CSF, the official contingency plans for FMD for both countries allow for emergency vaccination if sanctioned by the EC.

Movement Control From Higher Risk Regions

Some forms of CSF, SVD, and FMD are difficult to detect in live animals or on post-mortem examination without laboratory testing, and in some instances detection may be delayed due to deficiencies in active surveillance or diagnostic testing capabilities. Any such delay in detection of an outbreak could increase the export risk to the United States. Consequently, the risk analyses examined potential pathways for disease introduction into the Czech Republic, Latvia, Lithuania, and Poland such as importation and intra-Community trade in live animals and animal products, vehicular and human traffic, and commodities for personal consumption.

Import controls: Import of live animals and animal products into the Czech Republic, Latvia, Lithuania, and Poland from non-EU countries occurs at certain road, rail, air, and/or sea ports through a border inspection post (BIP) that has been approved by the EC. The EC conducts a rigorous inspection of each BIP prior to approval and carries out regular audits to monitor the efficacy of sanitary controls. Each BIP visited by APHIS appeared sufficiently able to keep up with required levels of inspection.

Swine, ruminants, and derived products such as meat, meat products, and genetic material are harmonized commodities under EC legislation, which means that the requirements for import from non-EU countries are standardized across all EU Member States. Binding EC legislation lists the non-EU countries, and establishments within those countries, that are approved for export of certain commodities to the EU. Slaughterhouses, cutting plants, semen collection centers, and other exporting establishments are subject to inspection prior to approval. Veterinary certificates required for export to the EU outline comprehensive animal health and testing requirements and must be endorsed by an official veterinarian of the exporting country.

APHIS recognizes all of the countries approved for export of live swine and swine semen to the EU as free of SVD (although some are subject to the restrictions specified in § 94.13) and all but Switzerland as free of CSF. APHIS also considers these countries free of FMD, although some are subject to the restrictions in § 94.11. However, although import practices in the Czech Republic, Latvia, Lithuania, and Poland have largely been protective with regard to CSF, SVD, and FMD, EC legislation allows EU Member States to import fresh pork and pork products derived from swine from several regions that APHIS has not evaluated and therefore regards as affected with these diseases. EU Member States may also import bovine embryos and meat and meat products from both domestic and wild ruminants from regions that APHIS considers affected with FMD.

Veterinary inspectors at the entry BIP check that the documentation accompanying imported commodities is in order, including appropriate health certificates and other movement control documents, and that the shipment is properly identified and the identification matches the documentation. Veterinary inspectors also physically examine and sample a percentage of incoming shipments as prescribed by EC legislation.

The risk analyses concluded EC legislation imposes less stringent restrictions on sourcing of imported ruminants and swine than do APHIS requirements, resulting in some risk of introducing CSF, SVD, or FMD into the Czech Republic, Latvia, Lithuania, Poland, or other EU Member States via imported animals or animal products. However, this risk is substantially mitigated by factors such as veterinary inspection of live animals prior to shipment, approval of establishments for export of animal products, certification of disease status by an official veterinarian, and veterinary inspection at the point of entry into the EU.

Trade controls: As EU Member States, the Czech Republic, Latvia, Lithuania, and Poland may engage in intra-Community trade with other Member States as governed by EC legislation that was transposed into national legislation prior to accession. Live animals and animal products must be accompanied by an appropriate health certificate signed by an official veterinarian of the country of origin. Intra-Community trade in swine and swine products, including semen and embryos, from CSF or SVD affected regions of EU Member States is prohibited. There are no trade restrictions based on FMD since there are currently no outbreaks reported in the EU.

Establishments such as slaughterhouses, cutting plants, milk processing plants, and semen collection centers must be approved by the Member State in which they reside according to criteria similar to those for exporting establishments in non-EU countries. The EC and the official veterinary services of the Member State conduct periodic audits to monitor compliance with approval criteria and certification requirements. The risk analyses concluded that the likelihood of introducing SVD or FMD via intra-Community trade was low and, although the likelihood of introducing CSF was slightly higher, this risk was largely mitigated by the factors described above.

Veterinary control of passenger traffic: In the Czech Republic, Latvia, Lithuania, and Poland, the majority of border crossings from non-EU countries are controlled by the Customs Service, without official veterinary control. Posters are prominently displayed at border crossings to promote public awareness of prohibited meat, milk, and meat and milk products. However, the EC permits personal consignments of products that could carry live CSF, SVD, and/or FMD virus from countries that APHIS has not evaluated and regards as affected with these diseases. In some instances, there is considerable local passenger and commercial traffic to and from neighboring non-EU countries that APHIS does not consider free of CSF, SVD, and/or FMD. Veterinary officials indicated that individuals attempting to cross the border with agricultural products at a checkpoint without veterinary inspection are redirected to a BIP or the products are confiscated. However, the percentage of incoming traffic that is inspected for prohibited agricultural commodities varies among border crossings. The risk analyses concluded that, although the likelihood of introduction of such commodities by this route is relatively high, existing production and biosecurity measures substantially reduce the associated export risk to the United States.

Livestock Demographics

As stated above, the Czech Republic, Latvia, Lithuania, and Poland have adopted the EC legislation with regard to animal identification. Each country has in place or is implementing herd registration and animal identification plans for ruminants and swine that include movement tracking through a central computerized database. Health certificates and/or a movement authorization form are required for internal movement of ruminants and swine.

Small swine holdings predominate in each of these countries, and there is considerable overlap in distribution with wild boar, although veterinary authorities indicated that the majority of pigs are raised indoors. Production and slaughter systems in each country are such that large confinement operations (up to 30,000 pigs) are the most likely source of swine and swine products for export. APHIS site visit teams noted biosecurity measures on the confinement operations that would effectively prevent direct or indirect contact with wild boar, and limit the likelihood of CSF, SVD, or FMD introduction by other routes. The risk analyses concluded that commercial production and biosecurity practices in these countries serve to mitigate potential export risk to the United States.

Cattle are distributed throughout Latvia and Lithuania; agriculture in these two countries has traditionally included dairy-beef husbandry. There are few sheep or goats and these are generally distributed in small numbers on individual farms. Biosecurity measures on ruminant operations are generally not sufficient to prevent direct and/or indirect contact with wildlife or contact with live virus on clothing or vehicles. However, exports to the United States will likely be derived from the larger cattle operations, which are closely monitored by the official veterinary services.

Disease Surveillance

CSF: The Czech Republic, Latvia, Lithuania, and Poland all have national surveillance programs in place for CSF in domestic swine and wild boar. Active surveillance is primarily based on serology for antibodies to the CSF virus, as is common throughout the world. Since antibodies occur late in CSF infection, serological surveillance would likely miss an early infection (e.g., in the first 21 days). In each country, training and national simulation exercises aid in passive surveillance for CSF by developing and maintaining the ability to quickly detect these diseases. Passive surveillance is likely sufficient to detect overt clinical signs of CSF, but detection may be delayed in the case of moderate or low virulence strains. In some instances, lack of incentive for hunters to sample wild boar and underreporting of wild boar found dead may also hinder detection.

SVD: The Czech Republic, Latvia, Lithuania, and Poland each conduct serological surveillance for SVD in domestic swine at a considerably lower level than for CSF, and rely more on passive surveillance for this disease. Consequently, detection may be delayed in the absence of overt clinical signs, although serological surveillance would eventually detect the historical presence of the disease.

FMD: Lithuania conducts serological surveillance for FMD in cattle, domestic swine, wild boar, and deer at a relatively low level. Surveillance is not routinely conducted in reservoir populations such as sheep and goats. Latvia conducted serological surveillance for FMD in cattle and domestic swine, although not small ruminants or susceptible wild animals, through 2003; active surveillance is no longer conducted. Both countries rely heavily on passive surveillance for

FMD, which may delay detection in the absence of overt clinical signs.

Diagnostic Capabilities

The Czech Republic, Latvia, Lithuania, and Poland all have established accredited national reference laboratories (NRL) for animal diseases, including CSF, SVD, and FMD. Overall, the laboratories are well organized and equipped, with experienced scientific and technical staff. Standard operating procedures and quality control measures are in place throughout. Laboratory biosecurity practices are adequate to prevent the escape of live virus.

CSF: In each country, the NRL provides a full range of diagnostic tests for the diagnosis and confirmation of CSF. Tests have all been validated and include well-regarded commercial test kits used in many countries and tests developed in-house that are performed using standard methodology. An APHIS site visit team expressed concern regarding the sensitivity of the ELISA test used for screening for CSF in Lithuania. Laboratory officials indicated they are addressing this issue by phasing in more sensitive tests for the detection of CSF and are also working to expand the diagnostic capabilities for SVD and FMD. The risk analyses concluded that an index case of CSF would be diagnosed by these laboratories if proper samples were submitted.

SVD and FMD: The NRL of each country provides a moderate spectrum of diagnostic testing for SVD and, in Latvia and Lithuania, for FMD as well. The risk analyses concluded that each NRL has the competence to make a presumptive diagnosis of SVD or FMD; however, diagnostic capabilities are limited by reliance on serology, and samples would be sent to the reference laboratory in Pirbright, UK, for confirmatory testing, which would result in a slight delay in confirming an outbreak.

Emergency Response Capacity

The Czech Republic, Latvia, Lithuania, and Poland have contingency plans in place and supporting legislation to control and eradicate CSF, SVD, and/or FMD outbreaks. These contingency plans conform closely to the provisions of EC legislation. The EC has a ''stamping out'' policy with regard to CSF, SVD, and FMD. Eradication is carried out by compulsory destruction of all animals on the affected premises with burial or incineration of the carcasses. All live animals, animal products, and genetic material moved off of an affected premises during the time between disease introduction and detection of the outbreak must be traced and destroyed. Additionally, protection zones of at least a 3-kilometer radius and surveillance zones of at least a 10-kilometer radius from the affected premises, respectively, are established, and the movement of live animals, animal products, and genetic material is suspended until the restrictions are lifted.

Release Assessment Conclusions

APHIS considers the potential for introduction of CSF, SVD, and/or FMD into the Czech Republic, Latvia, Lithuania, or Poland to be greater than the potential for the introduction of CSF, SVD, and/or FMD from the Czech Republic, Latvia, Lithuania and Poland into the United States. This is due to the fact that these countries share common land borders with several regions APHIS does not consider to be free of these diseases, because they engage in free trade with other EU Member States that import live animals or animal commodities from such regions, and because, under harmonized EC legislation, they could directly import live swine or swine commodities from such regions.

Following our analysis, we have concluded that the risk profiles for the Czech Republic, Latvia, Lithuania, and Poland with regard to CSF are equivalent in CSF risk to the EU–15. The EU–15 is considered a low-risk region for CSF in §§ 94.9 and 94.10 and is subject to the import restrictions specified in § 94.24 for live swine, pork, and pork products, and § 98.38 for swine semen. Therefore, we are proposing to include the Czech Republic, Latvia, Lithuania, and Poland along with the other countries that comprise the low-risk region for CSF currently referred to in our regulations as the EU–15. As noted previously, to reflect the addition of those four countries to that region, and to accommodate possible future additions to that region, we would amend the regulations by replacing references to the ''EU–15'' with references to the ''APHIS-defined EU CSF region'' wherever they appear in parts 93, 94, and 98.

We are proposing to recognize the Czech Republic, Latvia, Lithuania, and Poland as free of SVD and to recognize Latvia and Lithuania as free of FMD. In addition to proposing to include the Czech Republic, Latvia, Lithuania, and Poland in the list in § 94.12(a) of regions declared free of SVD, and Latvia and Lithuania to the list in § 94.1(a)(2) of regions declared free of both rinderpest and FMD, we are also proposing to add the Czech Republic, Latvia, Lithuania, and Poland to the list in § 94.13 of regions declared free of SVD whose exports of pork and pork products are also subject to restrictions and to add Latvia and Lithuania to the list in § 94.11(a) of regions declared free of rinderpest and FMD whose exports of meat and other animal products to the United States are nevertheless subject to certain restrictions.

Administrative Units

On October 28, 1997, we published in the **Federal Register** a final rule (62 FR 56000–56026, Docket No. 94–106–9) and a policy statement (62 FR 56027–56033, Docket No. 94–106–8) that established procedures for recognizing regions and levels of risk for the purpose of regulating the importation of animals and animal products. With the establishment of those procedures, APHIS can consider requests to allow importations from regions based on levels of risk, as well as to recognize entire countries free of a disease. In subsequent rules, we identified the smallest administrative jurisdictions in the EU–15 that we would use to regionalize those Member States in the event of future animal disease outbreaks. As discussed in those documents, we believe that each of those jurisdictions is the smallest that can be demonstrated to have effective oversight of normal animal movements into, out of, and within that Member State, and that, in association with national authorities, if necessary, has effective control over animal movements and animal diseases locally.

We have identified the following AUs for each country: Czech Republic-region, Latvia-district, Lithuania-county, Poland-district.

Further information on each AU and why we chose it is available in the risk analysis for each Member State. If we receive no substantive comments regarding our identification of AUs for these Member States and we finalize this proposed rule, following the effective date of the final rule, these AUs will be used to regionalize those Member States in the event of future animal disease outbreaks.

Miscellaneous

We are also proposing to revise the definition of European Union in § 92.1 to update its list of EU Member States. There are currently 25 Member States of the EU, 10 more than when that definition was added to the regulations. In part 92, the European Union is referred to in § 92.3, which states: ''Whenever the European Commission (EC) establishes a quarantine for a

disease in the European Union in a region the Animal and Plant Health Inspection Service recognizes as one in which the disease is not known to exist and the EC imposes prohibitions or other restrictions on the movement of animals or animal products from the quarantined area in the European Union, such animals and animal products are prohibited importation into the United States.'' Therefore, it is necessary to update the definition of European Union to ensure that this provision applies to all EU Member States.

We are further proposing to remove § 94.1a, ''Criteria for determining the separate status of a territory or possession as to rinderpest and foot-and-mouth disease,'' from the regulations. Those provisions, which were established in 1974, were rendered unnecessary when we added the current provisions for the recognition of regions in 9 CFR part 92.

Finally, in § 98.38(f), we are proposing to remove a reference to the Office International des Epizooties and to refer instead to the World Organization for Animal Health, as this is the current, internationally recognized name for that organization.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the regulations governing the importation of animals and animal products to add the Czech Republic, Latvia, Lithuania, and Poland to the region of the European Union that we recognize as low risk for CSF. We are also proposing to add the Czech Republic, Latvia, Lithuania, and Poland to the list of regions we consider free from SVD and to add Latvia and Lithuania to the list of regions considered free from FMD and rinderpest.

The U.S. Swine Industry

The U.S. swine industry plays an important role in the U.S. economy. Cash receipts from marketing meat animals were about $15 billion in 2005 (the average between 2001 and 2005 was $12.4 billion).[2] Additionally, swine and related product exports generated over $2.1 billion in sales that year. Other agricultural and nonagricultural sectors are dependent on the swine industry for their economic activity. At present, international trade in U.S. livestock proceeds without CSF or SVD related restrictions. Maintaining such favorable conditions depends in part on continued aggressive efforts to prevent transmission of foreign diseases to U.S. swine.

As shown in table 1, U.S. pork production increased from 7,764,000 metric tons (MT) in 1996 to 9,392,000 MT in 2005, an annual growth rate of about 2.1 percent. Similarly, consumption increased from 7,619 MT to 8,671 MT. During the same period, U.S. exports increased from 440,000 MT to 1,207,000 MT, by far outpacing imports. Net exports increased from 159,000 MT to 743,000 MT.

TABLE 1.—U.S. PORK PRODUCTION, CONSUMPTION, PRICE, EXPORTS, AND IMPORTS, 1996–2005

Year	Production (1,000 MT)	Consumption (1,000 MT)	Price per MT	Exports (1,000 MT)	Imports (1,000 MT)	Net exports (1,000 MT)
1996	7,764	7,619	$1,596	440	281	159
1997	7,835	7,631	1,562	473	288	185
1998	8,623	8,305	1,170	558	320	238
1999	8,758	8,594	1,178	582	375	207
2000	8,596	8,455	1,413	584	438	146
2001	8,691	8,389	1,473	707	431	276
2002	8,929	8,685	1,179	731	486	245
2003	9,056	8,816	1,298	779	538	241
2004	9,312	8,817	1,621	989	499	490
2005	9,392	8,671	1,562	1,207	464	743
5-year average (2001–2005)	9,076	8,676	1,427	883	484	399

Sources: USDA/FAS, PS&D Online, 1996–2005, *http://www.fas.usda.gov/psdonline/psdquery.aspx;* prices, reported as $/100 pounds for yearly pork carcass cut-out values, are converted to dollars per metric ton, and are taken from Red Meat Yearbook (94006), *http://usda.manlib.cornell.edu/ers/94006/wholesaleprices.xls;* net exports are calculated as the difference between exports and imports for each year.

The Swine Industry in the Czech Republic, Latvia, Lithuania, and Poland

The four countries (the Czech Republic, Latvia, Lithuania, and Poland) together produced an average of 2.522 million MT of pig meat between 2001 and 2005. They are net importers of pork, which is the focus of this analysis. They had a 5-year (2001–2005) average level of pork exports of 130,030 MT and an average level of imports of 152,954 MT, yielding an average net export of a negative 22,823 MT. The Czech Republic and Poland accounted for 95 percent of production and export of the above total.

Potential Costs of Classical Swine Fever, Swine Vesicular Disease, and Foot and Mouth Disease

CSF, also known as hog cholera or swine plague, is a highly contagious and often fatal disease of pigs. Young animals are more severely affected than older animals. Mortality rates may reach up to 90 percent among young pigs. SVD is less severe and does not usually cause death. The overall cost of control and eradication depends on the mitigation methods used to control and eradicate the two diseases.

Potential costs include disease control measures such as imposing quarantine measures and movement controls, indemnity payments, vaccination costs, surveillance, and laboratory testing. CSF was eradicated from the United States in 1976 at a cost of about $550 million in 2006 dollars. Several EU countries experienced small-and-large scale CSF outbreaks between 1990 and 1997 and suffered heavy economic losses. One large outbreak cost producers $917.6 million, the national governments

[2] USDA/NASS, Meat Animal Production, Disposition, and Income: 2005 Summary, April 2006.

$296.9 million, and the EU $1,040.6 million in 2006 dollars. The cost of a small scale outbreak was $14 million and the cost of the medium-scale outbreak was $268.8 million.[3] The above costs are direct costs of disease outbreaks and do not include indirect costs such as losses caused by trade restrictions. Little information exists on the cost of control and eradication of SVD in a previously free region.

FMD is a contagious viral disease that affects cloven-hoofed animals. Cattle, pigs, sheep and goats are highly susceptible to FMD. Although the death rates are low, it has serious lasting negative effects on infected animals that survive the disease. It causes decreased milk production, decreased pregnancy rates, weight loss, and lameness. In addition to these losses, an FMD outbreak can lead to economic sanctions, including the loss of export markets. Any outbreak of FMD in the United States could result in a loss of billions of dollars for agriculture and related industries as indicated by the most recent FMD outbreak in the United Kingdom (UK). According to the World Organization for Animal Health (OIE), over 6 million cattle, sheep, swine, and goats were slaughtered to stop the spread of the disease and the epidemic is estimated to have cost the UK economy about $12.9 billion.[4]

Impact of Potential Pork Imports

In this section, we estimate the impact of pork imports from the Czech Republic, Latvia, Lithuania, and Poland on U.S. production, consumption, and prices using a net trade welfare model.[5] The baseline data used are as shown in the last row of table 1. The demand and supply elasticities used are -0.86 and 1, respectively.[6]

Based on the four countries' combined average annual global exports of 130,130 MT (2001–2005), we model three potential levels of pork exports to the United States from the Czech Republic, Latvia, Lithuania, and Poland: (1) An amount proportional to the percentage of the EU–15's pork exports sent to the United States (1.87 percent); (2) an amount proportional to the percentage of Denmark's[7] pork exports sent to the United States (3.99 percent); and (3) an amount equal to 10 percent of the global pork exports by the four countries. Amounts of pork shipped to the United States under the three scenarios would be 2,433 MT, 5,192 MT, and 13,013 MT.

TABLE 2.—THE IMPACT OF PORK IMPORTS FROM THE CZECH REPUBLIC, LATVIA, LITHUANIA, AND POLAND ON THE UNITED STATES ECONOMY

	Import Scenario 1	Import Scenario 2	Import Scenario 3
Assumed pork imports, MT	[1] 2,433	[2] 5,192	[3] 13,013
Change in U.S. consumption, MT	1,160	2,475	6,202
Change in U.S. production, MT	−1,273	−2,717	−6,811
Change in wholesale price of pork, dollars per MT	−$0.22	−$0.47	−$1.19
Change in consumer welfare	$1,924,230	$4,106,610	$10,294,830
Change in producer welfare	−$1,817,020	−$3,877,160	−$9,715,120
Annual net benefit	$107,210	$229,450	$579,710

Note: Welfare and benefit are used interchangeably. The baseline data used is a 5-year annual average for production, consumption, price, exports and imports as reported in the last row of table 1. The demand and supply elasticities used are −0.86 and 1, respectively (John Sullivan, John Wainio, Vernon Roningen, A Database for Trade Liberalization Studies, #AGES89–12, March 1989).

[1] Calculated by multiplying the total global exports of the Czech Republic, Latvia, Lithuania, and Poland, 130,130 MT, by the proportion (1.87 percent) of EU–15's global export sent to the U.S. EU–15 countries including Denmark exported 50,742 MT to the United States from their global exports of 2,719,698 MT.

[2] Calculated by multiplying total global exports of the Czech Republic, Latvia, Lithuania, and Poland by the proportion (3.99 percent) of Denmark exports sent to the United States, 43,037 MT out of 1,077,986 MT.

[3] Calculated by multiplying total global exports of the Czech Republic, Latvia, Lithuania, and Poland by 10 percent.

Table 2 presents the changes resulting from the assumed U.S. pork imports from the Czech Republic, Latvia, Lithuania, and Poland. These include annual changes in U.S. consumption, production, wholesale price, consumer welfare, producer welfare, and net welfare. Our medium level of pork imports of 5,192 MT (import scenario 2, assuming pork imports proportional to those received from Denmark) would result in a decline of $0.47 per metric ton in the wholesale price of pork and a fall in U.S. production of 2,717 MT. Consumption would increase by 2,475 MT. Producer welfare would decline by $3.9 million and consumer welfare would increase by $4.1 million, yielding an annual net benefit of about $230,000.

Import scenario 1 presents impacts assuming a more likely level of pork imports (proportional to those received from the EU–15). In this case, price would decrease by $0.22 per metric ton, production would decline by 1,273 MT, and consumption would increase by 1,160 MT. Consumer welfare would increase by $1.9 million and producer welfare would decline by $1.8 million. The annual net benefit would be about $107,000.

Finally, import scenario 3 presents a case of expanded trade, with pork imports by the United States assumed to equal 10 percent of global exports by the four countries. The wholesale price of pork would decline by $1.19 per metric ton, production would decline by 6,811 MT, and consumption would increase

[3] Saatkamp, H. W., P. B. M. Berentsen *et al.* ''Economic aspects of the control of classical swine fever outbreaks in the European Union,'' Vet Microbiology 73 (2000): 221–237; Stegeman, A., A. Elbers *et al.*, ''The 1997–98 epidemic of classical swine fever in the Netherlands,'' Vet Microbiology, 73 (2000): 183–196.

[4] D. Thompson, P. Muriel, D. Russell, P. Osborne, A. Bromley, M. Rowland, S. Creigh-Tyte, and C. Brown, ''Economic losses of foot and mouth disease outbreak in the U.K,'' Rev. sci. tech. int. epiz., 21 (2002): 675–687.

[5] The data used were obtained from Foreign Agricultural Service (FAS), Production, Supply and Distribution database (*http://www.fas.usda.gov/psdonline/psdquery.aspx;*) USDA/ERS, Red Meat Yearbook (94006) (*http://usda.mannlib.cornell.edu/usda/ers//wholesaleprices.xls*); The Global Trade Atlas: Global Trade Information Services, Inc., country Edition, June 2006; and UN/FAO, FAO stat data (*http://faostat.fao.org*).

[6] John Sullivan, John Wainio, Vernon Roningen, A Database for Trade Liberalization Studies, #AGES89–12, March 1989.

[7] Exports from Denmark to the United States are used as an upper range estimate of possible exports from these countries. Denmark's pork industry is export oriented, and it is the second largest supplier of pork products to the United States, after Canada. Using the proportion of its global pork exports that are shipped to the United States as an estimate of possible imports from the four countries likely overstates potential shipments to the United States from these countries.

by 6,202 MT. Consumer welfare would increase by $10.3 million, while producer welfare would decline by $9.7 million. The annual net benefit would be about $580,000.

In all cases consumer welfare gains would outweigh producer welfare losses. The decline in producer welfare, even in the last scenario, would represent less than one-tenth of 1 percent of cash receipts received from the sale of domestic hogs and pork products.[8] Thus, our analysis indicates that U.S. entities are unlikely to be significantly affected by this rule.

The Small Business Administration (SBA) has established guidelines for determining which types of firms are to be considered small under the Regulatory Flexibility Act. This rule could affect importers of live animals or animal products and swine operations with sales.

Meat processing entities (NAICS 311612) and meat and meat product merchant wholesalers (NAICS 424470) may be affected by this rule. Under SBA standards, meat processing establishments with no more than 500 employees and meat and meat product wholesalers with no more than 100 employees are considered small. In 2002, there were 1,335 companies in the United States that processed and sold meat. More than 97 percent of these establishments are considered to be small entities and had average sales of $15.4 million, while large meat processors had average sales of $188 million. In 2002, there were 2,535 meat and meat product wholesalers in the United States. Of these establishments, 2,456 (97 percent) employed not more than 100 employees and are, thus, considered small by SBA standards. Small wholesalers had average sales of $9.3 million, while large entities had average sales of $131 million.[9]

Other entities that could theoretically be affected include refrigerated long-distance trucking firms (NAICS 484230), freight forwarders (NAICS 488510), and deep sea freight transport companies (NAICS 483111). The SBA classifies trucking firms as small if their annual receipts are not more than $23.5 million; freight forwarding firms are small if their annual receipts are not more than $6.5 million, and deep sea freight transport firms are small if they have not more than 500 workers. According to the 2002 Economic Census, there were 3,429 trucking firms, 3,827 freight forwarders, and 195 deep sea freight transport companies. Over 99 percent of trucking firms, 96 percent freight forwarders, and 97 percent of deep sea freight transport firms are considered to be small. Thus, predominant numbers of meat processors, wholesale traders, and transport firms that could be affected by the rule are considered to be small by SBA standards. Average sales of even the smallest packers and wholesalers are large compared to the amount of pork expected to be imported from the four countries.

U.S. swine and pork producers (NAICS 112210) might be potentially affected by the proposed rule. According to the 2002 Census of Agriculture, there were 82,028 hog and pig operations with sales of 184,997,686 hogs and pigs valued at $12.4 billion. These facilities are considered to be small if their annual receipts are not more than $750,000. Over 83 percent of these operations (or 68,083) are considered to be small and had sales of fewer than 2,000 hogs and pigs. Small operations had a total inventory of 16,297,158 (8.81 percent) with an average inventory of 237 hogs, while large operations (or 13,945) had sales of 168,700,528 (91.19 percent) with an average inventory of 12,714 hogs. Based on inventory share, small operations had annual sales of $1.3 billion and an average income of about $19,400, while large operations had sales of $11 billion with an average income of about $834,000. As shown in table 3, the impact of potential pork imports on U.S. producers as a result of this rule would be small. The decrease in producer welfare per small entity is less than $133 or about 0.6 percent of average annual sales of small entities when we assume that 10 percent of combined global pork exports by the four countries would be sent to the United States.

TABLE 3.—THE ECONOMIC IMPACT OF POTENTIAL PORK IMPORTS FROM THE CZECH REPUBLIC, LATVIA, LITHUANIA, AND POLAND ON U.S. SMALL ENTITIES, ASSUMING 10 PERCENT OF COMBINED GLOBAL PORK EXPORTS BY THE FOUR COUNTRIES ARE SENT TO THE UNITED STATES, 2005 DOLLARS

Total decline in producer welfare [1]	$9,715,120
Decrease in welfare incurred by small entities [2]	855,902
Average decrease per head of inventory, small entities [3]	0.05
Average decrease per small entity [4]	124
Average decrease as percentage of average sales, small entities [5]	0.6%

[1] From table 2. The change in producer welfare is negative indicating a decline.
[2] Change in producer welfare multiplied by 8.81 percent from the above text. We assume that the change in producer welfare would be proportional to inventory share.
[3] Decrease in producer welfare for small entities divided by 16,297,158 (see text above).
[4] Average decrease per head of inventory multiplied by 237 (see text above).
[5] Average decrease per small entity divided by $19,400 (see text above).

Because quantities of swine, swine semen, ruminants, and ruminant products imported from these countries, if such imports were to occur, are likely to be very small, effects of the rule with respect to these commodities are not included in the analysis.

The amounts of pork shipped to the United States under the three scenarios discussed above would be 2,433 MT, 5,192 MT, and 13,013 MT. Even when the largest import quantity is assumed, the welfare effect for U.S. small-entity producers would be equivalent to less than 1 percent of their average revenue.

Predominant numbers of producers, meat processors, and wholesale traders are considered to be small entities. Other small entities that could theoretically be affected by the proposed rule include refrigerated long-distance trucking firms, freight forwarders, and deep sea freight transport companies. In all cases, any effects of the proposed rule for these types of businesses are expected to be very minor.

[8] $9.7 million divided by $12.4 billion equals 0.08 percent.

[9] U.S. Census Bureau, 2002 Economic Census: Manufacturing—Industries Series, Wholesale Trade—Subject Series and Transportation and Warehousing—Subject Series, issued August 2006; and SBA, Small business Size Standards matched to North American Industry Classification System 2002, effective July 2006.

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the proposed addition of the Czech Republic, Latvia, Lithuania, and Poland to the list of EU countries considered to be low risk for CSF and to the list of regions recognized as free of SVD, but that are subject to certain import restrictions, and the addition of Latvia and Lithuania to the list of regions recognized as free of FMD and rinderpest, but that are subject to certain import restrictions, we have prepared environmental assessments for each country.

The environmental assessments were prepared in July or August 2006 and in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessments may be viewed on the Regulations.gov Web site or in our reading room. We invite the public to comment on those environmental assessments. Comments on the environmental assessments may be submitted using the same process as comments on the proposed rule. (Instructions for accessing Regulations.gov and for submitting comments, and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule. In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This proposed 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

9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Region, Reporting and recordkeeping requirements.

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 98

Animal diseases, Imports.

Accordingly, we propose to amend 9 CFR parts 92, 93, 94, and 98 as follows:

PART 92—IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS: PROCEDURES FOR REQUESTING RECOGNITION OF REGIONS

1. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. In § 92.1, the definition of *European Union* would be revised to read as follows:

§ 92.1 Definitions.

* * * * *

European Union. The organization of Member States consisting of Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Republic of Ireland, Spain, Sweden, and the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland).

* * * * *

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

3. The authority citation for part 93 would continue to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

4. In § 93.500, the definition of *European Union-15 (EU–15)* would be removed and a definition of *APHIS-defined EU CSF region* would be added, in alphabetical order, to read as follows:

§ 93.500 Definitions.

* * * * *

APHIS-defined EU CSF region. The European Union Member States of Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Republic of Ireland, Spain, Sweden, and the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland).

* * * * *

§ 93.505 [Amended]

5. In § 93.505, paragraph (a), the words ''region consisting of the EU–15 for the purposes of classical swine fever'' would be removed and the words ''APHIS-defined EU CSF region'' would be added in their place, and the note at the end of the paragraph would be removed.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

6. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

7. In § 94.0, the definition of *European Union–15 (EU–15)* would be removed and a definition of *APHIS-defined EU CSF region* would be added, in alphabetical order, to read as follows:

§ 94.0 Definitions.

* * * * *

APHIS-defined EU CSF region. The European Union Member States of Austria, Belgium, the Czech Republic,

Denmark, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Republic of Ireland, Spain, Sweden, and the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland).

* * * * *

§ 94.1 [Amended]

8. In § 94.1, paragraph (a)(2) would be amended by adding the words ''Latvia, Lithuania,'' immediately after the word ''Japan,''.

§ 94.1a [Removed]

9. Section 94.1a would be removed.

§ 94.9 [Amended]

10. In § 94.9, paragraphs (b) and (c), the words ''EU–15'' would be removed and the words ''APHIS-defined EU CSF region'' added in their place.

§ 94.10 [Amended]

11. In § 94.10, paragraphs (b) and (c), the words ''EU–15'' would be removed and the words ''APHIS-defined EU CSF region'' added in their place.

§ 94.11 [Amended]

12. In § 94.11, paragraph (a) would be amended by adding the words ''Latvia, Lithuania,'' immediately after the word ''Japan,''.

13. In § 94.12, paragraph (a) would be revised to read as follows:

§ 94.12 Pork and pork products from regions where swine vesicular disease exists.

(a) Swine vesicular disease is considered to exist in all regions of the world except Australia, Austria, the Bahamas, Belgium, Bulgaria, Canada, Central American countries, Chile, the Czech Republic, Denmark, Dominican Republic, Fiji, Finland, France, Germany, Greece, Greenland, Haiti, Hungary, Iceland, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Panama, Poland, Portugal, Republic of Ireland, Romania, Spain, Sweden, Switzerland, Trust Territories of the Pacific, the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland), Yugoslavia, and the Regions in Italy of Friuli, Liguria, Marche, and Valle d'Aosta.

* * * * *

14. In § 94.13, in the introductory text of the section, the first sentence would be revised to read as follows:

§ 94.13 Restrictions on importation of pork or pork products from specified regions.

Austria, the Bahamas, Belgium, Bulgaria, Chile, the Czech Republic, Denmark, France, Germany, Hungary, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Republic of Ireland, Spain, Switzerland, the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland), Yugoslavia, and the Regions in Italy of Friuli, Liguria, Marche, and Valle d'Aosta are declared free of swine vesicular disease in § 94.12(a) of this part. * * *

* * * * *

§ 94.24 [Amended]

15. Section 94.24 would be amended as follows:

a. In the section heading, by removing the words ''EU–15'' and adding the words ''APHIS-defined EU CSF region'' in their place.

b. In paragraph (a), introductory text, and paragraph (a)(1)(i), by removing the words ''EU–15'' and adding the words ''APHIS-defined EU CSF region'' in their place.

c. In paragraphs (a)(1)(ii) and (a)(1)(iii), by removing the words ''the EU–15'' and adding the words ''the APHIS-defined EU CSF region'' in their place and by removing the words ''an EU–15'' and adding the word ''the'' in their place.

d. In paragraph (a)(5), by removing the words ''EU–15'' and adding the words ''APHIS-defined EU CSF region'' in their place.

e. In paragraph (b), introductory text, and paragraph (b)(2)(i), by removing the words ''EU–15'' and adding the words ''APHIS-defined EU CSF region'' in their place.

f. In paragraph (b)(2)(ii) and (b)(2)(iii), by removing the words ''the EU–15'' and adding the words ''the APHIS-defined EU CSF region'' in their place and by removing the words ''an EU–15'' and adding the word ''the'' in their place.

g. In paragraph (b)(6), by removing the words ''EU–15'' and adding the words ''APHIS-defined EU CSF region'' in their place.

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

16. The authority citation for part 98 would continue to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

17. In § 98.30, the definition of *European Union-15 (EU–15)* would be removed and a definition of *APHIS-defined EU CSF region* would be added, in alphabetical order, to read as follows:

§ 98.30 Definitions.

* * * * *

APHIS-defined EU CSF region. The European Union Member States of Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Republic of Ireland, Spain, Sweden, and the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland).

* * * * *

§ 98.38 [Amended]

18. Section 98.38 would be amended as follows:

a. In the section heading, by removing the words ''EU–15'' and adding the words ''APHIS-defined EU CSF region'' in their place.

b. In the introductory text of the section, paragraph (a), and paragraph (b)(1), by removing the words ''EU–15'' and adding the words ''APHIS-defined EU CSF region'' in their place.

c. In paragraph (b)(2), by removing the words ''the EU–15'' and adding the words ''the APHIS-defined EU CSF region'' in their place and by removing the words ''an EU–15'' and adding the word ''the'' in their place.

d. In paragraph (b)(3), by removing the words ''EU–15 established'' and adding the words ''APHIS-defined EU CSF region established '' in their place and by removing the words ''EU–15'' immediately before the word ''Member''.

e. In paragraph (f), by removing the words ''Office International des Epizooties'' and the parentheses surrounding the words ''World Organization for Animal Health''.

f. In paragraph (i), by removing the words ''EU–15'' and adding the words ''APHIS-defined EU CSF region'' in their place.

Done in Washington, DC, this 6th day of February 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–2327 Filed 2–9–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27070; Directorate Identifier 2007–CE–003–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Regional Aircraft Models HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, Jetstream Model 3201 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) originated 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:

> This Airworthiness Directive * * * is published in order to maintain the structural integrity of the applicable aircraft. The Service Bulletin provides life limits for critical landing gear components. Failure of such items could lead to unsafe conditions.

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 March 14, 2007.

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: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; 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. This 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–2007–27070; Directorate Identifier 2007–CE–003–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.: 2006–0087 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> This Airworthiness Directive * * * is published in order to maintain the structural integrity of the applicable aircraft. The Service Bulletin provides life limits for critical landing gear components. Failure of such items could lead to unsafe conditions.
>
> The MCAI requires:
>
> From the effective date of this AD, it is mandatory to comply with the requirements given in Jetstream Series 3100 and 3200 Service Bulletin 32–JA981042 Rev 5. Landing Gear—Main and Nose Landing Gears—To introduce life limitations and provide means of establishing total flight cycles since new for critical components * * *

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

BAE Systems has issued British Aerospace Jetstream Series 3100 and 3200 Service Bulletin 32–JA981042 Rev 5, dated November 1, 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 highlighted in a Note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 149 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the requirements of this proposed AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $23,840, or $160 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:

British Aerospace (Operations) Limited Trading As British Aerospace Regional Aircraft (Type Certificate No. A21EU) and British Aerospace Regional Aircraft (Type Certificate No. A56EU): Docket No. FAA–2007–27070; Directorate Identifier 2007–CE–003–AD.

Comments Due Date

(a) We must receive comments by March 14, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models HP.137 Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

This Airworthiness Directive * * * is published in order to maintain the structural integrity of the applicable aircraft. The Service Bulletin provides life limits for critical landing gear components. Failure of such items could lead to unsafe conditions.

Actions and Compliance

(f) Unless already done, within 60 days after the effective date of this AD, comply with the requirements given in BAE Systems British Aerospace Jetstream Series 3100 and 3200 Service Bulletin 32–JA981042 Rev 5, dated November 1, 2005.

Note 1: The compliance times of this AD are presented in cycles (landings) since new (CSN). If you do not keep the total CSN, then you may multiply the total number of airplane hours time-in-service by 0.75.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: We allow a different method for calculating the CSN of a component listed in this AD.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; 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

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2006–0087, dated April 18, 2006, and BAE Systems British Aerospace Jetstream Series 3100 and 3200 Service Bulletin 32–JA981042 Rev 5, dated November 1, 2005, for related information.

Issued in Kansas City, Missouri, on February 5, 2007.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–2312 Filed 2–9–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–23437; Airspace Docket No. 05–AWA–2]

RIN 2120–AA66

Proposed Modification of the Phoenix Class B Airspace Area; Arizona

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Phoenix (PHX), AZ, Class B airspace area. Specifically, this action proposes to lower the ceiling to 9,000 feet mean sea level (MSL) and expand the arrival extension boundaries to 30 Nautical Miles (NM) to ensure the containment of the PHX Standard

Terminal Arrival Routes (STAR) at the Phoenix Sky Harbor International Airport, and correct the inefficiencies of several existing areas identified during public meetings, and reviews of the airspace by the Phoenix Airspace Users Work Group (PAUWG) and Phoenix Terminal Radar Approach Control (TRACON P50). The FAA is proposing this action to improve the flow of air traffic, enhance safety, and reduce the potential for midair collision in the PHX Class B airspace area, while accommodating the concerns of airspace users. Further, this effort supports the FAA's national airspace redesign goal of optimizing terminal and en route airspace areas to reduce aircraft delays and improve system capacity.

DATES: Comments must be received on or before April 13, 2007.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2004–23437 and Airspace Docket No. 05–AWA–2, at the beginning of your comments.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2005–23437 and Airspace Docket No. 05–AWA–2) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2005–23437 and Airspace Docket No. 05–AWA–2.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRM's

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261.

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

Background

In 1989, the FAA issued a final rule establishing the Phoenix Terminal Control Area (TCA). This area was later re-classified as a Class B airspace area as a result of the Airspace Reclassification Final Rule (56 FR 65638). Since its establishment, the Phoenix Class B airspace area has undergone several modifications. The existing Class B airspace area was developed in the early 1990s and revised in 1998 (63 FR 58291). Reviews of the airspace were conducted by representatives of P50 and the results presented to the PAUWG at regularly scheduled meetings during the last twelve months. These reviews indicated that the current Class B airspace contained areas of inefficiencies where boundary location/identification can be improved, and identified areas in need of modification to ensure the containment of STARs within Class B airspace. The proposed Class B airspace modifications will address these matters.

Public Input

As announced in the **Federal Register** (71 FR 5102), informal airspace meetings were held April 25, 2006, at the Glendale Airport Terminal Building, Glendale AZ; April 27, 2006, at Williams Gateway Airport, Mesa, AZ; and May 2, 2006 at the Deer Valley Airport, Phoenix, AZ. These meetings allowed interested airspace users an opportunity to present their views and offer suggestions regarding planned modifications to the PHX Class B airspace area. All comments received during the informal airspace meetings and the subsequent comment period were considered in developing this proposal.

The Airline Pilots Association, International (ALPA) cited the continuing problem of Traffic Alert and Collision Avoidance System (TCAS) resolution advisories with the current ceiling of 3,000 feet on the final approach course. Pointing out their agreement with lowering the airspace floor on the final from 3,000 to 2,700 feet, they endorsed the proposal.

The Aircraft Owners and Pilots Association (AOPA), Deer Valley Pilots Association (DVPA) and the Arizona Pilots Association (APA) provided detailed comments and alternatives to consider. These organizations advised their members to comment to the FAA in support of their well-advertised counter proposals. Of 82 written comments received, 24 specifically indicated their concurrence to similar APA or AOPA proposals. An additional 29 comments, in a form letter published on the DVPA website, indicated concurrence with the ''ad-hoc committee'' alternate proposal. Although the PAUWG ad-hoc committee did not author a proposal as referenced, language in the website indicated concurrence with the AOPA and APA alternate proposals. The remaining commenters responded with similar concerns or concurrence with the FAA proposal.

Two glider operators are affected by the lowering of the ceiling. 14 CFR 91.215 exempts gliders from the Mode C requirement within the Mode C Veil up to 10,000 feet or the ceiling of the Class B Airspace, whichever is lower. The 9,000-foot ceiling would thus limit non-Mode C equipped gliders to that

altitude. P50 has agreed to enter into a Letter of Agreement (LOA) with these operators, providing relief from the provisions of 14 CFR 91.215(b) (3) (ii).

Three comments received were in favor of the 9,000-foot ceiling. They cited the increased ability to fly over the airspace at a lower altitude. Seven comments were in opposition of the 9,000-foot ceiling due to the potential impact to the glider community. Four of these stated that the 9,000-foot ceiling would be acceptable if there were a LOA waiving the requirements of 14 CFR 91.215(b) (3) (ii).

The FAA agrees that lowering the ceiling to 9,000 feet will accomplish the goal of having arrival traffic enter the top of Class B airspace. Additionally, the lower ceiling will enable Visual Flight Rules (VFR) traffic to transit the Phoenix area at a lower altitude above the Class B airspace without contacting ATC. The impact to the glider community will be eliminated with a LOA waiving the requirements of 14 CFR 91.215(b) (3) (ii).

Numerous individual commenters expressed a general criticism of the complex design, including those in agreement with alternative proposals expressing concerns over being able to navigate around Distance Measuring Equipment (DME) arcs. A frequent statement was made that ''without moving map avionics, I will be unable to identify the boundaries''. DVPA objected to the use of DME arcs since the General Aviation (GA) pilot primarily uses pilotage for navigation. Use of DME would require pilots to spend too much time looking in the cockpit rather than for traffic.

The current method for defining airspace boundaries on the final, within 15 NM of PHX, is through north-south road alignments requiring local knowledge. Large turbine-powered aircraft are required to operate at or above the floors of the Class B airspace while arriving and departing the primary airport. Transient pilots, without local area knowledge, have no reliable means to determine their position relative to the next floor of airspace. The current Class B airspace has multiple areas defined along the 15, 20, and 25 DME arcs. The use of DME arcs to define the Class B airspace is consistent with other airports around the country. FAA Order 7400.2E para 15–2–3 b., prescribes the use of Navigational Aid (NAVAIDS) as references where available to describe the airspace. The Phoenix area has abundant geographical features that assist in basic pilotage around the proposed airspace. This is currently the case with the existing 15, 20, and 25 DME arcs.

Area A

Several commenters and organizations objected to the ''Bowtie'' design of the surface area and suggested that defining the surface area was difficult north and south of PHX since it is not associated with any Very High Frequency Ommidirectional Range (VOR) radials or ground reference points.

The FAA does not agree. Large turbine-powered aircraft arriving PHX are required to be sequenced to a 5 NM final. Jet aircraft departures may only diverge upon reaching a point 5 NM east or west of the airport due to noise abatement procedures. Large turbine-powered aircraft departures may diverge 30 degrees from runway heading on departure. The result is large areas north and south of the PHX airport that large turbine-powered aircraft never traverse.

The published East/West Transition route over PHX is a heavily used transition through the Class B airspace between 3,500–5,000 feet. The current surface area requires TRACON to keep these aircraft on frequency until departing the surface area approximately 5 NM from the airport. The proximity of the Scottsdale Airport (SDL) and Phoenix Deer Valley Airport (DVT) Class D airspace to the current Class B airspace offers little time for aircraft to establish contact with these facilities prior to entering their airspace. South of PHX, the transition is bracketed by 3,000-foot areas. These areas force aircraft, using the transition, to descend below the published transition altitudes enroute to Stellar Airpark (P19), Chandler Municipal Airport (CHD), and Williams Gateway Airport (IWA), or points east. The Bowtie configuration and adjacent airspace change proposals will allow these aircraft to change frequencies sooner and fly at higher altitudes below Class B airspace. Aircraft flying the charted transition route will remain well clear of the surface area diagonals.

Area B

Several commenters suggested retaining the existing road definitions contained in the current Class B airspace description for the surface area. One commentor suggested that if DME arcs were used, they should be made tangential to the inside of the existing 51st and 99th Avenue alignments.

This area retains the existing 3,000-foot airspace to the west of PHX. A continuation of the southwest diagonal of the surface area A is used for the southern boundary. The use of DME arcs to define Class B airspace is consistent with FAA policies. The proposed 10 and 15 DME arcs will be tangent to the current 51st and 99th Avenue alignments, affording a convenient reference for non-participating local pilots to navigate.

Area C

Numerous individual commenters and those in agreement with alternative proposals, expressed concern over the 1,470 foot Mesa Towers and their affect on the VFR Flyway. 14 CFR 91.119, Minimum Safe Altitudes: General, requires 1,000-foot vertical and 2,000-foot horizontal separation. Several commenters stated, if a power unit fails, the 2,700-foot base of the Class B airspace would not allow them to operate at an altitude allowing an emergency landing. AOPA commented that if the floor is lowered 300 feet, then the adjacent sector must remain as large as possible.

The FAA does not agree. Moving the VFR flyway east of the PXR 10 DME will encourage aircraft to operate away from an area of intense large turbine-powered aircraft activity. The flyway will pass over FFZ airport at a higher recommended altitude allowing more time for a contingency involving a power failure. Non-participating aircraft can still operate under the 2,700-foot shelf and meet the requirements of FAR 91.119 by maintaining 2,000 feet horizontal clearance from the obstacle (Mesa Towers). The airspace that is lowered no longer includes the areas north of Camelback Road and south of Guadalupe Road. That adjoining airspace will be raised 1,000 feet, with one airspace area, raised 2,000 feet in the area north of Stellar Airpark. This airspace will allow aircraft choosing to circumnavigate the Class B airspace to fly at the recommended 3,500 feet along the flyway east of the PXR 10 DME.

Area D

AOPA, APA and DVPA endorsed proposals suggesting the 4,000-feet area retain its uniformity across the north and south valleys.

The current surface area and 4,000 foot area north of PHX, would be raised to 5,000 feet. This decompresses traffic operating under the Class B airspace near the mountains immediately north of PHX. Aircraft requesting a transition south over PHX, can contact TRACON at a higher altitude approaching the transition in an area of limited radar and radio coverage. Aircraft not receiving Class B clearance are expected to remain outside of the airspace if clearance is not received. The current airspace requires aircraft to remain below 4,000

feet in areas of terrain as high as 2,700 feet, or north of this area at a higher altitude, in the vicinity of the SDL and DVT airports until clearance is received. Raising the airspace to 5,000 feet and increasing its size to the south achieves the goal of enabling more vertical airspace for aircraft to maneuver and to see and avoid traffic. The majority of aircraft requesting the transition operate at speeds less than 150 knots. Two major freeways identifying the airspace boundaries bracket this volume as a ground reference favored by many commenters. They are approximately 12.5 NM apart providing ample room to maneuver.

Area E

The current surface area and 4,000 foot area south of PHX would be raised to 5,000 feet. This decompresses traffic operating under the Class B airspace near South Mountain. This area raises portions of the Class B airspace currently at 3,000 feet northwest of the CHD airport. At this time, aircraft departing the transition must descend below 3,000 feet before turning east, then must contact CHD tower for transition through the CHD Class D airspace below 3,000 feet. The proposed change would offer the option of flying over CHD Class D airspace. The higher altitude offers the opportunity to fly higher south and west from south valley airports. Additionally, the southern boundary is contracted north approximately 3 NM allowing non-participating aircraft to operate at higher altitudes.

Area F

One commenter suggested that the existing 6,000 foot shelf be extended north over Luke AFB consistent with the lateral limits proposed by the FAA. The APA and one commenter provided detailed graphics of the potential of raising the Instrument Landing System (ILS) glide slope to 3.5 degrees.

The FAA does not agree. In this area, the airspace is being expanded to contain PHX arrival traffic during periods of sustained arrival demand and for the development of simultaneous independent ILS approach procedures during peak traffic operations. The ability to develop these procedures is critical in enabling PHX TRACON to efficiently and safely manage the arrival rate demand during reduced visibility conditions. ALPA stated they oppose any effort to raise the ILS glide slope above the three degree standard as suggested by the APA.

Area G: No comments specific to this area received.

Area H

One commenter stated the advantage of this small block of airspace is offset by the difficulty pilots will have in locating the boundaries. Another emphasized this block of airspace needs to be simplified. AOPA, APA & DVPA proposals are in favor of a rectangular 4,000-foot area containing this area.

The FAA does not agree. The Minimum Vectoring Altitude (MVA) in this area is 5,000 feet. Current Class B airspace and alternative proposals, contain this area in a 4,000-foot area. TRACON cannot operate in this area below the MVA, and though a rectangular area with a floor of 4,000 feet as suggested may aid in simplification, it is overly restrictive to pilots able to navigate around or below it. Aircraft, navigating via the currently published Gila Route without Class B clearance, will be able to avoid the airspace below 5,000 feet. TRACON requires this area to descend aircraft on a base leg to join the ILS at CAGOR intersection (PXR 16 DME) at 5,000 feet.

Area I

Numerous individual comments and those in agreement with alternative proposals expressed concerns over being able to climb above higher terrain east of PHX. AOPA commented in reference to FAA Advisory Circular AC No: 91–36D, VFR Flight Near Noise Sensitive Areas, referencing the Superstition Mountains.

The FAA does not agree. This airspace is expanded to contain PHX arrival traffic during periods of sustained arrival demand, and for the development of simultaneous independent ILS approach procedures during west traffic. The ability to develop these procedures is critical in enabling PHX TRACON to efficiently and safely manage the arrival rate demand during reduced visibility conditions. Non-participating aircraft have the option of adjusting their flight to avoid precipitous terrain or calling TRACON for a Class B clearance in order to climb sooner. AC–91–36D does not apply where it would conflict with regulations, ATC instructions, or where a pilot believes that operating below 2,000 feet is necessary for safety of flight.

Area J: No comments specific to this area received.

Area K: No comments specific to this area received.

Area L

The Class B Airspace southern boundary in this area would be expanded south to contain ARLIN Arrivals on the IWA R–256 radial at 6,000 feet. AOPA and APA recommended in the alternative proposals that a portion of this area be included in the 4,000-foot area rectangle.

The 4,000-foot rectangular area, as proposed, would represent a barrier to non-participating aircraft attempting to navigate north of the Estrella mountains. Terrain penetrates the suggested area with a 4,512-foot peak and surrounding terrain. This area would be more restrictive than the current airspace, thus forcing non-participating aircraft closer to the ground. The MVA in this area is 5,500 feet and does not require Class B protection at 4,000 feet.

Area M and Q

One commenter, and the alternative proposals, suggest that the tab could be narrower if aircraft were not vectored off the published arrival routes until they are within the Mode C Veil.

The FAA does not agree. Aircraft arriving on the PXR 336R STAR are vectored off the arrival for sequencing to the base leg during east traffic operations. These aircraft need to be on a base leg at sufficient distance to allow a simultaneous downwind flow from the northeast arrival STAR. Retaining the aircraft on the arrival until closer to the airport would require multiple vectors to position aircraft, creating sector complexity and an inefficient operation.

Area N

The alternative proposals omit this area in favor of retaining the existing 6,000-foot area. Only large turbine-powered aircraft, departing PHX and forced to level at 7,000 feet to avoid arrival traffic at 8,000 feet, use this area. TRACON does need 6,000 feet in this area for PHX traffic. The current 6,000-foot area forces non-participating traffic to remain below 6,000 until 20 NM when climbing north out of the valley. This causes conflict with numerous high performance aircraft on the SWIRL arrival to the SDL and DVT airports. These aircraft are required to level at 6,000 due to MVA restrictions until approaching 20NM north of PHX before descending. The added 1,000 feet of airspace will offer the opportunity for non-participating aircraft to climb higher and de-conflict with these aircraft.

Area O: No comments specific to this area received.

Area P: No comments specific to this area received.

Area Q: See ''Area M''.

Area R: No comments specific to this area received.

Area S: No comments specific to this area received.

Area T: No comments specific to this area received.

Area U

One GA pilot representative organization suggested that this area is unnecessary for airline approaches that strictly remain on the 3 degree published glide slope.

The FAA does not agree. The PXR 10 DME arc used to define part of the 2,700-foot Area C, overlaps the FFZ Class D airspace. FFZ ATCT has operational need to retain this airspace for its traffic within Class D below 3400 feet. As part of this proposal, FFZ has agreed to amend its Class D boundary to the area east of Gilbert Road. This would allow non-participating aircraft operating under the 2,700-foot floor beyond the 6 DME surface area, to retain the same lateral space between the surface area and Class D airspace that currently exists. In order to provide a DME reference to aircraft on final and to protect ILS crossing altitudes, the area above FFZ Class D airspace between Gilbert Road and the PXR 10 DME, is defined as Class B Floor 3,400 feet. This also provides a north-south road reference for locally based pilots to avoid Class B and D airspace.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify the PHX Class B airspace area. Specifically, this action (depicted on the attached chart) proposes to expand the eastern boundary to ensure the containment of the PHX STARs within Class B airspace and reconfigure several existing areas, correcting areas of inefficiencies identified during public meetings hosted by Phoenix TRACON. These proposed modifications would reduce the overall size of the PHX Class B airspace area, improve the containment of turbo-jet aircraft within the airspace, and improve the alignment of lateral boundaries with VOR radials and visual landmarks for improved VFR navigation.

The following are the proposed revisions for the PHX Class B airspace: The floor of the airspace east and west of PHX is lowered to contain PHX arrival traffic during periods of sustained arrival demand. Additionally, these proposed changes would facilitate the planned development of simultaneous, independent ILS approach procedures by creating necessary Class B airspace to contain the new procedures. The ability to develop these procedures is critical in enabling PHX to sustain an arrival rate equivalent to demand during reduced visibility conditions. During these periods, the airport arrival rate (AAR) is reduced by over 30%, from 72 aircraft an hour to 48 aircraft an hour. This creates a nationwide impact to the National Airspace System (NAS) that in the past has taken the user days to recover. The floor north and south of PHX is raised to create greater access for VFR aircraft in areas that do not require Class B airspace.

The results of the proposed Phoenix Class B changes are the proper containment of large turbine-powered aircraft within Class B airspace, more efficient traffic management during periods of reduced visibility, increased arrival rate demand, de-confliction of non-participating aircraft operating in close proximity to ILS crossing altitudes east of the airport, and better alignment of lateral boundaries with prominent and abundant visual landmarks for improved VFR navigation.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, the FAA has determined that this proposed rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

This NPRM would modify Phoenix, AZ, Class B airspace at Phoenix Sky Harbor International Airport. The proposed rule would lower the altitude ceiling of the airspace and expand the arrival extension boundaries. The NPRM would generate benefits for system users and the FAA in the form of enhanced operational efficiency, simplified navigation in the Phoenix terminal area and may reduce circumnavigation costs. Since Class B airspace is already in place at Phoenix, and since the modifications proposed in this rule are a contraction of the Class B airspace, minimal costs, if any, would result. Thus, the FAA has determined this proposed rule would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities,

section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule should not impose any circumnavigation costs on individuals operating in the Phoenix area and the proposed rule would not impose any costs on small business entities. Operators of GA aircraft are considered individuals, not small business entities, and are not included when performing a regulatory flexibility analysis. Flight schools are considered small business entities. However, the FAA assumes that they provide instruction in aircraft equipped to navigate in Class B airspace given they currently provide instruction in the Phoenix terminal area. Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and has determined that it would have only a domestic impact and therefore no affect on international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million. This proposed rule does not contain such a mandate.

Conclusion

In view of the *de minimus* possible cost of compliance, potential cost savings of the proposed rule and enhancements to aviation safety and operational efficiency, the FAA has determined the proposed rule would be cost-beneficial. The FAA solicits comments regarding this determination.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 3000 Subpart B—Class B Airspace

* * * * *

AWP AZ B Phoenix, AZ

Phoenix Sky Harbor International Airport (Primary Airport)
(Lat. 33°26′10″ N., long. 112°00′34″ W.)
Phoenix VORTAC
(Lat. 33°25′59″ N., long. 111°58′13″ W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 9,000 feet MSL defined by an east/west line along the northern boundary defined by Camelback Road and the PXR 10 DME, thence east to the intersection of Camelback Road and I–17; thence a line direct to the I–10/Squaw Peak Stack following the Loop 202 Freeway from the I–10/Squaw Peak Stack to the Red Mountain Hohokam Stack; thence northeast to the intersection of Camelback Road and Hayden Wash (lat. 33°30′07″ N., long. 111°54′32″ W.); thence east along Camelback Road to the PXR 6 DME arc (lat. 33°30′07″ N., long. 111°53′00″ W.); thence south to the Power Line/Canal (lat. 33°21′25″ N., long. 111°53′33″ W.); thence west to a point at lat. 33°21′25″ N., long. 111°55′12″ W., thence northwest to the intersection of I–10 and SR–143 (lat. 33°24′37″ N., long. 111°58′38″ W.); thence west to SR–51/I–10 extension to lat. 33°24′34″ N., long. 112°02′13″ W., thence southwest to a point at lat. 33°21′45″ N., long. 112°06′20″ W.; thence west along the lat. 33°21′45″ N.; thence north along the PXR 10 DME arc until intersecting Camelback Road.

Area B. That airspace extending upward from 3,000 feet MSL to and including 9,000 feet MSL defined by an east/west line along the northern boundary defined by the intersection of Camelback Road and the PXR 15 DME arc; thence east along Camelback Road to the intersection of Camelback Road and the PXR 10 DME arc; thence south along the PXR 10 DME arc until the intersection with lat. 33°21′45″ N.; thence east along lat. 33°21′45″ N. to lat. 33°21′45″ N., long. 112°06′20″ W.; thence southwest direct to the intersection of the Gila River and the Chandler Blvd extension (lat. 33°18′18″ N., long. 112°12′03″ W.); thence northwest along the Gila River to the intersection of the river and the PXR 15 DME arc; thence northwest along the PXR 15 DME arc to the intersection of Camelback Road.

Area C. That airspace extending upward from 2,700 feet MSL to and including 9,000 feet MSL defined by an east/west line along the northern boundary defined by the intersection of Camelback Road and PXR 6 DME arc (lat. 33°30′07″ N., long. 111°53′00″ W.); thence east to the intersection of Gilbert Road and PXR 10 DME arc; thence south along Gilbert Road to the intersection of Gilbert Road and Falcon Field (FFZ) Class D airspace (lat. 33°24′35″ N., long. 111°47′18″ W.); thence southeast along the FFZ Class D airspace boundary to the intersection with the PXR 10 DME arc; thence southwest along the PXR 10 DME arc to the intersection with lat. 33°21′25″ N.; thence west along lat. 33°21′25″ N. to the intersection of the PXR 6 DME arc; thence north along the PXR 6 DME arc to the intersection of Camelback Road with (lat. 33°30′07″ N., long. 111°53′00″ W.).

Area D. That airspace extending upward from 5,000 feet MSL to and including 9,000 feet MSL defined by an east/west line along the northern boundary using the Peoria Avenue/Shea Boulevard alignment from the intersection of I–17 (lat. 33°35′00″ N., long. 112°07′00″ W.); thence east along lat. 33°35′00″ N. to the intersection with Pima Road (lat. 33°35′00″ N., long. 111°53′28″ W.); thence south along Pima Road to the intersection of Camelback Road; thence west along Camelback Road to Hayden Wash (lat. 33°30′07″ N., long. 111°54′32″ W.); thence southwest on a line direct to the Red Mountain Hohokam Stack; thence west along the Loop 202 Freeway to the I–10/Squaw Peak Stack; thence northwest to the intersection of Camelback Road and I–17; thence north along I–17 to the intersection of I–17 and Peoria Avenue/Shea Boulevard.

Area E. That airspace extending upward from 5,000 feet MSL to and including 9,000 feet MSL defined by an eastern boundary starting at the intersection of I–10/SR–143 (lat. 33°24′37″ N., long. 111°58′38″ W.); thence southeast to lat. 33°21′25″ N., long. 111°54′55″ W.; thence southeast to the Chandler Airport (lat. 33°16′00″ N., long. 111°48′40″ W.); thence west along lat. 33°16′00″ N. to the intersection of the Gila

River; thence north along the river to the intersection of the Chandler Boulevard extension (lat. 33°18′18″ N., long. 112°12′03″ W.); thence northeast direct to lat. 33°21′45″ N., long. 112°06′20″ W.; thence northeast direct to lat. 33°24′34″ N., long. 112°02′13″ W.; thence east to the intersection of I–10/SR–143.

Area F. That airspace extending upward from 4,000 feet MSL to and including 9,000 feet MSL defined by an east/west line along the northern boundary at the intersection of Peoria Avenue/Shea Boulevard and PXR 25 DME (lat. 33°35′00″ N., long. 112°26′07″ W.); thence east along lat. 33°35′00″ N. to the intersection of I–17 (lat. 33°35′00″ N., long. 112°07′00″ W.); thence south along I–17 to the intersection of Camelback Road; thence west along Camelback Road to the intersection of the PXR 15 DME arc; thence south along the PXR 15 DME arc to lat. 33°24′00″ N., long. 112°15′59″ W.; thence west along lat. 33°24′00″ N. to the intersection of the PXR 25 DME; thence north along the PXR 25 DME arc north to the intersection of Peoria Avenue/Shea Boulevard (lat. 33°35′00″ N., long. 112°26′07″ W.).

Area G. That airspace extending upward from 4,000 feet MSL to and including 9,000 feet MSL defined by an east/west line along the northern boundary defined by Peoria Avenue/Shea Boulevard and the intersection of Pima Road (lat. 33°35′00″ N., long. 111°53′28″ W.); thence east along lat. 33°35′00″ N. to the PXR 15 DME arc; thence south along the PXR 15 DME arc to lat. 33°16′00″ N.; thence west along lat. 33°16′00″ N. to Chandler Airport (lat. 33°16′00″ N., long. 111°48′40″ W.); thence direct northwest to lat. 33°21′25″ N., long. 111°55′12″ W.; thence east along the Power Line/Canal (lat. 33°21′25″ N.) to the PXR 10 DME arc; thence north along the PXR 10 DME arc to the intersection of Camelback Road; thence west along Camelback Road to the intersection of Pima Road; thence north along Pima Road to the intersection of Peoria Avenue/Shea Boulevard (lat. 33°35′00″ N., long. 111°53′28″ W.).

Area H. That airspace extending upward from 5,000 feet MSL to and including 9,000 feet MSL defined by an east/west line from the intersection of Litchfield Road and Southern Avenue (lat. 33°24′00″ N., long. 112°21′30″ W.); thence east along lat. 33°24′00″ N. to the intersection of the PXR 15 DME arc; thence southeast along the PXR 15 DME arc to lat. 33°20′00″ N.; thence west along lat. 33°20′00″ N. to intersect the extension of Litchfield Rd (lat. 33°20′00″ N., long. 112°21′30″ W.); thence north along the Litchfield Road to lat. 33°24′00″ N., long. 112°21′30″ W.

Area I. That airspace extending upward from 5,000 feet MSL to and including 9,000 feet MSL defined by an east/west line along lat. 33°35′00″ N. from the intersection of Peoria Avenue/Shea Boulevard and the PXR 15 DME arc east to the PXR 25 DME arc (lat. 33°35′00″ N., long. 111°30′18″ W.); thence south along the PXR 25 DME arc to lat. 33°16′00″ N.; thence west along lat. 33°16′00″ N. to the PXR 15 DME arc; thence north along the PXR 15 DME arc to the intersection of Peoria Avenue/Shea Boulevard (lat. 33°35′00″ N.).

Area J. That airspace extending upward from 6,000 feet MSL to and including 9,000 feet MSL defined by lat. 33°35′00″ N., long. 112°15′40″ W. on the Loop 101 Freeway; thence north along the freeway to a point at lat. 33°40′00″ N., long. 112°13′45″ W.; thence north to lat. 33°41′41″ N., long. 112°13′05″ W. on the PXR 20 DME arc; thence east along the PXR 20 DME arc to the PXR 354°(T)/342°(M) radial; thence south along the PXR 354°(T)/342°(M) radial to the intersection of the Loop 101 Freeway; thence east along the freeway to a point on Loop 101 Freeway at the approach end of Scottsdale Airport Runway 21 (lat. 33°38′39′″ N., long. 111°53′31″ W.); thence northeast to lat. 33°43′38″ N., long. 111°46′54″ W. on the PXR 20 DME arc; thence southeast along the PXR 20 DME arc to intersect lat. 33°35′00″ N.; thence west along lat. 33°35′00″ N. to lat. 33°35′00″ N. long. 112°15′40″ W.

Area K. That airspace extending upward from 6,000 feet MSL to and including 9,000 feet MSL defined by the intersection of PXR 17 DME arc and lat. 33°16′00″ N.; thence east along lat. 33°16′00″ N. to the PXR 20 DME arc; thence southwest along the PXR 20 DME arc to I–10 (lat. 33°07′02″ N., long. 111°50′26″ W.); thence northwest along I–10 to lat. 33°09′39″ N., long. 111°52′28″ W. on the PXR 17 DME arc; thence clockwise along the PXR 17 DME arc to intersect with lat. 33°16′00″ N.

Area L. That airspace extending upward from 6,000 feet MSL to and including 9,000 feet MSL defined by the intersection of the PXR 25 DME arc and lat. 33°24′00″ N.; thence east along lat. 33°24′00″ N. to Litchfield Road; thence south along Litchfield Road to lat. 33°20′00″ N., long. 112°21′30″ W.; thence east along lat. 33°20′00″ N. to the PXR 15 DME arc; thence southeast along the PXR 15 DME arc to the Gila River; thence southeast along the Gila River to lat. 33°16′00″ N.; thence west along lat. 33°16′00″ N. to the PXR 25 DME arc; thence north along the PXR 25 DME to lat. 33°24′00″ N.

Area M. That airspace extending upward from 7,000 feet MSL to and including 9,000 feet MSL defined by lat. 33°48′02″ N., long. 112°12′24″ W.; thence east along the PXR 25 DME arc to the PXR 354°(T)/342°(M) radial; thence south along the PXR 354°(T)/342°(M) radial to the PXR 20 DME arc; thence west along the PXR 20 DME arc to lat. 33°41′41″ N. long. 112°13′05″ W.; thence north to lat. 33°48′02″ N., long. 112°12′24″ W.

Area N. That airspace extending upward from 7,000 feet MSL to and including 9,000 feet MSL defined from the PXR 354°(T)/342°(M) radial and the PXR 20 DME arc; thence east along the PXR 20 DME arc to lat. 33°43′38″ N., long. 111°46′54″ W.; thence southwest to the approach end of Scottsdale Airport Runway 21 (lat. 33°38′39″ N., long. 111°53′31″ W.); thence northwest along the Loop 101 Freeway to the intersection of the PXR 354°(T)/342°(M) radial; thence north along the PXR 354°(T)/342°(M) radial to the PXR 20 DME arc.

Area O. That airspace extending upward from 7,000 feet MSL to and including 9,000 feet MSL defined from lat. 33°47′11″ N., long. 111°42′16″ W.; thence southeast along the PXR 25 DME arc to intersect the Peoria Avenue/Shea Boulevard extension (lat. 33°35′00″ N., long. 111°30′18″ W.); thence west along lat. 33°35′00″ N. to the PXR 20 DME arc; thence northwest along the PXR 20 DME arc to lat. 33°43′38″ N., long. 111°46′54″ W., thence northeast to lat. 33°47′11″ N., long. 111°42′16″ W.

Area P. That airspace extending upward from 7,000 feet MSL to and including 9,000 feet MSL defined by the intersection of the PXR 20 DME arc and lat. 33°16′00″ N., long. 111°37′25″ W.; thence east along lat. 33°16′00″ N. to intersect with the PXR 25 DME arc; thence southwest along the PXR 25 DME arc to intersect with I–10; thence northwest along I–10 to intersect with the PXR 20 DME arc; thence northeast along the PXR 20 DME arc to the intersection of lat. 33°16′00″ N.

Area Q. That airspace extending upward from 8,000 feet MSL to and including 9,000 feet MSL defined by lat. 33°53′48″ N., long. 112°11′50″ W.; thence east along the PXR 30 DME arc to the PXR 354°(T)/342°(M) radial; thence south along the PXR 354°(T)/342°(M) radial to the PXR 25 DME arc; thence west along the PXR 25 DME arc to lat. 33°48′02″ N., long. 112°12′24″ W.; thence north to lat. 33°53′48″ N., long. 112°11′50″ W.

Area R. That airspace extending upward from 8,000 feet MSL to and including 9,000 feet MSL defined by lat. 33°50′38″ N., long. 111°37′39″ W. on the PXR 30 DME arc; thence southeast along the PXR 30 DME arc to lat. 33°43′44″ N., long. 111°29′14″ W.; thence south to lat. 33°40′46″ N., long. 111°34′03″ W. on the PXR 25 DME arc; thence northwest along the PXR 25 DME arc to lat. 33°47′11″ N., long. 111°42′16″ W.; thence northeast direct to lat. 33°50′38″ N., long. 111°37′39″ W.

Area S. That airspace extending upward from 8,000 feet MSL to and including 9,000 feet MSL defined by the intersection of the PXR 25 DME and PXR 127°(T)/115°(M) radial; thence southeast along the PXR 127°(T)/115°(M) radial to the PXR 30 DME arc; thence southwest along the PXR 30 DME arc to intersect with I–10; thence northwest along I–10 to the PXR 25 DME arc; thence northeast along the PXR 25 DME arc to intersect with the PXR 127°(T)/115°(M) radial.

Area T. That airspace extending upward from 7,000 feet MSL to and including 9,000 feet MSL defined by lat. 33°30′34″ N., long. 112°27′36″ W.; thence west along lat. 33°30′34″ N. to the PXR 30 DME arc; thence south along the PXR 30 DME arc to lat. 33°16′00″ N.; thence east along lat. 33°16′00″ N. to the PXR 25 DME arc; thence north along the PXR 25 DME arc to lat. 33°30′34″ N., long. 112°27′36″ W.

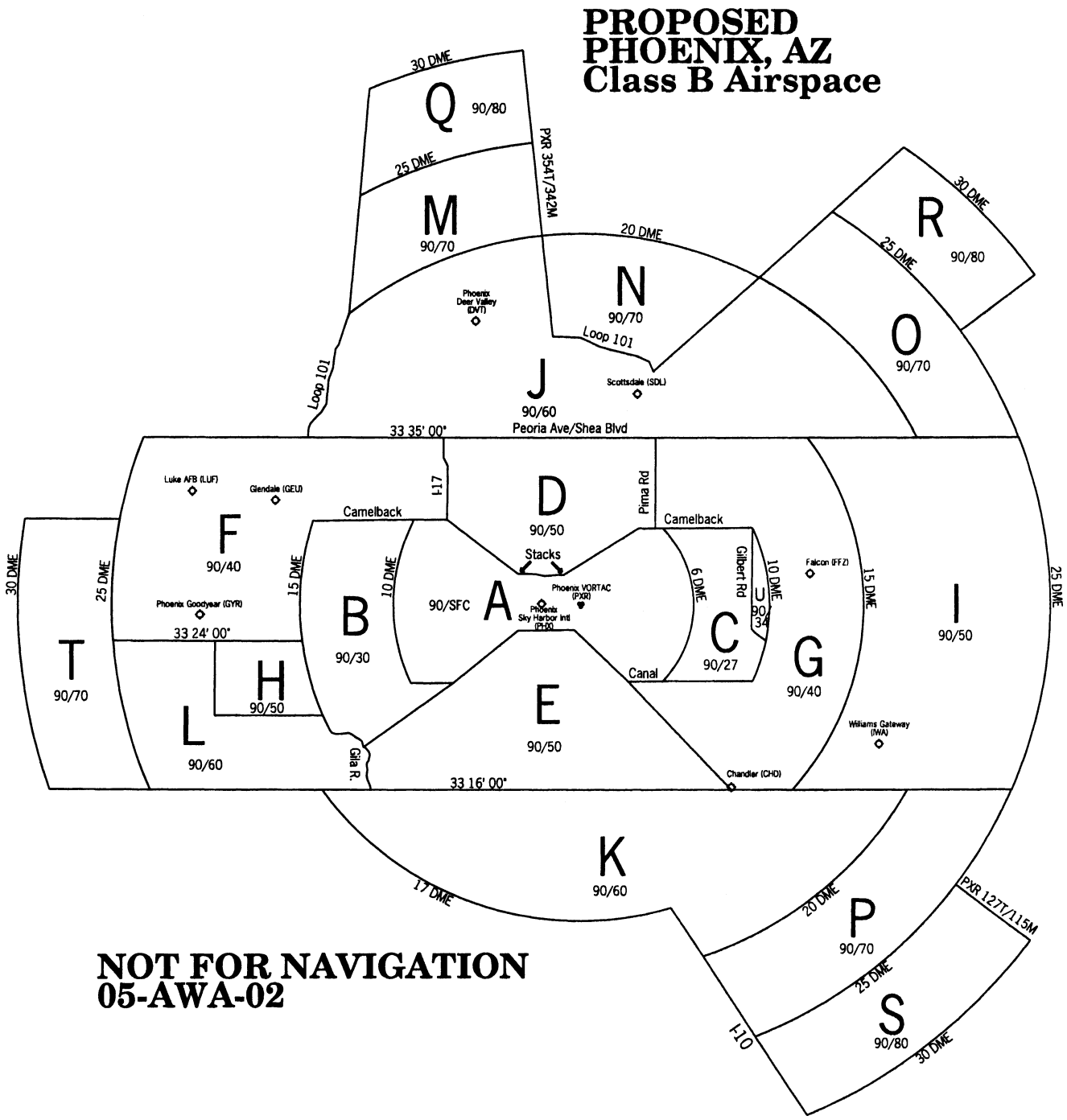
Area U. That airspace extending upward from 3,400 feet MSL to and including 9,000 feet MSL defined from the intersection of the PXR 10 DME arc and Camelback Road (lat. 33°30′08″ N., long. 111°47′20″ W.); thence south along the PXR 10 DME arc to intersect with the southwest boundary of FFZ Class D airspace (lat. 33°24′02″ N., long. 111°46′30″ W.); thence northwest along FFZ Class D line to Gilbert Road (lat. 33°24′35″ N., long. 111°47′18″ W.); thence north along Gilbert Road to the intersection of Camelback Road and the PXR 10 DME arc (lat. 33°30′08″ N., long. 111°47′20″ W.).

* * * * *

Issued in Washington DC, on February 2, 2007.

Edith V. Parish,

Manager, Airspace and Rules.



[FR Doc. 07–599 Filed 2–9–07; 8:45 am]

BILLING CODE 4910–13–P

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Amendments to the Comprehensive Plan and Water Code Relating to a Flexible Flow Management Plan for Operation of the New York City Delaware Basin Reservoirs

AGENCY: Delaware River Basin Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission will hold a public hearing and accept written comment on a proposal to amend the agency's Comprehensive Plan and Water Code to establish a Flexible Flow Management Program (FFMP) for the New York City Delaware Basin Reservoirs (''City Delaware Reservoirs'') for multiple objectives, including, among others, water supply and drought mitigation; management of the reservoir tailwater fisheries and other habitat needs, and spill mitigation. The current reservoir releases program, which was established by Resolution No. 2004–3 in April of 2004, will expire on May 31, 2007. The current spill mitigation program, established by Resolution No. 2006–18, also will expire on May 31, 2007. The Commission will also accept comment on alternative reservoir management strategies that may be adopted in the event that consensus on the proposed FFMP is not reached. The alternative reservoir releases options to be considered are: extending the current reservoir releases program or reinstating a previous reservoir releases program plan. Either option would be considered in combination with a seasonal spill mitigation program or an annual spill mitigation program for the three reservoirs. The releases program adopted in the event consensus is not reached on the FFMP would continue in effect until any expiration date contained in the program adopted or unless and until replaced by another program that has been approved by the Commission following a notice and comment rulemaking process. In accordance with Section 3.3 of the Delaware River Basin Compact, any program affecting the diversions, compensating releases, rights, conditions, and obligations of the 1954 Supreme Court Decree in the matter of *New Jersey* v. *New York*, 347 U.S. 995, 74 S. Ct. 842 also requires the unanimous consent of the decree parties, which include the states of Delaware, New Jersey and New York, the Commonwealth of Pennsylvania, and the City of New York.

DATES: Two public hearings on the proposal will be conducted at 2:30 p.m. and 6:30 p.m. respectively on Tuesday, March 27, 2007 at the Lake Wallenpaupack Environmental Learning Center in Hawley, PA. Written comments will be accepted through April 6, 2007. To allow sufficient time for consideration of written comments, comments must be received, not merely postmarked, by that date. In addition, three informational meetings will be held on the proposal. The first will take place during the morning conference session of the Commission's regularly scheduled meeting on Wednesday, February 28, 2007 at the DRBC office building in West Trenton, NJ. The second will take place during a meeting of the Commission's Regulated Flow Advisory Committee (RFAC), which will take place at 10 a.m. on Tuesday, March 6, 2007 at the Commission's office building in West Trenton, NJ. The third informational meeting will take place at 1 p.m. on Tuesday, March 27, 2007, immediately prior to the first public hearing on the proposal, scheduled for that date at the Lake Wallenpaupack Environmental Learning Center in Hawley, PA.

ADDRESSES: Directions to the Lake Wallenpaupack Environmental Learning Center are available at *http://www.pplweb.com/lake+wallenpaupack/contacts+and+directions/get+directions.htm* and will be posted on the DRBC Website, *http://www.drbc.net*, by February 20, 2007. Driving directions to the Commission's office building, located at 25 State Police Drive in West Trenton, NJ, are available on the DRBC Web site at *http://www.drbc.net*. Please do not rely upon MapQuest or other Internet mapping services for driving directions, as they do not provide accurate directions to the DRBC. Written comments must include the name, address and affiliation of the commenter. Comments may be submitted by e-mail to *paula.schmitt@drbc.state.nj.us*; by U.S. Mail to: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628–0360; and by fax to Attn: Commission Secretary at 609–883–9522. In all cases, the subject line, ''Comment on Flexible Flow Management Plan for City Delaware Reservoirs'' should be included.

FOR FURTHER INFORMATION CONTACT: The text of the proposed FFMP in its entirety will be posted on the Web site of the Delaware River Basin Commission, *http://www.drbc.net*, on Tuesday, February 20, 2007 and will remain posted through May 9, 2007. Please contact Pamela M. Bush, Esquire, Commission Secretary and Asst. General Counsel at 609–883–9500 ext. 203 with questions about the proposed rule change or the rulemaking process.

SUPPLEMENTARY INFORMATION:

Background. The flow management objectives considered by the Supreme Court Decree of 1954 were narrower than the diverse objectives that have emerged in the decades since. Today, the finite waters of the Delaware, and the limited storage available in the basin are being managed for multiple purposes, including among others water supply and drought mitigation, flood mitigation, and habitat protection in the tailwaters fishery, the mainstem and the estuary. In accordance with the Delaware River Basin Compact, a statute concurrently enacted in 1961 by the U.S. Government and the four basin States—Delaware, New Jersey, New York and Pennsylvania—the Delaware River Basin Commission may modify diversions, releases, rights, conditions and obligations established by the decree, provided that the decree parties unanimously consent to such modifications. The Commission and decree parties have made use of this authority to provide flexibility to respond to fluctuating hydrologic conditions and evolving priorities throughout the Commission's history. In 1983, in accordance with an agreement among the parties known as the ''Good Faith Agreement,'' a reservoir release regime was established on a permanent basis to supplement the provisions of the decree for the limited purpose of protecting and enhancing the tailwaters fishery. Since the adoption of this regime in the form of a docket (similar to a permit) issued to the New York State Department of Environmental Conservation—Docket D–77–20 CP (Revised)—the ''fishery management program'' as the plan is sometimes called, has been modified repeatedly by the Commission with the unanimous consent of the decree parties. Resolution No. 2004–3, approving Docket D–77–20 CP (Revision 7), established the three-year interim program that is set to expire on May 31, 2007. A series of temporary spill mitigation programs also have been established, the latest in the form of Docket D–77–20 CP (Revision 9), approved by DRBC Resolution No. 2006–18 in September 2006.

Unlike the experimental programs instituted by the Commission in the

past, the FFMP is intended to provide a comprehensive framework for addressing multiple flow management objectives, including, in addition to water supply, drought mitigation and protection of the tailwaters fishery, a diverse array of habitat protection needs in the mainstem, estuary and bay, flood mitigation, recreational goals and salinity repulsion. Some of the flow needs identified by the parties have not yet been defined sufficiently for the development of detailed plans. These include protection of the dwarf wedgemussel, a Federal and State-listed endangered species present in the mainstem, oyster production in Delaware Bay, and protection of warm-water and migratory fisheries in the lower basin. Incremental and periodic adjustments are expected to be made to the FFMP for these purposes, based upon ongoing monitoring, scientific investigation, and periodic re-evaluation of program elements.

A central feature of the reservoir release programs implemented to date for management of the tailwaters fishery has been the use of reservoir storage ''banks'' to be used for narrowly defined purposes under specific hydrologic and temperature conditions and at specified times of the year. These are applied in conjunction with a set of fixed seasonal flow targets. The system requires complex daily flow and temperature modeling as a component of determining the releases, and as a result, the program is difficult and costly to administer. The current approach also lacks the seasonal fluctuations characteristic of a natural flow regime. The FFMP would largely eliminate the use of banks and would base releases instead on reservoir storage levels, resulting in larger releases when water is abundant and smaller releases when storage is at or below normal. The result would more closely approximate a natural flow regime. In addition, the FFMP would provide for more gradual transitions (or ''ramping'') from higher to lower releases and vice versa than the current regime. The FFMP would include a spill mitigation component similar to but potentially more aggressive than the temporary programs implemented in the past. The storage represented by snowpack water content would continue to be considered.

Hydrologic modeling and habitat assessments are being undertaken to evaluate the sustainable benefits of the FFMP for the tailwaters fishery and for spill mitigation. In addition, an evaluation is being made of the potential benefits and costs of increasing storage in one or more of the City Delaware Reservoirs that may improve the capacity of the system to meet the full range of flow objectives.

If consensus among the decree parties and DRBC commissioners cannot be reached on details of the FFMP in time to approve and initiate implementation of the plan by June 1, 2007, the parties intend to continue to work at refining and improving the FFMP until such a consensus can be reached. The Commission will conduct a separate notice and comment rulemaking process on the proposed program at that time. Under such circumstances, for an interim period, the parties will consider extending the current fisheries management program or reinstating a previous regime. In either case, the releases program will be considered in combination with a spill mitigation plan.

The proposed FFMP in its entirety will be posted on the Web site of the Delaware River Basin Commission, *http://www.drbc.net*, on Tuesday, February 20, 2007.

Dated: February 5, 2007.

Pamela M. Bush,

Commission Secretary.

[FR Doc. E7–2169 Filed 2–9–07; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–07–004]

RIN 1625–AA08

Special Local Regulations for Marine Events; St. Mary's River, St. Mary's City, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the enforcement period for the ''St. Mary's Seahawk Sprint'' held annually on the waters of the St. Mary's River, near St. Mary's City, Maryland. This proposed rule is intended to restrict vessel traffic in portions of the St. Mary's River and is necessary to provide for the safety of life on navigable waters during the event.

DATES: Comments and related material must reach the Coast Guard on or before February 27, 2007.

ADDRESSES: You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 415 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Inspections and Investigations Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis M. Sens, Project Manager, Inspections and Investigations Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–07–004), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

On April 21, 2007, St. Mary's College of Maryland will sponsor the ''Seahawk Sprint'' crew races on the waters of the St. Mary's River. The event will consist of intercollegiate crew rowing teams racing along a 2000 meter course on the waters of the St. Mary's River. A fleet of spectator vessels is expected to gather near the event site to view the competition. The regulation at 33 CFR 100.527 is effective annually for the St. Mary's College crew races marine event. Paragraph (d) of Section 100.527 establishes the enforcement date for the

St. Mary's Seahawk crew races. This regulation proposes to temporarily change the enforcement date from the second Saturday in April to the third Saturday in April, holding the marine event on April 21, 2007. St. Mary's College crew club who is the sponsor for this event intends to hold this event annually, however, they have changed the date of the event for 2007 so that it is outside the scope of the existing enforcement period. To provide for the safety of participants, spectators, support and transiting vessels, the Coast Guard proposes to temporarily restrict vessel traffic in the event area during the crew races.

Discussion of Proposed Rule

The Coast Guard proposes to temporarily suspend the regulations at 33 CFR 100.527 by revising the date of enforcement in paragraph (d) to reflect the event will be conducted in 2007 on the third Saturday in April, April 21, 2007. This proposed change is needed to accommodate the sponsor crew race schedule. The special local regulations will be enforced from 7 a.m. to 5 p.m. on April 21, 2007, and will restrict general navigation in the regulated area during the crew races. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the effective period. The regulated area is needed to control vessel traffic during the event to enhance the safety of participants and transiting vessels.

In addition to notice in the **Federal Register**, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, and marine information broadcasts so mariners can adjust their plans accordingly.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The effect of this proposed action merely establishes the date on which the existing regulation would be in effect and would not impose any new restrictions on vessel traffic.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would effect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the St. Mary's River during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would merely change the date on which the existing regulations would be enforced in the regulated area and would not impose any new restrictions on vessel traffic.

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

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine event permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. In § 100.527, from 7 a.m. to 5 p.m. on April 21, 2007,suspend paragraph (d).

3. In § 100.527, from 7 a.m. to 5 p.m. on April 21, 2007, add a new paragraph (d) to read as follows:

§ 100.527 St. Mary's River, St. Mary's City, Maryland.

* * * * *

(d) *Enforcement period*. This section will be enforced from 7 a.m. to 5 p.m. on April 21, 2007. A notice of enforcement of this section will be disseminated through the Fifth Coast Guard District Local Notice to Mariners announcing the specific event date and times. Notice will also be made via marine Safety Radio Broadcast on VHF–FM marine band radio channel 22 (157.1 MHz).

* * * * *

Dated: January 25, 2007,

Larry L. Hereth,

Rear Admiral, U. S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E7–2231 Filed 2–9–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–06–112]

RIN 1625–AA87

Security Zone; Severn River and College Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a permanent security zone on certain waters of the Severn River and College Creek in Maryland. This action is necessary in order to ensure the security of high-ranking public officials and safeguard the public at large against terrorist acts or incidents during the U.S. Naval Academy graduation ceremony, held annually on the Friday before the Memorial Day holiday in May. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port of Baltimore.

DATES: Comments and related material must reach the Coast Guard on or before April 13, 2007.

ADDRESSES: You may mail comments and related material to Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland 21226–1791. Coast Guard Sector Baltimore, Waterways Management Division, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Sector Baltimore, Waterways Management Division, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576–2674 or (410) 576–2693.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–06–112), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all

comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. Due to increased awareness that future terrorist attacks are possible, the Coast Guard, as lead federal agency for maritime homeland security, has determined that the Captain of the Port Baltimore must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. This security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

In this particular rulemaking, to address the aforementioned security concerns during the highly-publicized public event, and to take steps to prevent the catastrophic impact that a terrorist attack against high-ranking public officials and the public at large during the annual U.S. Naval Academy graduation ceremony would have on the public interest, the Captain of the Port, Baltimore, Maryland proposes to establish a security zone upon all waters of the Severn River, from shoreline to shoreline, bounded by a line drawn from Horseshoe Point, at 38°59′47.6″ N, 076°29′33.2″ W; eastward across the Severn River to a point located at 39°00′01.5″ N, 076°29′08.5″ W; and a line drawn from Biemans Point, at 38°59′14.4″ N, 076°28′30.1″ W; westward across the Severn River to a point 38°59′03.5″ N, 076°28′50.0″ W; located on the Naval Academy waterfront. This security zone includes the waters of College Creek eastward of the King George Street Bridge. This security zone would help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against a large number of participants during the event. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on the U.S. Naval Academy during its annual graduation ceremony would have on the large number of participants, and the surrounding area and communities, a security zone is prudent for this type of event.

Discussion of Proposed Rule

Each spring, on the Friday before the Memorial Day holiday in May, the U.S. Naval Academy conducts an outdoor graduation ceremony. The commencement takes place at 10 a.m. local time and is attended by high-ranking officials of the United States and over 30,000 participants and guests on the Naval Academy grounds, in Annapolis, Anne Arundel County, Maryland. The event is held indoors in the event of inclement weather.

This security zone is necessary to prevent vessels or persons on designated waters of the Severn River, between Horseshoe Point and Biemans Point, and all waters of College Creek eastward of the King George Street Bridge, from approaching the Naval Academy and thereby bypassing the security measures for the event established by the United States Secret Service and Naval Support Activity Annapolis. Marine vessel travel in the area of the Naval Academy Bridge in the Severn River and College Creek would be restricted. The area affected covers nearly 2000 yards of the Severn River's length.

Except for Public vessels and vessels at berth, mooring or at anchor, this rule would require all vessels in the designated security zone, as defined by this rule, underway at the time this security zone is implemented to immediately proceed out of the security zone. We would issue Broadcast Notices to Mariners to further publicize the security zone and any revisions to the zone. Entry into or remaining in this zone would be prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland.

Regulatory Evaluation

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

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

The operational restrictions of the security zone are tailored to provide the minimal disruption of vessel operations necessary to provide immediate, improved security for persons, vessels, and designated waters of the Severn River, between Horseshoe Point and Biemans Point, and all waters of College Creek eastward of the King George Street Bridge, located in Annapolis, Maryland. Additionally, this security zone is temporary in nature any hardships experienced by persons or vessels are outweighed by the national interest in protecting high-ranking officials of the United States and the public at large from the devastating consequences of acts of terrorism, and from sabotage or other subversive acts, accidents, or other causes of a similar nature.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities: The owners or operators of vessels intending to operate, remain or anchor on the Severn River, between Horseshoe Point and Biemans Point, and on College Creek, eastward of the King George Street Bridge, from 7:30 a.m. to 2 p.m. annually on the Friday before the Memorial Day holiday in May. This security zone would not have a significant economic impact on a substantial number of small entities due to the limited duration of the enforcement of this regulation and during these limited enforcement periods vessels may seek permission of the Captain of the Port, Baltimore, to enter and transit the zone. Before the effective period, we would issue maritime advisories widely available to users of the Severn River and College Creek.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Ronald L. Houck, at Coast Guard Sector Baltimore, Waterways Management Branch, at telephone number (410) 576–2674. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rulemaking is a security zone less than one week in duration. A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' (CED) are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.509 to read as follows:

§ 165.509 Security Zone; Severn River and College Creek, Annapolis, MD.

(a) *Definitions*. For purposes of this section, the *Captain of the Port, Baltimore, Maryland* means the Commander, Coast Guard Sector Baltimore, Maryland or any Coast Guard commissioned, warrant, or petty officer

who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his or her behalf.

(b) *Location*. The following area is a security zone: All waters of the Severn River, from shoreline to shoreline, bounded by a line drawn from Horseshoe Point, at 38°59′47.6″ N, 076°29′33.2″ W; eastward across the Severn river to a point located at 39°00′01.5″ N; 076°29′08.5″ W; and a line drawn from Biemans Point, at 38°59′14.4″ N, 076°28′30.1″ W; westward across the Severn River to a point 38°59′03.5″ N, 076°28′50.0″ W; located on the Naval Academy waterfront. This security zone includes the waters of College Creek eastward of the King George Street Bridge (NAD 1983).

(c) *Regulations*. (1) The general regulations governing security zones found in § 165.33 apply to the security zone described in paragraph (b) of this section.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Captain of the Port, Baltimore, Maryland.

(3) Persons or vessels requiring entry into or passage through the security zone must first request authorization from the Captain of the Port, Baltimore to seek permission to transit the area. The Captain of the Port, Baltimore, Maryland can be contacted at telephone number (410) 576–2693. The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, VHF channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, Baltimore, Maryland and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(d) *Enforcement*. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) *Enforcement period*. This section will be enforced annually on the Friday before the Memorial Day holiday in May from 7:30 a.m. to 2 p.m. local time.

Dated: January 29, 2007.

Brian D. Kelley,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. E7–2334 Filed 2–9–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212, and 252

RIN 0750–AF55

Defense Federal Acquisition Regulation Supplement; DoD Representations and Certifications in the Online Representations and Certifications Application (DFARS Case 2006–D032)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address DoD-unique requirements relating to the Online Representations and Certifications Application (ORCA). ORCA presently includes only representations and certifications required by the Federal Acquisition Regulation, but is being revised to also include those required by the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 13, 2007, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D032, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil*. Include DFARS Case 2006–D032 in the subject line of the message.
- *Fax:* (703) 602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Felisha Hitt, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Felisha Hitt, (703) 602–0310.

SUPPLEMENTARY INFORMATION:

A. Background

Subpart 4.12 of the Federal Acquisition Regulation (FAR) requires prospective contractors to complete electronic annual representations and certifications in ORCA, in conjunction with required registration in the Central Contractor Registration database. ORCA presently includes only representations and certifications required by the FAR, but is being revised to also include those required by the DFARS. This will eliminate the need for offerors to submit the same information to various DoD offices in response to individual solicitations.

Section 204.1202(2) of the proposed rule lists the existing DFARS representations and certifications that will be included in ORCA. The DFARS representations and certifications implement DoD-unique statutory requirements and trade agreements, and contain special requirements applicable to the significant number and various types of defense contracts and subcontracts performed outside the United States.

The proposed rule contains a substitute paragraph (c) for use with the provision at FAR 52.204–8, Annual Representations and Certifications, to permit the inclusion of information relating to both the FAR and the DFARS. An offeror must include information in paragraph (c) only if changes to the offeror's annual representations and certifications apply to a particular solicitation.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. The analysis is summarized as follows:

The objective of the rule is to provide a centralized location for the representation and certification information required by the DFARS, thereby eliminating the need for offerors to submit the same information to various DoD offices in response to individual solicitations. The legal basis for the rule is 41 U.S.C. 421. The rule will apply to all entities registered in the Central Contractor Registration database. FAR 4.1102 requires that prospective contractors be registered in the database before the award of a contract or agreement, with certain exceptions. Administrative personnel that have general knowledge of the contractor's business should be able to enter the required information into the database. The rule is expected to have a positive impact on small business concerns by reducing administrative burdens.

A copy of the analysis may be obtained from the point of contact specified herein. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D032.

C. Paperwork Reduction Act

The information collection requirements of the representations and certifications addressed in this proposed rule that require offerors to provide specific fill-in information have been approved by the Office of Management and Budget under Control Numbers 0704–0229, 0704–0245, and 0704–0259. The proposed rule does not impose information collection requirements beyond those already required by existing DFARS representations and certifications.

List of Subjects in 48 CFR Parts 204, 212, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 204, 212, and 252 as follows:

1. The authority citation for 48 CFR parts 204, 212, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Subpart 204.12 is added to read as follows:

Subpart 204.12—Annual Representations and Certifications

204.1202 Solicitation provision and contract clause.

When using the provision at FAR 52.204–8, Annual Representations and Certifications—

(1) Use the provision with 252.204–7XXX, Alternate A, Annual Representations and Certifications; and

(2) Do not include the following representations and certifications:

(i) 252.209–7005, Reserve Officer Training Corps and Military Recruiting on Campus.

(ii) 252.212–7000, Offeror Representations and Certifications—Commercial Items.

(iii) 252.216–7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government.

(iv) 252.225–7000, Buy American Act—Balance of Payments Program Certificate.

(v) 252.225–7020, Trade Agreements Certificate.

(vi) 252.225–7031, Secondary Arab Boycott of Israel.

(vii) 252.225–7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.

(viii) 252.225–7042, Authorization to Perform.

(ix) 252.229–7003, Tax Exemptions (Italy).

(x) 252.229–7005, Tax Exemptions (Spain).

(xi) 252.239–7011, Special Construction and Equipment Charges.

(xii) 252.247–7022, Representation of Extent of Transportation by Sea.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

3. Section 212.301 is amended by adding paragraph (f) introductory text to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) The following additional provisions and clauses apply to DoD solicitations and contracts for the acquisition of commercial items. If the offeror has completed the provisions listed in paragraph (f)(i) or (ii) of this section electronically as part of its annual representations and certifications at *https://orca.bpn.gov*, the contracting officer may consider this information instead of requiring the offeror to complete these provisions for a particular solicitation.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.204–7XXX is added to read as follows:

252.204–7XXX Alternate A, Annual Representations and Certifications.

Alternate A, Annual Representations and Certifications (XXX 2007)

As prescribed in 204.1202, substitute the following paragraph (c) for paragraph (c) of the provision at FAR 52.204–8:

(c) The offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) Web site at *https://orca.bpn.gov/*. After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer, and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [offeror to insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR/DFARS Clause #	Title	Date	Change

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.

[FR Doc. E7–2205 Filed 2–9–07; 8:45 am]

BILLING CODE 5001–08–P

Notices

Federal Register
Vol. 72, No. 28
Monday, February 12, 2007

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

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Wednesday, February 14, 2007, 1:30–2 p.m.

PLACE: Middle East Broadcasting Networks, Inc., 7600 Boston Blvd., Suite D, Springfield, VA 22153.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 52b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Carol Booker at (202) 203–4545.

Dated: February 7, 2007

Carol Booker,

Legal Counsel.

[FR Doc. 07–630 Filed 2–8–07; 10:57 am]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: License Exception TMP: Special Requirements.

Agency Form Number: N/A.

OMB Approval Number: 0694–0029.

Type of Request: Extension of a currently approved collection of information.

Burden: 1 hour.

Average Time Per Response: 20 minutes.

Number of Respondents: 4.

Needs and Uses: If commodities shipped under License Exception TMP are for news-gathering purposes, the exporter must send BIS a copy of the packing list or similar documentation. Also, a TMP exporter must send BIS an explanatory letter if commodities shipped must be detained abroad beyond the 12 month limit. The information is used to determine whether or not an extension should be granted.

Affected Public: Individuals or households, business or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, email address, *David_Rostker@omb.eop.gov,* or fax number, (202) 395–7285.

Dated: February 6, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–2300 Filed 2–9–07; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southeast Region Office Socioeconomic Survey of Gulf Shrimp Fishermen.

Form Number(s): None.

OMB Approval Number: 0648–0476.

Type of Request: Regular submission.

Burden Hours: 450.

Number of Respondents: 600.

Average Hours Per Response: 45 minutes.

Needs and Uses: National Oceanic and Atmospheric Administration (NOAA) proposes to collect socioeconomic data from commercial fishermen in the Gulf of Mexico shrimp fishery who hold a permit for shrimp fishing in federal waters (U.S. Exclusive Economic Zone). Information about variable and fixed costs, capital investment and other economic information will be collected. This data complements other data already collected and is needed to conduct analyses that will improve the management of the shrimp fishery and to satisfy legal requirements. The data will be used to assess how fishermen will be impacted by and respond to federal regulation likely to be considered by fishery managers.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance

Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: February 6, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–2301 Filed 2–9–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket No. 4–2007]

Foreign–Trade Zone 121 – Albany, New York, Application for Subzone, MPM Silicones, LLC, (Silicone–Based Products and Intermediaries), Waterford, New York

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Capital District Regional Planning Commission, grantee of FTZ 121, requesting special–purpose subzone status for the manufacturing and warehousing facilities of MPM Silicones, LLC, an affiliate of Momentive Performance Materials, Inc. (Momentive), located in Waterford, New York. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 2, 2007.

The Momentive facility (1,000 employees, 581 acres) is located at 260 Hudson River Road, in Waterford, New York. The facility is used for the manufacturing and warehousing of methyl chloride, organo functional silanes, silicone fluids, plastics additives, anti–fog coating and primers, pressure sensitive adhesives, abrasion resistant coatings, adhesive sealants, architectural coatings, urethane foam additives, encapsulants, uncured silicone rubber, liquid injection molding components, paper release coatings, personal care silicone fluids and gels, textile coatings, flurosilicones and phenylsilicones. Components and materials sourced from abroad, representing some 25–35% of all parts consumed in manufacturing, include: light oils; silicon; silicon dioxide; platinum; raw trichlorosilane; methyl chloride; raw trifluropropene; methanol; isopropyl alcohol; *n*–butyl alcohol; monomethyl ethers; ether–phenols; ether–alcohol-phenols; aromatic additives; acyclic monocarboxylic acids; oleic, linoleic and linolenic acids; cyclic monocarboxylic acids; polycarboxylic acids; carboxylic acids; inorganic acid esters; acyclic monoamines; amine function compounds; cyclanic, cyclenic, or cycloterpenic mono- or polyamines; aromatic polyamines; other organo–inorganic compounds; heterocyclic compounds; organic surface–active agents; lubricating preparations; waxes; glues; adhesives; activated carbon; insecticides; finishing agents; compound plasticizers; antioxidizing preparations; reaction initiators; additives for cements, mortars or concrete; binders for foundry molds or cores; polyethers; epoxide resins; polyurethanes; silicones; carboxymethylcellulose; articles of plastic; gaskets, washers and other seals; articles of precious metal; and, copper–zinc base alloys (duty rates range from duty–free to 7%). The application indicates that any inputs subject to antidumping or countervailing duties, such as silicon, and inputs that fall under Chapter 32 of the HTSUS will be admitted to the subzone in privileged foreign (PF) status (19 CFR 146.41).

FTZ procedures would exempt Momentive from customs duty payments on the foreign components used in export production. Some 20 percent of the plant's shipments are exported. On its domestic sales, Momentive would be able to choose the duty rates during customs entry procedures that apply to the finished products (duty rates range from duty–free to 6.5%) for the foreign inputs noted above (except for inputs in PF status). The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 13, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 30, 2007.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 707 Westchester Ave., Suite 209, White Plains, NY 10604.

Office of the Executive Secretary, Foreign–Trade Zones Board, U.S. Department of Commerce, Room 2814B, 1401 Constitution Ave. NW, Washington, DC 20230.

For further information, contact Elizabeth Whiteman at Elizabeth__Whiteman@ita.doc.gov or (202) 482–0473.

Dated: February 2, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–2347 Filed 2–9–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Written Assurances for Exports of Technical Data Under License Exception TSR

ACTION: Extension of a currently approved collection: Request for Comments.

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 April 13, 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 Larry Hall, BIS ICB Liaison, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION

I. Abstract

U.S. exporters are required to receive letters of assurance from their foreign

importers stating that they will not export or reexport technical data to destinations outlined in the E.A.R. unless they have received prior authorization from BIS.

II. Method of Collection

Submitted in written form.

III. Data

OMB Number: 0694–0023.
Form Number: N/A.
Type of Review: Extension of a currently approved collection.
Affected Public: Business or other for-profit institutions.
Estimated Number of Respondents: 200.
Estimated Time per Response: 30 minutes.
Estimated Total Annual Burden Hours: 104.
Estimated Total Annual Cost: No start-up capital expenditures.

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. In addition, the public is encouraged to provide suggestions on how to reduce and/or consolidate the current frequency of reporting.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 6, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–2298 Filed 2–9–07; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Delivery Verification Procedure

ACTION: Extension of a currently approved collection: Request for comments.

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 April 13, 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 Larry Hall, BIS ICB Liaison, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Foreign governments sometimes require U.S. importers of strategic commodities to furnish their foreign supplier with a U.S. Delivery Verification Certificate validating that the commodities shipped to the U.S. were in fact received. This procedure increases the effectiveness of controls over exports of strategic commodities.

II. Method of Collection

Submitted on forms.

III. Data

OMB Number: 0694–0016.
Form Number: BIS–647P.
Type of Review: Extension of a currently approved collection.
Affected Public: Businesses or other for-profit institutions.
Estimated Number of Respondents: 100.
Estimated Time per Response: 31 minutes.
Estimated Total Annual Burden Hours: 56.
Estimated Total Annual Cost: No start-up capital expenditures.

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. In addition, the public is encouraged to provide suggestions on how to reduce and/or consolidate the current frequency of reporting.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 6, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–2299 Filed 2–9–07; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

(C–423–806, C–351–818, C–201–810, C–469–804, C–401–804, A–423–805, A–351–817, A–405–802, A–428–816, A–201–809, A–455–802, A–485–803, A–469–803, A–401–805, A–412–814, A–583–080)

Revocation Pursuant to Second Five–Year (Sunset) Reviews: Countervailing Duty Orders on Certain Steel Products from Belgium, Brazil, Mexico, Spain and Sweden; Antidumping Duty Orders on Certain Cut–to-Length Carbon Steel Plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and the United Kingdom; Antidumping Finding on Carbon Steel Plate from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the International Trade Commission (the Commission) that revocation of the countervailing duty (CVD) orders on certain steel products from Belgium, Brazil, Mexico, Spain, and Sweden [1]; the antidumping duty (AD) orders on cut–to-length carbon steel plate (CTL plate) from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and the United Kingdom; and

[1] Each of these countervailing duty orders on certain steel products covered certain cut-to-length plate only. *See, e.g., Countervailing Duty Order and Amendment to Final Affirmative Countervailing Duty Determination: Certain Steel Products From Belgium* 58 FR 43749 (August 17, 1993).

the antidumping (AD) finding on carbon steel plate from Taiwan, would not be likely to lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseable time, the Department of Commerce (the Department) is publishing this notice of revocation of these CVD and AD orders and AD finding pursuant to Section 751(d)(2) of the Tariff Act of 1930 as amended (the Act).

EFFECTIVE DATE: December 15, 2005.

FOR FURTHER INFORMATION CONTACT: Deborah Scott, Jacqueline Arrowsmith, or Dana Mermelstein, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–2657, (202) 482–5255; (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 15, 2000, the Department published the continuation of the countervailing duty orders on CTL plate from Belgium, Brazil, Mexico, Spain, and Sweden; the antidumping duty orders on CTL plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and the United Kingdom; and the antidumping finding on carbon steel plate from Taiwan. *See Continuation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, South Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom*, 65 FR 78469 (December 15, 2000)(*Continuation Notice*).[2] On November 1, 2005, pursuant to section 751(c) of the Act and 19 CFR 351.218, the Department initiated, and the Commission instituted, the sunset reviews of these countervailing and antidumping duty orders, and antidumping finding, by publishing the respective notices of initiation in the **Federal Register**. *See Initiation of Five–Year (''Sunset'') Reviews*, 70 FR 65884 (November 1, 2005) and *Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom*, 70 FR 62324 (October 31, 2005).

As a result of the sunset reviews, the Department found that revocation of the countervailing duty orders would likely lead to continuation or recurrence of countervailable subsidies, and notified the Commission of the countervailing duty rates likely to prevail were the orders revoked. *See Cut–to Length Carbon Steel Plate from Brazil: Final Results of Expedited Five–year (''Sunset'') Review of the Countervailing Duty Order*, 71 FR 32522 (June 6, 2006); *Cut–to Length Carbon Steel Plate from Mexico: Final Results of Expedited Five–year (''Sunset'') Review of the Countervailing Duty Order*, 71 FR 32521 (June 6, 2006); *Cut–to Length Carbon Steel Plate from Spain: Final Results of Expedited Five–year (''Sunset'') Review of the Countervailing Duty Order*, 71 FR 32523 (June 6, 2006). *See also Cut–to Length Carbon Steel Plate from Belgium: Final Results of Full Sunset Review,* 71 FR 58585 (October 4, 2006); *Final Results of Full Sunset Review: Cut–to-Length Carbon Steel Plate from Sweden*, 71 FR 58587 (October 4, 2006).

The Department also found that revocation of the antidumping duty orders and finding would likely lead to continuation or recurrence of dumping, and notified the Commission of the magnitude of the margins likely to prevail were the orders and finding to be revoked. *See Cut–to-Length Carbon Steel Plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and the United Kingdom and Carbon Steel Plate from Taiwan; Second Five–year (Sunset) Reviews of Antidumping Duty Orders and Antidumping Finding; Final Results*, 71 FR 11577 (March 8, 2006).

On December 14, 2006, the Commission determined that revocation of these countervailing and antidumping duty orders, and of the antidumping finding on carbon steel plate from Taiwan, would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, pursuant to section 751(c) of the Act. The Commission notified the Department and published its decision on January 31, 2007. *See Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom*, 72 FR 4529 (January 31, 2007) and USITC Publication 3899 entitled *Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom: Investigation Nos. AA1921–197 (Second Review); 701–TA–319, 320, 325–327, 348, and 350 (Second Review); and 731–TA–573, 574, 576, 578, 582–587, 612, and 614–618 (Second Review)* (January 2007).

Scope of the Countervailing Duty Orders (CTL Plate from Belgium, Brazil, Mexico, Spain and Sweden) and Antidumping Duty Orders (CTL Plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and the United Kingdom)

The products covered by these countervailing and antidumping duty orders include hot–rolled carbon steel universal mill plates (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot–rolled carbon steel flat–rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the U.S. Harmonized Tariff Schedule (HTSUS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat–rolled products of non–rectangular cross–section where such cross–section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') -- for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

As a result of changed circumstances reviews with respect to Finland, Germany, and the United Kingdom,[3] the

[2] In addition to the continuations of the CTL plate orders, this notice included in the continuations of orders on corrosion-resistant carbon steel flat products, which are not subject to the instant revocation notice.

[3] *''See Certain Cut-To-Length Carbon Steel Plate from Finland, Germany and the United Kingdom:*

antidumping duty orders on all three countries and the countervailing duty order on the United Kingdom[4] were partially revoked with respect to certain cut–to-length carbon steel plate with a maximum thickness of 80 mm in steel grades BS 7191, 355 EM and 355 EMZ, as amended by Sable Offshore Energy Project specification XB MOO Y 15 0001, types 1 and 2.

As a result of a decision by the Court of International Trade,[5] cut–to-length floor plate ''with patterns in relief derived directly from the rolling process'' was excluded from the scope of the countervailing duty and antidumping duty orders on CTL Plate from Belgium.

Scope of the Antidumping Finding (Carbon Steel Plate from Taiwan)

The merchandise covered by this antidumping finding is hot–rolled carbon steel plate, 0.1875 inch or more in thickness, over 8 inches in width, not in coils, not pickled, not coated or plated with metal, not clad, other than black plate, and not pressed or stamped to nonrectangular shape. The merchandise under review is currently classifiable under items 7208.40.30.30, 7208.40.30.60, 7208.51.00.30, 7208.51.00.45, 7208.51.00.60, 7208.52.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.13.00.00, 7211.14.00.30, 7211.14.00.45, 7211.90.00.00, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Determination

As a result of the determination by the Commission that revocation of these countervailing and antidumping duty orders, and antidumping finding, is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department is revoking the countervailing duty orders on CTL plate from Belgium, Brazil, Mexico, Spain and Sweden; the antidumping duty orders on CTL plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and the United Kingdom; and the antidumping finding on carbon steel plate from Taiwan, pursuant to sections 751(c) and 751(d) of the Act. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is December 15, 2005 (*i.e.*, the fifth anniversary of the date of publication in the **Federal Register** of the *Continuation Notice*). The Department will notify U.S. Customs and Border Protection to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after December 15, 2005, the effective date of revocation of these countervailing and antidumping duty orders, and antidumping finding. The Department will complete any pending administrative reviews of these orders or finding and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

These revocations pursuant to five–year sunset reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and are published pursuant to section 777(i)(1) of the Act.

Dated: February 2, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E7–2220 Filed 2–9–07; 8:45 am]

Billing Code: 3510–DS–S

Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews, and Revocation of Orders in Part, 64 FR 46343 (August 25, 1999).

[4]The Department found that revocation would not be likely to lead to continuation or recurrence of countervailable subsidies and revoked the order on cut-to-length carbon steel plate from the United Kingdom. *See Cut-to Length Carbon Steel Plate from the United Kingdom: Final Results of Full Sunset Review*, 71 FR 58587 (October 4, 2006).

[5] *See Duferco Steel, Inc. v. United States*, 26 CIT 1241 (October 17, 2002).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Circular Welded Non–Alloy Steel Pipe From Mexico: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from Mueller Comercial de Mexico, S. de R.L. de C.V (''Mueller''), a Mexican manufacturer of circular welded non–alloy steel pipe, and Southland Pipe Nipples Co., Inc. (''Southland''), an interested party, the Department of Commerce (''the Department'') initiated an administrative review of the antidumping duty order on circular welded non–alloy steel pipe from Mexico. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 77720 (December 27, 2006). This administrative review covered the period November 1, 2005, through October 31, 2006. We are now rescinding this review due to requests by parties to withdraw from the review.

EFFECTIVE DATE: February 12, 2007.

FOR FURTHER INFORMATION CONTACT: John Drury or Stephen Bailey, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–0193, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on circular welded non–alloy steel pipe from Mexico on November 2, 1992. *See Notice of Antidumping Duty Orders: Certain Circular Welded Non–Alloy Steel Pipe from Brazil, the Republic of Korea (''Korea''), Mexico, and Venezuela and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Welded Non–Alloy Steel Pipe from Korea*, 57 FR 49453 (November 2, 1992). The Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order for the period November 1, 2005, through October 31, 2006, on November 1, 2006. See 71 FR 64240. Respondents Hylsa S.A. de C.V. (''Hylsa''), Mueller, and interested party Southland requested that the Department conduct an administrative review of the antidumping duty order on circular welded non–alloy steel pipe and tube from Mexico on November 30, 2006. Hylsa withdrew its request for review on December 20, 2006. In response to the requests from Mueller and Southland, the Department published the initiation of the antidumping duty administrative review on circular welded non–alloy steel pipe from Mexico on December 27, 2005. See 70 FR 77720. The Department received requests for withdrawal from the administrative review from Mueller and Southland on December 29, 2006.

Rescission of the Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. See 19 CFR 351.213(d)(1). Mueller, Southland and Hylsa have withdrawn their requests in a timely manner. Therefore, we are rescinding this review. The Department intends to issue assessment instructions to U.S. Customs and Border Protection 41 days after the date of publication of this rescission of administrative review. See section 356.8(a) of the Department's regulations.

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: February 6, 2007.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–2348 Filed 2–9–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–485–803)

Notice of Final Results of Antidumping Duty Administrative Review and Final Partial Rescission: Certain Cut–to-Length Carbon Steel Plate from Romania

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 11, 2006, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on certain cut–to-length carbon steel plate (''cut–to-length plate'') from Romania. The review covers Mittal Steel Galati, S.A. (''MS Galati'') a Romanian producer/exporter of the subject merchandise. This administrative review also covers Metalexportimport SA (''MEI''), an unaffiliated exporter for which the Department is rescinding this review. The period of review is August 1, 2004, through July 31, 2005.

EFFECTIVE DATE: February 12, 2007

FOR FURTHER INFORMATION CONTACT: Dena Crossland or John Drury, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3362 or (202) 482–0195, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 2006, the Department published the preliminary results of the administrative review of the antidumping duty order on cut–to-length plate from Romania. *See Certain Cut–to-Length Carbon Steel Plate from Romania: Preliminary Results of the Antidumping Duty Administrative Review and Partial Rescission*, 71 FR 53377 (September 11, 2006) (''*Preliminary Results*''). We invited interested parties to comment on the Preliminary Results.

On October 11, 2006, we received case briefs from MS Galati and the domestic interested party IPSCO Steel Inc. (''IPSCO''). Additionally, on October 11, 2006, we received a letter from petitioner, Nucor Corporation (''Nucor''), stating its support for the case brief filed by IPSCO. We received rebuttal briefs from IPSCO, Nucor, and MS Galati on October 18, 2006. On October 11, 2006, MS Galati requested a public hearing in this review, but withdrew its request on October 20, 2006. Therefore, no public hearing was held.

Final Partial Rescission

We preliminarily determined to rescind the review with respect to MEI because we found during verification that MEI is not the producer of subject merchandise, MEI does not take title to the merchandise which MS Galati exports through MEI, and MS Galati has knowledge of the destination of its subject merchandise exports. *See Preliminary Results*. No parties commented on this issue. Therefore, we have received no new information or evidence of changed circumstances that would cause the Department to reconsider that determination. Thus, we are finally rescinding the administrative review with respect to MEI.

Scope of the Order

The products covered by this order include hot–rolled carbon steel universal mill plates (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coil and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot–rolled carbon steel flat–rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included under this order are flat–rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')--for example, products which have been bevelled or rounded at the edges. Excluded from this review is grade X–70 plate. These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Analysis of Comments Received

The issues raised in the case briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum to David M. Spooner, Assistant Secretary for Import Administration, from Stephen Claeys, Deputy Assistant Secretary (''Decision Memorandum''), which is hereby adopted by this notice. A list of the issues addressed in the Decision Memorandum is appended to this notice. The Decision Memorandum is on file in the Central Records Unit in Room B–099 of the main Commerce building, and can also be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Use of Facts Available

As further discussed below, pursuant to section 776(a)(2)(D) of the Act, the Department finds that the use of facts available (''FA'') is appropriate with regard to MS Galati's inland freight from the plant to the port of exportation expenses for its U.S. sales. Section 776(a)(2) of the Act, provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that the Department must inform the interested party of the nature of any deficiency in its response and, to the extent practicable, allow the interested party to remedy or explain such deficiency.

We find that pursuant to section 776(a)(2)(D) of the Act, the application of FA is warranted for the calculation of MS Galati's inland freight expense because MS Galati provided information that could not be fully verified. In MS Galati's section C questionnaire response, it provided data for its inland freight to port expenses (field DINLFTP1U in the U.S. market sales database). Prior to verification, the Department requested, at page 13 of its verification outline, that MS Galati be prepared to provide documentation to support its inland freight to port calculation. During verification, MS Galati stated that it was unable to segregate the freight charges for one of its transportation providers because the provider issued invoices to MS Galati that were not itemized. *See* Memorandum to the File from John Drury and Dena Crossland, Case Analysts, Regarding Verification of the Home Market and U.S. Sales Responses of Mittal Steel Galati S.A. in the Antidumping Duty Administrative Review of Certain Cut–to-Length Carbon Steel Plate from Romania, dated August 31, 2006, at 37 (''MS Galati Verification Report''). MS Galati submitted tables showing a schedule of expected rates but could not confirm that it paid those rates as reported in the U.S. sales database.

At verification, MS Galati explained that the freight rates charged by its transportation companies vary by distance to the delivery point, and are also based on various discounts from the base price. MS Galati stated that rail shipments contain multiple products and go to multiple destinations. Therefore, unless the transportation company itemizes the bill, MS Galati cannot determine the actual rate paid for freight. While we were able to verify the freight rates for one transportation company, we were unable to verify the freight rates for another transportation company that issued invoices to MS Galati without segregating the charges. In the *Preliminary Results*, we applied the base freight rate for the transportation company that did not provide itemized invoices to MS Galati.

In its October 11, 2006, case brief, MS Galati argued that it was not charged the base freight rate, as shown in Verification Exhibit 33, which the Department used in the *Preliminary Results*. In its case brief, MS Galati demonstrated that it had paid a certain discounted rate. Pursuant to section 776(a)(2)(D) of the Act, we determine that this discounted rate is the appropriate FA rate to calculate DINLFTP1U for sales involving MS Galati's second transportation company.

Based on the above, we find that MS Galati did not provide information pertaining to its inland freight to port expenses that could be fully verified, within the meaning of section 776(a)(2)(D) of the Act. Additionally, MS Galati has not met the requirements of section 782(d) because it did not provide information to the Department to indicate that its inland freight expenses might be deficient until verification. Because the Department did not find that there were any deficiencies until verification, it was too late to notify MS Galati of these errors, obtain new data, and examine such methodologies and data for deficiencies.

Since MS Galati provided information that could not be fully verified, the Department determines that the application of FA is warranted. However, we cannot conclude that MS Galati did not cooperate to the best of its ability. As such, the Department determines that adverse FA pursuant to section 776(b) of the Act is not warranted. Even though information provided by MS Galati regarding transportation expenses was unverifiable because one of MS Galati's transportation companies did not provide itemized invoices, MS Galati did provide all the information it possessed as it related to transportation expenses, *i.e.*, it acted to the best of its ability. Therefore, we are applying the only discounted rate that could be verified for one of MS Galati's transportation companies as the FA rate for calculating the inland freight to port expense for MS Galati's U.S. sales. For a detailed analysis of the Department's decision to apply FA, *see* the Analysis Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Certain Cut–to-Length Carbon Steel Plate from Romania, dated January 9, 2007 (''Final Analysis Memo'').

Final Results of Review:

As a result of our review, we determine that the following margin exists for the period of August 1, 2004, through July 31, 2005:

Producer	Margin (Percentage)
Mittal Steel Galati S.A.	0.05 percent (*de minimis*)

Assessment

The Department shall determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. We will instruct CBP to liquidate entries at the rate indicated above. The Department will issue appropriate assessment instructions directly to the CBP within 15 days of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Notice of Policy Concerning Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (''*Assessment–Policy Notice*''). This clarification will apply to entries of subject merchandise during the period of review produced by MS Galati for which MS Galati did not know that the merchandise it sold to an intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the 75.04 percent all–others rate if there is no rate for the intermediary involved in the transaction. *See* the *Assessment–Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of cut–to-length plate from Romania entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Act: (1) for the company covered by this review, the cash deposit rate will be zero; (2) for merchandise exported by producers or exporters not covered in this review but covered in the investigation, the cash deposit rate will continue to be the company–specific rate from the final determination; (3) if the exporter is not a firm covered in this review or the investigation, but the producer is, the cash deposit rate will be that established for the producer of the merchandise for the most recent period; and (4) if neither the exporter nor the producer is a firm covered in this review or the investigation, the cash deposit rate will be 75.04 percent, the ''Romania–wide'' rate established in the less–than-fair–value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402 (f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 2, 2007.

David M. Spooner,

Assistant Secretary forImport Administration.

Appendix I

List of Issues in the Decision Memorandum

Issue I. Date of Sale
Issue II. Application of Facts Available for Inland Freight to Port Rate
Issue III. Provisions for Contingent Liabilities
Issue IV. Short–term Interest Income Offset
Issue V. Clerical Error Regarding the Constructed Export Price Offset
Issue VI. Assessment Rate Methodology

[FR Doc. E7–2216 Filed 2–9–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–337–806

Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order In Part: Individually Quick Frozen Red Raspberries from Chile

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 8, 2006, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain individually quick frozen red raspberries from Chile. The review covers seven producers/exporters of subject merchandise. We gave interested parties an opportunity to comment on the preliminary results. We have noted the changes made since the preliminary results below in the ''Changes Since the Preliminary Results'' section. The final results are listed below in the ''Final Results of Review'' section.

EFFECTIVE DATE: February 12, 2007.

FOR FURTHER INFORMATION CONTACT: Yasmin Nair or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–3813 or (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 2006, the Department of Commerce (''the Department'') published *Notice of Preliminary Results of Antidumping Duty Administrative Review, Notice of Intent to Revoke in Part: Individually Quick Frozen Red Raspberries from Chile*, 71 FR 45000 (August 8, 2006) (''*Preliminary Results*'') in the **Federal Register**.

On September 28, 2006, we extended the deadline for parties to submit comments on the *Preliminary Results* until October 17, 2006, and we extended the deadline for parties to submit rebuttal comments until October 23, 2006. *See* Memorandum from Yasmin Bordas to File, ''*3rd Administrative Review of Individually Quick Frozen Raspberries from Chile*,'' dated September 28, 2006. We also informed the parties that the Department would accept comments relating to verification findings for Sociedad Agroindustrial Valle Frio Ltda. (''Valle Frio'') and its affiliated processor, Agricola Framparque (''Framparque''), seven days after issuance of the verification report, and that the Department would accept rebuttals to those comments five days later.

On October 17, 2006, the Department received case briefs from the petitioners, Pacific Northwest Berry Association, Lynden, Washington, and each of its individual members, Curt Maberry Farm; Enfield Farms, Inc.; Maberry Packing; and Rader Farms, Inc., and respondents, Arlavan S.A. (''Arlavan''), Fruticola Olmue S.A. (''Olmue''), Santiago Comercio Exterior Exportaciones S.A. (''SANCO''), Valle Frio/Framparque, Valles Andinos S.A. (''Valles Andinos''), Vital Berry Marketing S.A. (''VBM''), and Alimentos Naturales Vitafoods S.A. (''Vitafoods''). On October 23, 2006, the petitioners, Arlavan, Olmue, VBM, Valle Frio/ Framparque, and Valles Andinos filed rebuttal briefs. On December 26, 2006, Valle Frio/ Framparque filed comments relating to their verification. We did not receive rebuttals to the December 26, 2006 comments.

On October 25, 2006, we extended the deadline for the final results to February 5, 2007. *See Certain Individually Quick Frozen Red Raspberries from Chile: Extension of the Time Limit for the Final Results of Antidumping Duty Administrative Review*, 71 FR 64244 (November 1, 2006).

Scope of the Order

The products covered by this order are imports of IQF whole or broken red raspberries from Chile, with or without the addition of sugar or syrup, regardless of variety, grade, size or horticulture method (*e.g.*, organic or not), the size of the container in which packed, or the method of packing. The scope of the order excludes fresh red

raspberries and block frozen red raspberries (*i.e.*, puree, straight pack, juice stock, and juice concentrate).

The merchandise subject to this order is currently classifiable under subheading 0811.20.2020 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Period of Review

The period of review (''POR'') is July 1, 2004, through June 30, 2005.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (''the Act''), during October 2006, we verified the cost information provided by Valle Frio and Framparque in Chile using standard verification procedures, including examination of relevant financial records and selection of original documentation containing relevant information. The Department reported its findings on December 18, 2006. *See* Memorandum from Angela S. Strom and Heidi K. Schriefer to the File, ''*Verification of the Cost Response of Valle Frio in the 2004–2005 Administrative Review of the Antidumping Duty Order of Individually Quick Frozen Red Raspberries from Chile*,'' dated December 18, 2006 (''*Cost Verification Report - Valle Frio*''), which is on file in the Central Records Unit (''CRU'') in room B–099 of the main Department building.

As explained in the *Preliminary Results*, during March to April 2006, we verified the sales and cost information provided by Olmue and SANCO in Chile using standard verification procedures, including examination of relevant sales and financial records, and selection of original documentation containing relevant information. The Department reported its findings on July 5, July 6, and July 27, 2006. *See* Memorandum to the File, ''*Verification of the Sales Response of Santiago Comercio Exterior S.A. in the 2004–2005 Antidumping Duty Administrative Review of Individually Quick Frozen Red Raspberries from Chile*,'' dated July 5, 2006; Memorandum to the File, ''*Verification of the Cost Response of Santiago Comercio Exterior S.A. in the Antidumping Review of Individually Quick Frozen Red Raspberries from Chile*,'' dated July 6, 2006; and Memorandum to the File, ''*Verification of the Sales and Cost of Production Responses of Fruticola Olmué S.A. in the 2004–2005 Antidumping Duty Administrative Review of Individually Quick Frozen Red Raspberries from Chile*,'' dated July 27, 2006. These reports are on file in the CRU in room B–099 of the main Department building.

Determination to Revoke In Part

The Department ''may revoke, in whole or part'' an antidumping order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222(b)(2). In determining whether to revoke an antidumping duty order in part, the Secretary will consider: (A) whether one or more exporters or producers covered by the order have sold the merchandise at not less than normal value (''NV'') for a period of at least three consecutive years; (B) whether, for any exporter or producer that the Secretary previously has determined to have sold the subject merchandise at less than NV, the exporter or producer agrees in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than NV; and (C) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping.

The Department's regulations require, *inter alia*, that a company requesting revocation submit the following: (1) a certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the receipt of such a request; and (3) an agreement that the order will be reinstated if the company is subsequently found to be selling the subject merchandise at less than fair value. *See* 19 CFR 351.222(e)(1)(i)-(iii). *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip From the Netherlands*, 65 FR 742, 743 (January 6, 2000).

On July 29, 2005, pursuant to 19 CFR 351.222(e)(1), SANCO requested revocation of the antidumping duty order as it pertains to that company. With its request for revocation, SANCO provided each of the certifications required under 19 CFR 351.222(e). Consistent with the *Preliminary Results*, we continue to find that the request from SANCO meets all of the criteria under 19 CFR 351.222(e)(1).

As explained in the preliminary and these final results, our calculations show that SANCO sold IQF red raspberries at not less than NV during the current review period. In addition, SANCO sold IQF red raspberries at not less than NV during the 2003–2004 and 2001–2003 review periods (*i.e.*, SANCO's dumping margin was zero or *de minimis*). *See Notice of Final Results of Antidumping Duty Administrative Review: Individually Quick Frozen Red Raspberries From Chile*, 70 FR 6618, 6620 (Feb. 8, 2005), covering the period December 31, 2001, through June 30, 2003; *see also Individually Quick Frozen Red Raspberries from Chile: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 72788 (Dec. 7, 2005), covering the period July 1, 2003, through June 30, 2004.

Moreover, based on our examination of the sales data submitted by SANCO, we find that SANCO sold the subject merchandise in the United States in commercial quantities in each of the consecutive years cited by SANCO to support its request for revocation. *See* Memorandum from Yasmin Bordas to Stephen J. Claeys, ''*Preliminary Determination to Revoke in Part the Antidumping Duty Order on Individually Quick Frozen Red Raspberries from Chile for Santiago Comercio Exterior Exportaciones Sociedad Anonima*,'' dated July 31, 2006, which is on file in room B–099 of the CRU.

Finally, we find that application of the antidumping order to SANCO is no longer warranted for the following reasons: (1) as noted above, the company had zero or *de minimis* margins for a period of at least three consecutive years; (2) the company has agreed to immediate reinstatement of the order if the Department finds that it has resumed making sales at less than NV; and (3) the continued application of the order is not otherwise necessary to offset dumping.

Therefore, we determine that SANCO qualifies for revocation of the order on IQF red raspberries pursuant to 19 CFR 351.222(b)(2) and that the order, with respect to subject merchandise exported by SANCO, should be revoked. In accordance with 19 CFR 351.222(f)(3), we are terminating the suspension of liquidation for subject merchandise exported by SANCO that was entered, or withdrawn from warehouse, for consumption on or after July 1, 2005, and will instruct U.S. Customs and Border Protection (''CBP'') to refund

with interest any cash deposits for such entries.

Collapsing Determination

As explained in the *Preliminary Results*, we have determined that Framparque should be collapsed with Valle Frio for the purposes of this review. *See* Memorandum to Susan Kuhbach, Director, ''*Collapsing of Sociedad Agroindustrial Valle Frio Ltda.*,'' dated July 31, 2006.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the February 5, 2007, *Issues and Decision Memorandum for the Third Antidumping Duty Administrative Review of Individually Quick Frozen Red Raspberries from Chile (''Decision Memorandum'')*, which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

For SANCO, Vitafoods, and Valles Andinos, we made no changes to the calculations from the *Preliminary Results*. *See* Memorandum from Team, through Brandon Farlander, to the File, ''*Preliminary Results Calculation Memorandum for Santiago Comercio Exterior Exportaciones Sociedad Anonima,*'' dated July 31, 2006; Memorandum from Team, through Brandon Farlander, to the File, ''*Preliminary Results Calculation Memorandum for Alimentos Naturales Vitafoods S.A.*,'' dated July 31, 2006; Memorandum from Team, through Brandon Farlander, to the File, ''*Preliminary Results Calculation Memorandum for Valles Andinos, S.A.*,'' dated July 31, 2006; which are on file in the Department's CRU.

Use of Facts Otherwise Available

Pursuant to section 776 of the Act, and for the reasons explained in the *Preliminary Results*, we have continued to apply adverse facts available (''AFA'') for the cost of production (''COP'') of the merchandise under review that was supplied by Arlavan's non–responsive supplier, DICAF Exportaciones Ltd. (''DICAF'').[1] However, for the final results, we have changed the calculation methodology for this COP. *See Changes Since the Preliminary Results: Arlavan*, below.

For the reasons explained in the *Preliminary Results*, we have continued to apply neutral facts available to one of Olmue's reported control numbers for which it did not provide COP information. *See* Memorandum from Team, through Brandon Farlander, to the File, ''*Preliminary Results Calculation Memorandum for Fruticola Olmué S.A.*,'' dated July 31, 2006.

Changes Since the Preliminary Results

Based on our findings at verification, and analysis of comments received, for Arlavan, Olmue, Valle Frio/Framparque, and VBM, we have made adjustments to the preliminary results calculation methodologies in calculating the final dumping margins in these proceedings. Brief descriptions of the company–specific changes are discussed below.

Arlavan

We modified our methodology for calculating the COP of the merchandise that was supplied to Arlavan by DICAF Exportaciones Ltd. (''DICAF'')/ Agroindustrial del Maule (''Agromaule'').[2] Because DICAF/ Agromaule did not respond to our questionnaire, we based DICAF/ Agromaule's cost on AFA. In the preliminary results, for each form of the merchandise under review, we calculated the simple average of the three highest COPs among all producers and used this as the DICAF/Agromaule COP. For the final results, we have used a weighted average of the COPs of the two producers who had the highest COPs of whole and non–whole finished IQF red raspberries. *See* Memorandum from Team, through Brandon Farlander, to the File, ''*Final Results Calculation Memorandum for Arlavan S.A.*,'' dated February 5, 2007.

Olmue

We corrected a clerical error in the comparison market and margin programs. Specifically, we placed parentheses around the summation of the gross unit price and billing adjustment variables in the recalculation of certain credit expenses, as necessary. *See* Memorandum from Team, through Brandon Farlander, to the File, ''*Final Results Calculation Memorandum for Fruticola Olmue S.A.*,'' dated February 5, 2007.

Valle Frio/Framparque

For the final results, we used Valle Frio/Framparque's revised comparison market packing expenses as a result of errors discovered at verification. *See* Memorandum from Team, through Brandon Farlander, to the File, ''*Final Results Calculation Memorandum for Sociedad Agroindustrial Valle Frio Ltda./Agricola Framparque*,'' dated February 5, 2007.

We made the following adjustments to Valle Frio's costs used in the *Preliminary Results*.

- We adjusted direct material, variable overhead and fixed overhead costs based on the information obtained at verification.
- We reclassified a portion of the reported indirect selling expenses as general and administrative (''G&A'') expenses based on the corrections to the allocation criteria discovered at verification.
- We adjusted the cost of sales denominator used to compute the G&A and financial expense ratios in accordance with the specific adjustments made to cost of manufacturing (''COM'').

We made the following adjustments to Framparque's costs used in the *Preliminary Results*.

- We used Framparque's cost buildup that was corrected at verification to calculate the costs of merchandise sold to the third country market. Using this cost buildup, we made additional adjustments to the direct material costs and have recalculated direct labor, variable overhead and fixed overhead costs.
- Consistent with the Preliminary Results, we removed all G&A and financial expense items from the variable overhead cost calculation, included these amounts in the numerator of the G&A and financial expense ratios, and computed the G&A and financial expense ratios for the fiscal year.
- We adjusted the cost of sales denominator used to compute the G&A and financial expense ratios in

[1] We note that in the Preliminary Results, we stated that we were applying AFA pursuant to section 776(a)(1)(D), which is the provision for application of facts available when information cannot be verified. Our analysis, however, is based on section 776(a)(1)(A), the provision for application of facts available when an interested party withholds requested information, and section 776(b) and (c).

[2] Although DICAF and Agromaule are legally two separate entities, the products, services, and personnel, as well as contact information, were the same. Although separately incorporated, Agromaule has the same familial ownership as DICAF. We refer in the remainder of this memorandum to ''DICAF/ Agromaule.'' For additional explanation of company ownership, see *Preliminary Results* at 45004.

accordance with the specific adjustments made to COM.

See Memorandum from Angela Strom to Neal Halper, ''*Cost of Production and Constructed Value Calculation Adjustments for the Final Results - Sociedad Agroindustrial Valle Frio Ltda./Agricola Framparque*,'' dated February 5, 2007 (''*Valle Frio/ Framparque Cost Calculation Memorandum''); see also Cost Verification Report - Valle Frio*.

VBM

- We revised the freight costs for two home market sales, pursuant to a clerical error correction letter submitted by VBM on October 12, 2006, and additional supporting documentation submitted by VBM on November 27, 2006. *See* Letter submitted to the Department by VBM, ''*Clarification of Information on the Record*,'' dated October 12, 2006; *see also VBM's Supplemental Questionnaire Response*, dated November 27, 2006. For additional discussion of this change, *see Decision Memorandum* at Comment 15.
- In the computer program used to calculate NV, we have corrected a currency conversion error for VBM's warehousing expenses. *See* Memorandum from Team, through Brandon Farlander, to the File, ''*Final Results Calculation Memorandum for Vital Berry Marketing S.A.*,'' dated February 5, 2007. For additional discussion of this change, *see Decision Memorandum* at Comment 16.

Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in ''substantial quantities.'' *See* section 773(b)(2)(C) of the Act. The sales were made within an extended period of time in accordance with section 773(b)(2)(B) of the Act, because we examined below–cost sales occurring during the entire POR. In such cases, because we compared prices to POR–average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

For Olmue, Valles Andinos, VBM, and Vitafoods, we found that, for certain products, more than 20 percent of comparison market sales were at prices less than the COP and, thus, the below–cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Final Results of Review

As a result of our review, we determine that the following weighted–average margins exist for the period of July 1, 2004, through June 30, 2005:

Exporter/manufacturer	Weighted–average margin percentage
Alimentos Naturales Vitafoods S.A.	0.00
Arlavan S.A.	3.39
Fruticola Olmue S.A.	0.01 (*de minimis*)
Santiago Comercio Exterior Exportaciones S.A.	(*de minimis*)
Sociedad Agroindustrial Valle Frio Ltda./ Agricola Framparque	2.59
Valles Andinos S.A.	6.42
Vital Berry Marketing, S.A.	0.10 (*de minimis*)

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Pursuant to 19 CFR 351.212(b)(1), for all sales made by respondents for which they have reported the importer of record and the entered value of the U.S. sales, we have calculated importer–specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

Where the respondents did not report the entered value for U.S. sales, we have calculated importer–specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer–specific *ad valorem* rates based on the estimated entered value. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

We are revoking the order in part, with respect to SANCO. Therefore, no future cash deposits will be required for the subject merchandise exported by SANCO. For all other exporters/ manufacturers, the following antidumping duty deposits will be required on all shipments of IQF red raspberries from Chile entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be the rates established in the final results of this administrative review (except no cash deposit will be required if its weighted–average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less–than-fair–value investigation or a previous review, the cash deposit rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, a previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm

covered in this or any previous review, the cash deposit rate will be 6.33 percent, the ''all others'' rate established in *Notice of Amended Final Determination of Sales at Less Than Fair Value: IQF Red Raspberries from Chile*, 67 FR 40270 (June 12, 2002).

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 5, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

APPENDIX I

List of Comments in the Decision Memorandum

General Comments

Comment 1: Direct Material Valuation
Comment 2: Treatment of Sales Made Above Normal Value

Comments Relating to Santiago Comercio Exportaciones Exterior S.A.

Comment 3: Valuation of IQF–Quality Fresh Raspberries Used to Produce Non–whole Frozen Raspberry Products
Comment 4: By–product Cost Treatment for Other Non–whole Raspberry Products

Comment 5: Affiliated Processor's General and Administrative Expenses and Interest Expenses
Comment 6: General and Administrative Expenses Rate Calculation
Comment 7: Gain on Revaluation of Non–monetary Assets and Liabilities

Comments Relating to Arlavan S.A.

Comment 8: Application of Adverse Facts Available for Cost of Production of Arlavan's Non-Responsive Supplier

Comments Relating to Sociedad Agroindustrial Valle Frio Ltda.

Comment 9: Valle Frio's Packing Expenses

Comment 10: Valle Frio's Indirect Selling Expense Ratio
Comment 11: Wages and Professional Fees in Agricola Framparque's General and Administrative Expense Ratio
Comment 12: Valle Frio's Production Quantities

Comment 13: General and Administrative Expense Ratio Calculation

Comments Relating to Fruticola Olmue S.A.

Comment 14: Clerical Error Concerning Certain of Olmue's Credit Expenses

Comments Relating to Vital Berry Marketing S.A.

Comment 15: Clerical Errors Made by VBM

Comment 16: Clerical Error Made by the Department

[FR Doc. E7–2371 Filed 2–9–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A–580–829

Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 11, 2006, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on stainless steel wire rod (SSWR) from the Republic of Korea. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and an examination of our calculations, we have made certain changes for the final results. The final weighted–average dumping margins for the respondents are listed below in the ''Final Results of the Review'' section of this notice.

EFFECTIVE DATE: February 12, 2007.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer at (202) 482–0410 or Richard Rimlinger at (202) 482–4477, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 2006, the Department of Commerce (the Department) published *Stainless Steel Wire Rod from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 59739 (October 11, 2006) (*Preliminary Results*), in the **Federal Register**. The period of review is September 1, 2004, through August 31, 2005. We have conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

We invited parties to comment on the *Preliminary Results*. On November 13, 2006, Carpenter Technology Corporation, Dunkirk Specialty Steel, LLC (a subsidiary of Universal Stainless & Alloy Products), and North American Stainless (collectively, the petitioners), and respondents Changwon Specialty Steel Co., Ltd., and Dongbang Specialty Steel Co., Ltd. (collectively, the respondent),[1] filed case briefs. On November 20, 2006, the petitioners and the respondent filed rebuttal briefs. Although the respondent requested a hearing on November 13, 2006, it withdrew its request on November 17, 2006. Because no other interested party requested a hearing, we did not hold one.

Scope of Order

For purposes of this order, the products covered are those SSWR that are hot–rolled or hot–rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot–rolling or hot–rolling annealing, and/or pickling and/or descaling, are normally sold in

[1] We collapsed the two respondents into a single entity because we concluded they had a close supplier relationship. See *Preliminary Results*, 71 FR at 59739.

coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold–finished into stainless steel wire or small–diameter bar. The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire–drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter.

Two stainless steel grades are excluded from the scope of the order. SF20T and K–M35FL are excluded. The chemical makeup for the excluded grades is as follows:

SF20T	
Carbon	0.05 max
Manganese	2.00 max
Phosphorous	0.05 max
Sulfur	0.15 max
Silicon	1.00 max
Chromium	19.00/21.00
Molybdenum	1.50/2.50
Lead–added	(0.10/0.30)
Tellurium–added	(0.03 min)

K–M35FL	
Carbon	0.015 max
Silicon	0.70/1.00
Manganese	0.40 max
Phosphorous	0.04 max
Sulfur	0.03 max
Nickel	0.30 max
Chromium	12.50/14.00
Lead	0.10/0.30
Aluminum	0.20/0.35

The products subject to the order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the February 1, 2007, Issues and Decision Memorandum for the Antidumping Duty Administrative Review of Stainless Steel Wire Rod from the Republic of Korea for the period September 1, 2004, through August 31, 2005 (*Decision Memorandum*), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

We have made the following changes to the margin we calculated for the respondent in the *Preliminary Results*:
1) We corrected a ministerial error to match models by grade properly.
2) We included the respondent's loss on inventory obsolescence in the calculation of general and administrative expenses.

Results of the Cost Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the cost of production (COP), we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the period of review were at prices less than the COP, we determined such sales to have been made in ''substantial quantities.'' See section 773(b)(2)(C) of the Act. The sales were made within an extended period of time in accordance with section 773(b)(2)(B) of the Act because we examined below–cost sales occurring during the entire period of review. In such cases, because we compared prices to average costs for the period of review, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of the comparison–market sales were at prices less than the COP and, thus, the below–cost sales were made within an extended period of time in substantial quantities by the respondent. In addition, these sales were made at prices that did not provide for the recovery of costs within a reasonable period of time. Therefore, we disregarded the below–cost sales and used the remaining sales, if any, as the basis for determining normal value, in accordance with section 773(b)(1) of the Act.

Final Results of the Review

As a result of our review, we determine that the following percentage weighted–average dumping margin exists on SSWR from the Republic of Korea for the period September 1, 2004, through August 31, 2005:

Company	Margin (percent)
Changwon/Dongbang ...	9.06

Assessment Rates

The Department will determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. We intend to issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer/customer–specific assessment rate or per–unit value for subject merchandise.

The Department clarified its ''automatic assessment'' regulation, codified at 19 CFR 351.212(c), on May 6, 2003. See *Notice of Policy Concerning Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment–Policy Notice*). This clarification will apply to entries of subject merchandise during the period of review produced by the companies included in these final results of review for which the reviewed companies did not know that the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the ''All Others'' rate if there is no rate for the intermediary involved in the transaction. See *Assessment–Policy Notice* for a full discussion of this clarification.

a. Export Price

With respect to export–price sales, we divided the total dumping margins (calculated as the difference between normal value and the export price) for the respondent's importer or customer by the total number of units the respondent sold to that importer or customer. We will direct CBP to assess the resulting per–unit dollar amount against each unit of merchandise on each of that importer's or customer's entries during the review period.

b. Constructed Export Price

For constructed export–price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct CBP to

assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries during the review period. See 19 CFR 351.212(b)(1).

Cash–Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, consistent with section 751(a)(1) of the Act: (1) the cash–deposit rates for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value (LTFV) investigation but the manufacturer is, the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash–deposit rate for all other manufacturers or exporters will continue to be 5.19 percent, the ''All Others'' rate from the amended final determination of the LTFV investigation published on September 15, 1998. See *Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Wire Rod From Korea*, 63 FR 49331 (September 15, 1998).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these final results of review in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 1, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

Appendix

Comments and Responses

1. Offsetting of Negative Margins
2. Model Match
3. Inland–Freight Expenses
4. Affiliated–Party Inputs
5. General and Administrative Expenses

[FR Doc. E7–2227 Filed 2–9–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–533–825)

Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 8, 2006, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on polyethylene terephthalate film, sheet, and strip (PET–Film) from India for the period January 1, 2004, through December 31, 2004. *See Notice of Preliminary Results and Rescission, in Part, of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 45037 (August 8, 2006) (*Preliminary Results*). Based on the results of our verification and our analysis of the comments received, the Department has revised the net subsidy rates for the respondents: Jindal Polyester Limited/Jindal Poly Films Limited of India (Jindal) and Polyplex Corporation Ltd. (Polyplex). The final net subsidy rates for the reviewed companies are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: February 12, 2007.

FOR FURTHER INFORMATION CONTACT: Elfi Blum, Nicholas Czajkowski, or Toni Page, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0197, (202) 482–1395, or (202) 482–1398, respectively.

SUPPLEMENTARY INFORMATION:

Background

Since the publication of the *Preliminary Results*, the following events have occurred. As provided in 782(i) of the Tariff Act of 1930, as amended (the Act), the Department conducted a verification of the questionnaire responses submitted by the Government of India (GOI), Polyplex, and Jindal from October 3 through October 13, 2006. We used standard verification procedures, including on–site examination of relevant records and original source documents. Our verification results are outlined in the public and proprietary versions of the verification memoranda, which are on file in the Central Records Unit (CRU), room B–099 of the Main Commerce Building. *See* ''Verification of the Questionnaire Responses Submitted by the Government of India (GOI)''(December 13, 2006) (*GOI Verification Report*); ''Verification of the Questionnaire Responses Submitted by Polyplex Corporation Ltd. (Polyplex)'' (December 13, 2006) (*Polyplex Verification Report*); and ''Verification of the Questionnaire Responses Submitted by Jindal Polyester Ltd. (Jindal)'' (December 13, 2006) (*Jindal Verification Report*). On December 28, 2006, Dupont Teijin Films, Mitsubishi Polyester Film of America, and Toray Plastics (America), Inc. (collectively, the Petitioners), Polyplex and Jindal, filed case briefs. Polyplex, Jindal, and Petitioners filed rebuttal briefs on January 4, 2006.

Scope of the Order

For purposes of the order, the products covered are all gauges of raw, pretreated, or primed Polyethylene Terephthalate Film, Sheet and Strip, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance–enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on our *Preliminary Results* following the release of our verification reports for the GOI, Polyplex, and Jindal. The issues raised in all case and rebuttal briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum for the 2004 Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India*, from Stephen J. Claeys to David M. Spooner, dated February 5, 2007 (*Issues and Decision Memorandum*), which is hereby adopted by this notice. The *Issues and Decision Memorandum* also contains a complete analysis of the programs covered by this review and the methodologies used to calculate the subsidy rates. A list of the comments raised in the briefs and addressed in the *Issues and Decision Memorandum* is appended to this notice. The Issues and Decision Memorandum is on file in the CRU, and can be accessed directly on the Web at *http://ia.ita.doc.gov*.

Changes Since the Preliminary Results

Based on our verification and analysis of comments received, we have made some adjustments in the methodology that was used in the *Preliminary Results* for calculating both Jindal's and Polyplex's subsidy rates under several programs, and adjusted the cash deposit rate to reflect the termination of the 80HHC Program. All changes are discussed in detail in the *Issues and Decision Memorandum*. In addition, the Department finds that the 80HHC Tax Exemption program was terminated in accordance with the provisions of 19 CFR 351.526. Therefore, the Department will include the subsidy rate from the 80HHC Tax Exemption program in the assessment rate but exclude it from the cash deposit rate.

Final Results of Review

In accordance with sections 777A(e)(1) and 751(a)(I)(A) of the Act and 19 CFR 351.221(b)(5), we calculated individual *ad valorem* subsidy rates for the producers/exporters, Jindal and Polyplex, the only producers/exporters subject to this review for the calendar year 2004, which is the POR for this administrative review.

Manufacturer/Exporter	Net Subsidy Rate	Cash Deposit Rate
Jindal	14.28 %	13.99 %
Polyplex	9.20 %	7.60 %

Assessment and Cash Deposit Instructions

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results of review. The Department will instruct CBP to collect cash deposits of estimated countervailing duties as detailed above, based upon the f.o.b. invoice price on all shipments of the subject merchandise from the producers/exporters under review, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

We will also instruct CBP to continue to collect cash deposits for non–reviewed companies at the most recent company–specific rate applicable to the company. Accordingly, the cash deposit rate that will be applied to non–reviewed companies covered by this order will be the rate for that company established in the investigation. *See Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India*, 67 FR 34905 (May 16, 2002). The ''all others'' rate shall apply to all non–reviewed companies until a review of a company assigned this rate is requested.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 5, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

Appendix I

List Of Issues Addressed In The Issues And Decision Memorandum

Comment 1: Inclusion of Deemed Export Sales in the Total Value of Export Sales

Comment 2: Inclusion of Non–Subject Merchandise in the Subsidy Calculations

Comment 3: Countervailibility of the Advance License Program(ALP)

Comment 4: Export Promotion Capital Goods Scheme Calculations

Comment 5: Sale of the DFRC License

Comment 6: Loans from Government–Owned Special Purpose Banks

Comment 7: State Sales Tax Incentive Programs

Comment 8: Target Plus Scheme(TPS)

[FR Doc. E7–2367 Filed 2–9–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 013007B]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), U. S. Department of Commerce.

ACTION: Notice of receipt of a permit application; request for comments.

SUMMARY: Notice is hereby given that NOAA Fisheries has received an application for a permit to conduct research for scientific purposes from Freddy Otte, City of San Luis Obispo, California. The requested permit would affect the South Central California Coast Distinct Population Segment of threatened steelhead trout (*Oncorhynchus mykiss*). The public is hereby notified of the availability of the permit application for review and comment before NOAA Fisheries either approves or disapproves the application.

DATES: Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) on or before March 14, 2007.

ADDRESSES: Written comments on the permit application should be sent to Matt McGoogan, Protected Resources Division, NOAA Fisheries, 501 W.

Ocean Blvd., Suite 4200, Long Beach, California 90802. Comments may also be sent using email (*FRNpermits.lb@noaa.gov*) or fax (562.980.4027). The permit application is available for review, by appointment only, at the foregoing address.

FOR FURTHER INFORMATION CONTACT: Matt McGoogan at phone number (562) 980–4026 or e-mail: *matthew.mcgoogan@noaa.gov*

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531B1543) (ESA), is based on a finding that such permits: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits are issued in accordance with and are subject to the ESA and NOAA Fisheries regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should provide the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NOAA Fisheries.

Permit Application Received

Freddy Otte has applied for a permit to take the South Central California Coast Distinct Population Segment of threatened steelhead trout (*Oncorhynchus mykiss*) and tissue collection from this species during a two-year study (2007 and 2008) of the abundance and distribution of juvenile steelhead in the San Luis Obispo Creek watershed, San Luis Obispo County, California. Freddy Otte proposes electrofishing and direct underwater observation using mask and snorkel as the methods for estimating abundance and distribution of juvenile steelhead, and has requested an annual non-lethal take of 1620 juvenile steelhead, and annual collection and possession of up to 100 juvenile steelhead tissue samples, with the total possession for both years not exceeding 200 tissue samples. The proposed research would conclude October 31, 2008.

Dated: February 6, 2007.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–2339 Filed 2–9–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 013107E]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability and request for comments.

SUMMARY: Notice is hereby given that the State of Washington through the Governor's Salmon Recovery Office (GSRO) has submitted a Habitat Restoration Program (HRP) pursuant to protective regulations promulgated under the Endangered Species Act (ESA). The HRP would affect ten Evolutionarily Significant Units (ESUs) of threatened salmonids in Washington State. This document serves to notify the public of the availability of the HRP for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the draft HRP must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time March 14, 2007.

ADDRESSES: Written comments should be sent to Matthew Longenbaugh, Habitat Conservation Division, National Marine Fisheries Service, 510 Desmond Drive, Suite 103, Lacey, Washington 98503. Comments may also be faxed to 360–753–9517. Copies of the entire HRP are available on the *http://www.governor.wa.gov/gsro/* or from the address posted on that site. Comments will be accepted via email at *HRP-WA-GSRO-comment@noaa.gov* or the Internet.

FOR FURTHER INFORMATION CONTACT: Matthew Longenbaugh at phone number 360–753–7761, or e-mail: *Matthew.Longenbaugh@noaa.gov* .

SUPPLEMENTARY INFORMATION: This notice is relevant to the following ten threatened salmonid ESUs: Puget Sound, Lower Columbia River, and Snake River spring/summer Chinook salmon (*Oncorhynchus tshawytscha*); Hood Canal summer-run and Columbia River chum salmon (*O. keta*); Lower Columbia River coho salmon (*O. kisutch*); Snake River Basin, Lower Columbia River, Middle Columbia River, and Upper Columbia River steelhead (*O. mykiss*).

Background

The GSRO submitted the HRP for habitat restoration activities that might affect certain salmonid ESUs listed as threatened in Washington State. The HRP was designed so that habitat restoration activities would be protective of salmonids and their habitat.

The HRP defines what activities are habitat restorations. These consist of restoration activities that are funded by the WA Salmon Recovery Funding Board (SRFB), specifically address a major limiting factor identified in a watershed-based salmon recovery plan, are consistent with approved Washington State technical guidance, are identified in a salmon recovery implementation plan, have proceeded through a process that ensures technical suitability and public participation, and would not result in significant negative effects.

Finally, the HRP is being analyzed by NMFS for possible biological effects of implementing habitat restoration activities. The biological opinion will analyze the effects of the HRP on listed salmonids and their habitat statewide. Before NMFS can decide whether to approve the HRP, the biological opinion must conclude that the identified habitat restoration activities conducted throughout Washington State under the HRP will not jeopardize listed salmonids or result in destruction or adverse modification of designated critical habitat. In addition, approval or disapproval of the HRP will depend on NMFS' findings after public review and comment.

As specified in the July 10, 2000, ESA 4(d) rule for salmon and steelhead (65 FR 42422), NMFS may approve a habitat restoration program of the state, provided that NMFS finds the activities to be consistent with the conservation of listed salmonids' habitat (50 CFR 223.203(b)(8). Prior to final approval of a habitat restoration program, NMFS must publish notification in the **Federal Register** announcing the program's availability for public review and comment, hence this notice.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the

conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities.

The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to activities associated with SRFB-funded habitat restoration provided that the state program has been approved by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000).

Dated: February 6, 2007.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–2340 Filed 2–9–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020507B]

Marine Mammals; File No. 731–1774

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

ACTION: Notice; receipt of application for amendment.

SUMMARY: Notice is hereby given that Robin Baird, Ph.D., Cascadia Research, 218 1/2 W. 4th Avenue, Olympia, WA 98501, has requested an amendment to scientific research Permit No. 731–1774.

DATES: Written, telefaxed, or e-mail comments must be received on or before March 14, 2007.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment: (See **SUPPLEMENTARY INFORMATION**).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 731–1774.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 731–1774, issued on September 16, 2005, and most recently amended on December 29, 2006, is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 731–1774, issued to Robin Baird, Ph.D. (Cascadia Research) authorizes vessel approaches, aerial over-flights, photo-identification, video and audio recording and suction cup tagging of cetacean species in all U.S. and international waters in the Pacific, including Alaska, Washington, Oregon, California, Hawaii, and other U.S. territories. The objectives of the research are to assess cetacean populations and to study diving and night-time behavior, social organization, and inter-specific interactions. The purpose of the modification is to enhance the examination of movements (for stock structure assessment) and habitat use of: Blainville's (*Mesoplodon densirostris*), Cuvier's (*Ziphius cavirostris*), Longman's (*Indopacetus pacificus*), and Baird's (*Berardius bairdii*) beaked whales, short-finned pilot (*Globicephala macrorhynchus*), non-Southern Resident killer (*Orcinus orca*), pygmy killer (*Feresa attenuata*), melon-headed (*Peponocephala electra*), and false killer (*Pseudorca crassidens*) whales, bottlenose (*Tursiops truncatus*), rough-toothed (*Steno bredanensis*), and Risso's (*Grampus griseus*) dolphins, and dwarf (*Kogia sima*) and pygmy (*Kogia breviceps*) sperm whales using satellite tagging with dart tags. For each species, up to 20 individuals may be dart tagged per year for the duration of the permit. Incidental harassment of non-target animals is already authorized no additional harassment takes are requested. Dart tagging would occur concurrently with already permitted activities, primarily in Hawaiian waters, though some species may be tagged opportunistically elsewhere where activities are authorized. No takes by dart tagging or additional incidental takes of ESA listed species are requested. The amended permit, if issued, would be valid until the permit expires on August 31, 2010.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

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;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.

Dated: February 6, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–2338 Filed 2–9–07; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Collection of Information; Proposed Extension of Approval; Comment Request—Recordkeeping Requirements Under the Safety Regulations for Full-Size Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed three year extension of approval of information collection requirements in the safety regulations for full-size cribs codified at 16 CFR 1500.18(a)(13) and Part 1508. These regulations were issued to reduce hazards of strangulation, suffocation, pinching, bruising, laceration, and other injuries associated with full-size cribs. (A full-size crib is a crib having an interior length ranging from 49¾ inches to 55 inches and an interior width

ranging from 25 to 30 inches.) The regulations prescribe performance, design, and labeling requirements for full-size cribs. They also require manufacturers and importers of those products to maintain sales records for a period of three years after the manufacture or importation of full-size cribs. If any full-size cribs subject to provisions of 16 CFR 1500.18(a)(13) and Part 1508 fail to comply in a manner severe enough to warrant a recall, the required records can be used by the manufacturer or importer and by the Commission to identify those persons and firms who should be notified of the recall. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than April 13, 2007.

ADDRESSES: Written comments should be captioned ''Collection of Information—Requirements Under the Safety Regulations for Full-Size Cribs'' and e-mailed to *cpsc-os@cpsc.gov.* Comments may also be sent by facsimile to (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: For information about the proposed renewal of this collection of information, or to obtain a copy of the pertinent regulations, call or write Linda L. Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; (301) 504–7671, or by e-mail to *lglatz@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Estimated Burden

The Commission staff estimates that there are approximately 75 firms required to annually maintain sales records of full-size cribs. The staff further estimates that the average burden per respondent is five hours per year, for a total of 375 hours and an annual cost of $17,000. (375 hrs. × $44.82/hr. based on total compensation of all civilian workers in management and professional positions in the U.S., July 2006, Bureau of labor Statistics.)

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: February 7, 2007.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E7–2313 Filed 2–9–07; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Proposed Extension of Approval; Comment Request—Procedures for Export of Noncomplying Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed three year extension of approval of information collection requirements in regulations codified at 16 CFR part 1019, which establish procedures for export of noncomplying products. These regulations implement provisions of the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act that require persons and firms to notify the Commission before exporting any product that fails to comply with an applicable standard or regulation enforced under provisions of those laws. The Commission is required by law to transmit the information relating to the proposed exportation to the government of the country of intended destination. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than April 13, 2007.

ADDRESSES: Written comments should be captioned ''Collection of Information—Procedures for Export of Noncomplying Products'' and e-mailed to *cpsc-os@cpsc.gov.* Comments may also be sent by facsimile to (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: For information about the proposed renewal of this collection of information, or to obtain a copy of the pertinent regulations, call or write Linda L. Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; (301) 504–7671, or by e-mail to *lglatz@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Estimated Burden

Based on a review of the number of export requests received by the CPSC during the last three years, the Commission staff estimates that approximately 75 notifications will be received from an estimated 35 firms per year. The staff further estimates that the average time for each response is one hour, for a total of 75 hours of annual burden. The annualized cost to respondents would be approximately $3,400.00. (75 hours at $44.82/hour based on total compensation for all civilian workers in the U.S., July 2006, Bureau of Labor Statistics.)

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological

collection techniques, or other forms of information technology.

Dated: February 7, 2007.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E7–2314 Filed 2–9–07; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Collection of Information; Proposed Extension of Approval; Comment Request —Safety Standard for Bicycle Helmets

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of bicycle helmets. The collection of information is in regulations implementing the Safety Standard for Bicycle Helmets. 16 CFR Part 1203. These regulations establish testing and recordkeeping requirements for manufacturers and importers of bicycle helmets subject to the standard. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than April 13, 2007.

ADDRESSES: Written comments should be captioned ''Bicycle Helmets'' and e-mailed to *cpsc-os@cpsc.gov.* Comments may also be sent by facsimile to (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: For information about the proposed renewal of this collection of information, or to obtain a copy of the pertinent regulations, call or write Linda L. Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; (301) 504–7671, or by e-mail to *lglatz@cpsc.gov.*

SUPPLEMENTARY INFORMATION: In 1994, Congress passed the ''Child Safety Protection Act,'' which, among other things, included the ''Children's Bicycle Helmet Safety Act of 1994'' Public Law 103–267, 108 Stat. 726. This law directed the Commission to issue a final standard applicable to bicycle helmets that would replace several existing voluntary standards with a single uniform standard that would include provisions to protect against the risk of helmets coming off the heads of bicycle riders, address the risk of injury to children, and cover other issues as appropriate. The Commission issued the final bicycle helmet standard in 1998. It is codified at 16 CFR Part 1203.

The standard requires all bicycle helmets manufactured after March 10, 1999, to meet impact-attenuation and other requirements. The standard also contains testing and recordkeeping requirements to ensure that bicycle helmets meet the standard's requirements. Certification regulations implementing the standard require manufacturers, importers, and private labelers of bicycle helmets subject to the standard to (1) Perform tests to demonstrate that those products meet the requirements of the standard, (2) maintain records of those tests, and (3) affix durable labels to the helmets stating that the helmet complies with the applicable standard. The certification regulations are codified at 16 CFR Part 1203, Subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of bicycle helmets subject to the standard to help protect the public from risks of injury or death associated with head injury associated with bicycle riding. More specifically, this information helps the Commission determine whether bicycle helmets subject to the standard comply with all applicable requirements. The Commission also uses this information to obtain corrective actions if bicycle helmets fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

The Office of Management and Budget (OMB) approved the collection of information in the certification regulations under control number 3041–0127. The Commission now proposes to request an extension of approval for the collection of information in the certification regulations.

A. Estimated Burden

The Commission staff estimates that approximately 30 firms manufacture or import bicycle helmets subject to the standard. There are an estimated 200 different models of bicycle helmets currently marketed in the U.S. The Commission staff estimates that the time required to comply with the collection of information requirements is approximately 100 to 150 hours per model per year. The total amount of time estimated for compliance with these requirements will be 20,000 to 30,000 hours per year (200 models × 100–150 hours/model = 20,000–30,000 hours). The annualized cost to respondents for the hour burden for collection of information is $896,000–$1,345,000 based on 20,000–30,000 hours times $44.82/hour (based on total compensation of all civilian workers in managerial and professional positions in the U.S., July 2006, Bureau of Labor Statistics).

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: February 7, 2007.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E7–2316 Filed 2–9–07; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Collection of Information; Proposed Extension of Approval; Comment Request—Recordkeeping Requirements Under the Safety Regulations for Non-Full-Size Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed three year extension of

approval of information collection requirements in the safety regulations for non-full-size cribs codified at 16 CFR 1500.18(a)(14) and Part 1509. These regulations were issued to reduce hazards of strangulation, suffocation, pinching, bruising, laceration, and other injuries associated with non-full-size cribs. (A non-full-size crib is a crib having an interior length greater than 55 inches or smaller than 49¾ inches; or an interior width greater than 30 inches or smaller than 25 inches; or both.) The regulations prescribe performance, design, and labeling requirements for non-full-size cribs. They also require manufacturers and importers of those products to maintain sales records for a period of three years after the manufacture or importation of non-full-size cribs. If any non-full-size cribs subject to provisions of 16 CFR 1500.18(a)(14) and Part 1509 fail to comply in a manner severe enough to warrant a recall, the required records can be used by the manufacturer or importer and by the Commission to identify those persons and firms who should be notified of the recall. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than April 13, 2007.

ADDRESSES: Written comments should be captioned ''Collection of Information—Requirements Under the Safety Regulations for Non-Full-Size Cribs'' and e-mailed to *cpsc-os@cpsc.gov.* Comments may also be sent by facsimile to (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: For information about the proposed renewal of this collection of information, or to obtain a copy of the pertinent regulations, call or write Linda L. Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; (301) 504–7671, or by e-mail to *lglatz@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Estimated Burden

The Commission staff currently estimates that there are approximately 16 firms required to annually maintain sales records of non-full-size cribs. The staff further estimates that the average number of hours per respondent is five per year, for a total of 80 hours and an annual cost of $3,600. (80 hrs. × $44.82/hr. based on total compensation of all civilian workers in managerial and professional positions in the U.S., July 2006, Bureau of Labor Statistics.)

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed renewal of this collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
—Whether the estimated burden of the proposed collection of information is accurate;
—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: February 7, 2007.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E7–2332 Filed 2–9–07; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DoD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 9 a.m., Tuesday, February 27, 2007.

ADDRESSES: The meeting will be held at ITS Noesis Business Unit, 4100 N. Fairfax Drive, Suite 800, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Schneider, ITS Noesis Business Unit, 4100 N. Fairfax Drive, Suite 800, Arlington, VA 22203, 703–741–0300.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition, Technology and Logistics to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development efforts in electronics and photonics with a focus on benefits to national defense. These reviews may form the basis for research and development programs initiated by the Military Departments and Defense Agencies to be conducted by industry, universities or in government laboratories. The agenda for this meeting will include programs on molecular electronics, microelectronics, electro-optics, and electronic materials. In accordance with Section 10(d) of Public Law 92–463, as amended (5 U.S.C. App. 2), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: February 6, 2007.

Patricia L. Toppings,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–611 Filed 2–9–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for a Swimmer Interdiction Security System (SISS) at Naval Base Kitsap-Bangor, Kitsap County, WA, and Announce Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, and the regulations implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), the Department of the Navy (DON) announces its intent to prepare an EIS to evaluate the potential environmental consequences of construction of facilities for and operation of the SISS.

The DON's Space and Naval Warfare Systems Center San Diego (SSC San Diego) proposes to construct and operate a SISS at Naval Base Kitsap–Bangor (NBK–Bangor). In response to the terrorist attacks of September 11,

2001, the U.S. Government has increased security requirements at its military installations. Chief of Naval Operations Instruction (OPNAVINST) 5530.14C, Navy Physical Security Manual, establishes requirements for security at naval bases, including NBK–Bangor. OPNAVINST 5530.14C requires waterside security measures be implemented to protect the DON's assets. The proposed SISS is needed to provide additional waterside security at NBK–Bangor to counter threats from surface and submerged swimmers. SSC San Diego is the Action Proponent.

Other than the preferred alternative, the most effective alternatives would be use of Combat Swimmers and Remotely Operated Vehicles (ROVs). Under the Combat Swimmers alternative, specially trained personnel would be used to interdict underwater intruders. The combat swimmers would be aboard Harbor Security Boats (HSB) and would be deployed into the water to respond to security alerts by finding, identifying, and marking the location of underwater objects or initiating interdiction of intruders. Under the ROV alternative, ROVs would be deployed from HSBs to respond to security alerts by finding, identifying, and marking the location of underwater objects or initiating interdiction of intruders. A No Action alternative will also be evaluated. Under this alternative, no SISS would be implemented.

DATES AND ADDRESSES: Public scoping meetings will be held in Keyport, Kitsap County, Washington, and Seattle, King County, Washington, to receive oral and written comments on environmental concerns that should be addressed in the EIS. Public scoping meetings will be held on: March 27, 2007, from 5:30 p.m. to 8:30 p.m., at the Naval Undersea Museum, Highway 308 at Garnet Way, Keyport, WA 98345, and on March 28, 2007, from 5:30 p.m. to 8:30 p.m., at the Holiday Inn, 211 Dexter Avenue North, Seattle, WA 98109.

SUPPLEMENTARY INFORMATION: The DON conducted a literature review and held discussions with subject matter experts to identify alternatives for implementing the SISS. Nine action alternatives and a No Action alternative have been identified. The highest rated and preferred alternative would be composed of human/marine mammal teams that would support DON operations and respond rapidly to security alerts. The system would involve stationing California sea lions and Atlantic Bottlenose dolphins at the site (combined total of no more than 30 animals). In-water enclosures housing SISS mammals would be placed adjacent to an existing pier/wharf on a floating dock at NBK–Bangor. The enclosures for the sea lions would be of the open-mesh type, while the dolphins would be housed in environmentally controlled enclosures. Additional support facilities, including on-shore pools for veterinary purposes and trailers for staff, laboratory, food preparation, and storage would be installed at an upland location at NBK–Bangor. The marine mammals would be deployed along the waterfront in conjunction with humans aboard small power boats; the mammals would respond to security alerts by finding, identifying, and marking the location of underwater objects, or initiating interdiction of intruders.

The marine mammals used in this system would come from the DON's marine mammal program in San Diego, and would undergo extensive health screening before and after transport to NBK–Bangor. The SISS facilities would operate in conformance with standards for animal care established by the Department of Defense, the Department of Agriculture, the Animal Welfare Act, and the Association for Assessment and Accreditation of Laboratory Animal Care, and a veterinarian would remain on site to meet animal health care needs. The DON is committed to protecting its marine mammals, and makes every effort to ensure the operational capability they provide is maintained by ensuring the animals remain healthy and safe while performing their duties. To this end, several studies have been conducted looking at the affects of cold water and air on the health and behavior of dolphins. Studies have been conducted in both artificial environments, such as an arctic research facility (Chun and Harris, 1978), and in naturally cold environments, such as off the coast of Connecticut (Scronce and Bowers, 1983). Other studies have been conducted in San Diego and Hawaii to determine the impact of cold water on the dolphin's ability to preserve its body temperature (Costa *et al.*, Williams *et al.*, 1991, Heath and Miller, 1998). Another study is currently being conducted to determine the exact temperature limits under which the dolphins can perform their tasking. These studies have helped the DON develop safe operational guidelines for the use of marine mammal systems under thermally challenging conditions. In addition, the DON has deployed dolphins to numerous cold water environments (e.g., Canada, Alaska, Norway, and Germany). It has developed facilities and procedures for mitigating any impact of cold exposure on the dolphins during these deployments. These will be further analyzed and reviewed during this EIS process. Analysis will include water quality, air quality, biological communities, fish, marine mammals, land and sea birds, threatened and endangered species, land and water use, geology and soils/sediments, cultural resources, socioeconomics, noise, public safety, aesthetics, energy, and, in the case of the preferred alternative, effects of the site environment on the deployed mammals.

FOR FURTHER INFORMATION CONTACT: Members of the public may provide comments orally or in writing at the scoping meeting, or by mail, fax, or email sent to the following address: Commanding Officer, Space and Naval Warfare Systems Center, *ATTN:* Mike Rothe 235, 53560 Hull St., San Diego, CA 92152, *phone:* 888–510–5476, *fax:* 619–221–5251, *e-mail: NBKEIS@spawar.navy.mil.* The deadline for submitting comments is April 11, 2007.

Dated: February 5, 2007.

M. A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7–2307 Filed 2–9–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 14, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response Comment: [insert OMB number], [insert abbreviated collection name, *e.g.*, ''Upward Bound Evaluation'']. Persons submitting

comments electronically should not submit paper copies.

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.

Dated: February 6, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New Collection.

Title: Northwest Regional Educational Needs Assessment Survey.

Frequency: Other: 1 time Project Yr 2.

Affected Public: Individuals or household (primary); State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 2,825.

Burden Hours: 942.

Abstract: In July and August 2006, the Regional Educational Laboratory Northwest (REL–NW) hosted a series of forums with educators in the five states REL–NW serves to discuss the types of evidence educators need to improve student achievement. This project is a follow-up survey with teachers, principals, and district superintendents in Washington, Oregon, Idaho, Montana and Alaska to prioritize the evidentiary needs for improving student learning. Findings from the study will aid in setting the research agenda for REL–NW.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3237. 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,* 540–776–7742. 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. E7–2240 Filed 2–9–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Number: 84.017A]

Office of Postsecondary Education; Overview Information; International Research and Studies Program

ACTION: Correction; Notice correcting the dates.

SUMMARY: We correct the *Applications Available* and *Deadline for Transmittal of Applications* dates in the notice published on January 24, 2007 (72 FR 3123).

SUPPLEMENTARY INFORMATION: On January 24, 2007, we published a notice in the **Federal Register** (72 FR 3123–3127) inviting applications for new awards for fiscal year (FY) 2007 for the International Research and Studies program. The *Applications Available* date (as published on pages 3123 and 3124) is corrected to February 12, 2007 and the *Deadline for Transmittal of Applications* date (as published on pages 3123 and 3124) is corrected to March 29, 2007.

FOR FURTHER INFORMATION CONTACT: Ed McDermott, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., suite 6082, Washington, DC 20006–8521. Telephone: (202) 502–7636 or by e-mail: *ed.mcdermott@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to one of the program contact persons listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

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: February 7, 2007.

James F. Manning,

Delegated the Authority of Assistant Secretary for Postsecondary Education.

[FR Doc. E7–2361 Filed 2–9–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.120A]

Minority Science and Engineering Improvement Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of intent to fund down the grant slate for the Minority Science and Engineering Improvement Program.

SUMMARY: The Secretary intends to use the grant slate developed for the Minority Science and Engineering Improvement Program in Fiscal Year (FY) 2006 to make new grant awards in FY 2007. The Secretary takes this action because a significant number of high-quality applications remain on last year's slate, and limited funding is available for new grant awards in FY 2007.

FOR FURTHER INFORMATION CONTACT: Dr. Bernadette Hence, U.S. Department of Education, 1990 K Street, NW., 6th Floor, room 6071, Washington, DC 20006–8513. Telephone: (202) 219–7038, by fax (202) 502–7861 or e-mail: *Bernadette.Hence@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) upon request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 2006, we published a notice in the **Federal Register** (71 FR 32934) inviting applications for new awards under the Minority Science and Engineering Improvement Program.

We received a significant number of applications for grants under the Minority Science and Engineering Improvement Program in FY 2006 and funded 23 new grants. Because such a large number of high-quality applications were received, many applications that were awarded high scores by peer reviewers did not receive funding in FY 2006.

The Administration included funds for this program in the President's Budget for FY 2007, but Congress has not enacted a final appropriation for FY 2007. However, based on Congressional action to date, the Department expects only to have limited funding available for new awards under this program in FY 2007. In order to conserve funding that would have been required for a peer review of new applications submitted under the program, we intend to select grantees in FY 2007 from the existing slate of applicants. This slate was developed during the FY 2006 competition using the competitive preference priorities, invitational priorities, selection criteria, and requirements referenced in the June 7, 2006 notice. No changes to the competitive preference priorities, invitational priorities, selection criteria, and requirements will be required by this action.

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: *www.gpoaccess.gov/nara/index.html*.

Program Authority: 20 U.S.C. 1067–1067k

Dated: February 7, 2007.

James F. Manning,

Delegated the Authority of Assistant Secretary for Postsecondary Education.

[FR Doc. E7–2364 Filed 2–9–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Parent Information and Training Program—Technical Assistance; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.235G

Dates:

Applications Available: February 12, 2007.

Deadline for Transmittal of Applications: March 14, 2007.

Deadline for Intergovernmental Review: May 14, 2007.

Eligible Applicants: Private nonprofit organizations that, to the extent practicable, are the parent information and training centers established pursuant to section 671 of the Individuals with Disabilities Education Act.

Estimated Available Funds: The Administration has requested $6.511 million for Demonstration and Training programs for FY 2007, of which we intend to use an estimated $150,000 for this 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: $140,000–$150,000.

Estimated Number of Awards: 1.

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: This program is designed to assist in the establishment, development, and coordination of the parent information and training centers funded under title III, section 703(c) of the Rehabilitation Act of 1973, as amended (Act).

Program Authority: 29 U.S.C. 773(c)(6).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 86, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $6.511 million for Demonstration and Training programs for FY 2007, of which we intend to use an estimated $150,000 for this 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: $140,000–$150,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Private nonprofit organizations that, to the extent practicable, are the training and information centers established pursuant to section 671 of the Individuals with Disabilities Education Act.

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 84.235G.

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, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550. *Telephone:* (202) 245–7363. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:* Applications Available: February 12, 2007.

Deadline for Transmittal of Applications: March 14, 2007.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, 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.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**

Deadline for Intergovernmental Review: May 14, 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 must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Parent Information and Training program, CFDA Number 84.235G must be submitted electronically using the Governmentwide 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.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Parent Information and Training program at *http://www.Grants.gov.* You must search for the downloadable application package for this program or competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.326, not 84.326A).

Please note the following:

- 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 date and time stamped. Your application must be fully uploaded and submitted, and must be date and 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 and 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 and 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 submission 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 steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (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 submit successfully an application via Grants.gov. In addition, you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide 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).

• 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 in this paragraph 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 from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application 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 Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

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 described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application 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. 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: The extensions to which we refer 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 to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

§ You do not have access to the Internet; or

§ You do not have the capacity to upload large documents to the Grants.gov system; and

§ No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Ellen Chesley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5018, Potomac Center Plaza, Washington, DC 20202–2550. *FAX:* (202) 245–7591.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. 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 84.235G), 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 84.235G), 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.

(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.

(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 qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You 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 84.235G), 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 the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application.

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this

notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are selected from 34 CFR 75.210 of EDGAR and are listed in the application package for this competition.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. 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:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. The required annual report must include information on the following measure: the percentage of all products and services deemed to be useful by parent training and information centers to improve vocational rehabilitation service utilization. The data on these measures will be collected by the grantee via survey, assessed, and reported in the aggregate to RSA. The grantee will negotiate targets with RSA after the first year, which will be used to establish a baseline.

VII. Agency Contact

For Further Information Contact: Ellen Chesley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5018, Potomac Center Plaza, Washington, DC, 20202–2550. *Telephone:* (202) 245–7346 or by *e-mail: Ellen.Chesley@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

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: February 7, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–2369 Filed 2–9–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Parent Information and Training Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.235F.

Dates:

Applications Available: February 12, 2007.

Deadline for Transmittal of Applications: March 14, 2007.

Deadline for Intergovernmental Review: May 14, 2007.

Eligible Applicants: Private nonprofit organizations that meet the requirements in section 303(c)(4) of the Rehabilitation Act of 1973, as amended (Act).

An applicant organization—

(1) Must demonstrate the capacity and expertise to—

(i) Coordinate training and information activities with Centers for Independent Living;

(ii) Coordinate and work closely with parent information and training centers established pursuant to section 671 of the Individuals with Disabilities Education Act; and

(iii) Effectively conduct the training and information activities authorized in section 303 of the Act;

(2)(i) Must be governed by a board of directors—

(A) That includes professionals in the field of vocational rehabilitation; and

(B) On which a majority of the members are individuals with disabilities or the parents, family members, guardians, advocates, or authorized representatives of the individuals; or

(ii)(A) Must have a membership that represents the interests of individuals with disabilities; and

(B) Must establish a special governing committee that includes professionals in the field of vocational rehabilitation and on which a majority of the members are individuals with disabilities or the parents, family members, guardians, advocates, or authorized representatives of the individuals; and

(3) Must serve individuals with a full range of disabilities and the parents, family members, guardians, advocates, or authorized representatives of the individuals.

Estimated Available Funds: The Administration has requested $6.511 million for Demonstration and Training programs for FY 2007, of which we intend to use an estimated $700,000 for this 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: $95,000–$105,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 7.

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: This program is designed to support projects that provide training and information to enable individuals with disabilities, and the parents, family members, guardians, advocates, or other authorized representatives of the individuals, to participate more effectively with professionals in meeting the vocational, independent living, and rehabilitation needs of individuals with disabilities. These grants are designed to meet the unique training and information needs of those individuals who live in the area to be served, particularly those who are members of populations that have been unserved or underserved by programs under the Act.

Statutory Activities: Applicants must provide information on how they will meet the requirements under section 303(c)(2) of the Act, which requires grantees to assist individuals with disabilities and the parents, family members, guardians, advocates, or authorized representatives of the individuals—

(1) To better understand vocational rehabilitation and independent living programs and services;

(2) To provide follow-up support for transition and employment programs;

(3) To communicate more effectively with transition and rehabilitation personnel and other relevant professionals;

(4) To provide support in the development of the individualized plan for employment;

(5) To provide support and expertise in obtaining information about rehabilitation and independent living programs, services, and resources that are appropriate; and

(6) To understand the provisions of the Act, particularly provisions relating to employment, supported employment, and independent living.

Program Authority: 29 U.S.C. 773(c).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 86, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $6.511 million for Demonstration and Training programs for FY 2007, of which we intend to use an estimated $700,000 for this 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: $95,000–$105,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 7.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Private nonprofit organizations that meet the requirements in section 303(c)(4) of the Rehabilitation Act of 1973, as amended (Act).

An applicant organization—

(1) Must demonstrate the capacity and expertise to—

(i) Coordinate training and information activities with Centers for Independent Living;

(ii) Coordinate and work closely with parent information and training centers established pursuant to section 671 of the Individuals with Disabilities Education Act; and

(iii) Effectively conduct the training and information activities authorized in section 303 of the Act.

(2)(i) Must be governed by a board of directors—

(A) That includes professionals in the field of vocational rehabilitation; and

(B) On which a majority of the members are individuals with disabilities or the parents, family members, guardians, advocates, or authorized representatives of the individuals; or

(ii)(A) Must have a membership that represents the interests of individuals with disabilities; and

(B) Must establish a special governing committee that includes professionals in the field of vocational rehabilitation and on which a majority of the members are individuals with disabilities or the parents, family members, guardians, advocates, or authorized representatives of the individuals; and

(3) Must serve individuals with a full range of disabilities and the parents, family members, guardians, advocates, or authorized representatives of the individuals.

2. *Cost Sharing or Matching:* This program 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 84.235F.

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, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times: Applications Available:* February 12, 2007. *Deadline for Transmittal of Applications:* March 14, 2007.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, 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.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**. *Deadline for Intergovernmental Review:* May 14, 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 must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Parent Information and Training program, CFDA Number 84.235F must be submitted electronically using the Governmentwide 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.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the Parent Information and Training program at *http://www.Grants.gov*. You must search for the downloadable application package for this program or competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.326, not 84.326A).

Please note the following:

- 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 date and time stamped. Your application must be fully uploaded and submitted, and must be date and 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 and 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 and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
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- 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 steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (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 submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
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- 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 in this paragraph 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.
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- We may request that you provide us original signatures on forms at a later date.

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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 described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application 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. 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: The extensions to which we refer 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 to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

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- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Ellen Chesley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5018, Potomac Center Plaza, Washington, DC 20202–2550. FAX: (202) 245–7591.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. 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 84.235F),
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 84.235F), 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.

(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.

(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.

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If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You 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 84.235F), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

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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 the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application.

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are selected from 34 CFR 75.210 of EDGAR and are listed in the application package for this competition.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. 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:* The Government Performance and Results Act of 1993 (GPRA) directs Federal

departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. The required annual report must include information on two measures: (a) The percentage of parents receiving PTI services who report enhanced knowledge and understanding of vocational rehabilitation services; and (b) the percentage of all products and services developed to improve vocational rehabilitation service utilization deemed to be useful by parents receiving PTI services. The data on these measures will be collected by the grantee via survey, assessed, and reported in the aggregate to RSA. Grantees will negotiate targets with RSA after the first year, which will be used to establish a baseline.

VII. Agency Contact

For Further Information Contact: Ellen Chesley, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5018, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7346 or by e-mail: *Ellen.Chesley@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

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: February 7, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–2370 Filed 2–9–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of Open Meeting and Partially Closed Meetings.

SUMMARY: The notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify members of the general public of their opportunity to attend. Individuals who will need special accommodations in order to attend the meeting (*i.e.,* interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than February 23, 2007. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: March 1–3, 2007.

Times:

March 1

Committee Meetings:

Assessment Development Committee: Closed Session—9 a.m. to 4 p.m.;

Reporting and Dissemination Committee: Open Session—3 p.m. to 4:30 p.m.;

Executive Committee: Open Session—4:30 p.m. to 5 p.m.; Closed Session 5 p.m. to 6 p.m.

March 2

Full Board: Open Session—8:30 a.m. to 12:15 p.m.; Closed Session—12:15 p.m. to 1:45 p.m.; Open Session—1:45 p.m. to 3 p.m.; Closed Session—3 p.m. to 4 p.m.

Committee Meetings:

Assessment Development Committee: Open Session—9:45 a.m. to 12:15 p.m;

Committee on Standards, Design and Methodology: Open Session—9:45 a.m. to 12:15 p.m.;

Reporting and Dissemination Committee: Open Session—9:45 a.m. to 12:15 p.m.;

March 3

Nominations Committee: Closed Session—7:30 a.m. to 8:30 a.m.

Full Board: Closed Session—9 a.m. to 9:30 a.m.; Open Session—9:30 a.m. to 12 p.m.

Location: The Loews Vanderbilt Hotel, 2100 West End Avenue, Nashville, TN 37203.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, developing guidelines for reporting and disseminating results, and developing standards and procedures for interstate and national corporations.

The Assessment Development Committee will meet in closed session on March 1 from 9 a.m. to 4 p.m. to review secure test questions for the National Assessment of Educational Progress (NAEP) reading and mathematics NAEP Long-term Trend assessments conducted at ages 9, 13, and 17 in 2008. The meeting must be conducted in closed session as disclosure of proposed test items for the reading and mathematics assessments would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The Reporting and Dissemination Committee will meet in open session on March 1 from 3 p.m. to 4:30 p.m. Thereafter the Executive Committee will meet in open session from 4:30 p.m. to 5 p.m. The Committee will meet in closed session from 5 p.m. to 6 p.m. to receive independent government cost estimates from the National Center for Education Statistics (NCES), for proposed contracts for item development, data collection, scoring and analysis, and reporting of NAEP results for 2007–2012, and their implications on future NAEP activities.

The discussion of independent government cost estimates prior to the development of the Request for Proposals for the NAEP 2007–2012 contracts is necessary for ensuring that NAEP contracts meet congressionally mandated goals and adhere to Board policies on NAEP assessments. This part of the meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program and would provide an advantage to potential bidders attending the meeting. Discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On March 2, the full Board will meet in open session from 8:30 a.m. to 12:15 p.m. From 8:30 a.m. to 9 a.m. the Board will approve the agenda, followed by welcome remarks and Oath of Office ceremonies for new Board members. The Board will then receive the Executive Director's report and hear an update on the work of the National Center for Education Statistics (NCES).

From 9:45 a.m. to 12:15 p.m. on March 2, the Board's standing committees—the Assessment Development Committee; the Committee on Standards, Design and Methodology; and the Reporting and Dissemination Committee—will meet in open session.

On March 2, the full Board will meet in closed session from 12:15 p.m. to 1:45 p.m. The Board will receive a briefing provided by the Associate Commissioner of the National Center for Education Statistics on secure national student achievement data related to upcoming NAEP reports, including results for the 2006 assessments in U.S. history and in civics, and a report comparing NAEP and state proficiency standards. The Governing Board will be provided with embargoed data that cannot be discussed in an open meeting prior to their official release. The meeting must therefore be conducted in closed session as disclosure of data would significantly impede implementation of The Nation's Report Card initial release activities, as protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On March 2 from 2 p.m. to 3 p.m. the Board will discuss and take action on the NAEP 2011 Writing Framework. Thereafter, the full Board will meet in closed session from 3 p.m. to 4 p.m. to receive a secure briefing on the pilot study results from the 2006 NAEP Economics Achievement Level Setting for Grade 12. This briefing will involve discussion of secure NAEP performance results, achievement level findings from the pilot study, and secure NAEP questions. These data constitute a major basis for the national release of the NAEP Grade 12 Economics results, and cannot be released in an open meeting prior to the official release of the reports. The meeting must therefore be conducted in closed session as disclosure of data would significantly impede implementation of the NAEP release activities, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On March 3, the Nominations Committee will meet in closed session from 7:30 a.m. to 8:30 a.m. to review and discuss confidential information regarding nominees received for Board vacancies for terms beginning on October 1, 2007. The Nominations Committee will prepare a final slate of candidates for each Board vacancy and make recommendations to the full Board. The full Board will then consider these nominations in closed session on March 3 from 9 a.m. to 9:30 a.m. During this closed session, the full Board will review and take action on the final slate of candidates for open Board positions. After review, the Board will submit the recommended candidates to the Secretary of Education for her review and action. These discussions pertain solely to internal personnel rules and practices for an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

The full Board will meet in open session on March 3 from 9:30 a.m. to 12 noon. From 9:30 a.m. to 10 a.m. the Board will discuss academic standards initiatives. Board actions on policies and Committee reports are scheduled to take place between 10:15 a.m. and 12 p.m., upon which the March 3, 2007 session of the Board meeting will adjourn.

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education. National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9 a.m. to 5 p.m. Eastern Standard Time.

Dated: February 6, 2007.

Charles E. Smith,

Executive Director, National Assessment Governing Board.

[FR Doc. 07–603 Filed 2–9–07; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Science; DOE/Advanced Scientific Computing Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Advanced Scientific Computing Advisory Committee (ASCAC). 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: Tuesday, February 27, 2007, 9 a.m. to 4:45 p.m.; Wednesday, February 28, 2007, 9 a.m. to 11:45 a.m.

ADDRESSES: American Geophysical Union, (AGU), 2000 Florida Avenue, NW., Washington, DC 20009–1277.

FOR FURTHER INFORMATION CONTACT: Melea Baker, Office of Advanced Scientific Computing Research; SC–21/Germantown Building; U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone (301) 903–7486, (E-mail: *Melea.Baker@science.doe.gov*).

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* The purpose of this meeting is to provide advice and guidance with respect to the advanced scientific computing research program.

Tentative Agenda: Agenda will include discussions of the following:

Tuesday, February 27, 2007

View from Washington on the Office of Advanced Scientific Computing
Presentation from the Under Secretary for Science
Report Discussion on Charge 1—Performance Metrics for Computational Facilities
Management Principles for HPC & Leadership Computer Acquisitions
Report Discussion on Charge 2—Examine the Role and Efficiency of Networking and Networking Research Within SC
Sub-Surface Modeling
Update on SciDAC
Strategy for Applied Math Program
Public Comment

Wednesday, February 28, 2007

New Charges—COV Review of Computational Partnerships

Joint Panel with BERAC on Progression Toward GTL (Genomics) Models
Overview of Cyber Security Workshop
Outreach and Communications Project for ASCR
Mathematical Research Challenges in Optimization of Complex Systems
Public Comment

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting.

If you would like to make oral statements regarding any of the items on the agenda, you should contact Melea Baker via FAX at 301–903–4846 or via e-mail (*Melea.Baker@science.doe.gov*). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585; between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on February 7, 2007.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–2306 Filed 2–9–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, February 26, 2007, 8:30 a.m. to 5 p.m., and Tuesday, February 27, 2007, 8:30 a.m. to 12 p.m.

ADDRESSES: Bethesda North Marriott Hotel and Conference Center 5701 Marinelli Road, North Bethesda, MD 20852.

FOR FURTHER INFORMATION CONTACT: Karen Talamini; Office of Basic Energy Sciences; U.S. Department of Energy; Germantown Building, Independence Avenue, Washington, DC 20585; *Telephone:* (301) 903–4563

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

- News from the Office of Science.
- News from the Office of Basic Energy Sciences.
- Update of COV of Scientific Facilities Division.
- Reports of BES Basic Research Needs Workshops.
- Reports of the BESAC Grand Challenges Subcommittee.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Karen Talamini at 301–903–6594 (fax) or *karen.talamini@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585; between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on February 6, 2007.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–2304 Filed 2–9–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–33–000]

California Independent System Operator Corporation; Notice of Filing

February 5, 2007.

Take notice that on January 25, 2007, California Independent System Operator Corporation tendered for filing a Petition for Declaratory Order as required by 18 CFR 381.302(a).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 1, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2278 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–595–004]

Discovery Gas Transmission LLC; Notice of Amended Negotiated Rate

February 5, 2007.

Take notice that on January 31, 2007, Discovery Gas Transmission LLC (Discovery) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fifth Revised Sheet No. 22, the following tariff sheet to become effective February 1, 2007.

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. E7–2273 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–157–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

February 2, 2007.

Take notice that on January 31, 2007, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, to be effective March 1, 2007:

Fifth Revised Sheet No. 200,
Original Sheet No. 315,
Sheet Nos. 316–399.

Equitrans states that the purpose of this filing is to permit Equitran to contract in its own name to acquire and utilize capacity on third-party systems.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2262 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–099]

Gas Transmission Northwest Corporation; Notice of Negotiated Rates

February 5, 2007.

Take notice that on January 31, 2007, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, the following tariff sheets, to become effective February 1, 2007:

Forty-Second Revised Sheet No. 15
Fifth Revised Sheet No. 19

GTN states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the

''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2268 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–164–000]

Gas Transmission Northwest Corporation, Anadarko Petroleum Corporation and Anadarko Energy Services Company; Notice of Joint Petition for Expedited Grant of Limited Waivers

February 5, 2007.

Take notice that on January 31, 2007, Gas Transmission Northwest Corporation (GTN) and Anadarko Petroleum Corporation (APC) and Anadarko Energy Services Company (AESC) (collectively with APC, Anadarko) tendered for filing a Joint Petition for Expedited Grant of Limited Waivers.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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 February 12, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2276 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–476–000]

ISO New England, Inc. and New England Power Pool; Notice of Compliance Filing

February 2, 2007.

Take notice that on January 29, 2007, the New England Power Pool tendered for filing a transmittal letter and proposed amendments to the ISO tariff in compliance with Commission Order Nos. 681 and 681–A.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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 February 20, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2257 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–81–031]

Kinder Morgan Interstate Gas Transmission; Notice of Filing

February 5, 2007.

Take notice that on January 31, 2007, Kinder Morgan Interstate Gas Transmission (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A, Seventh Revised Sheet No. 4G.01 and Eighth Revised Sheet No. 4L, to be effective February 1, 2007.

KMIGT states that the filing is being made to reflect an amendment to a previously approved negotiated rate contract.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of

Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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. E7–2277 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–478–000]

Midwest Independent Transmission System Operator, Inc.; Notice of Compliance Filing

February 2, 2007.

Take notice that on January 29, 2007, the Midwest Independent Transmission System Operator, Inc. tendered for filing proposed revisions to the Midwest ISO's Open Access Transmission and Energy Markets tariff, FERC Electric Tariff, Third Revised Volume No. 1, providing for Long-Term Firm transmission Right in compliance with Commission's Order No. 681 and 681–A.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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 February 20, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2258 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–161–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

February 5, 2007.

Take notice that on January 31, 2007, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Ninety Seventh Revised Sheet No. 9, to become effective February 1, 2007.

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. E7–2274 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–125]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

February 2, 2007.

Take notice that on January 31, 2007, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, to effective April 1, 2007:

Third Revised Sheet No. 26E,
Fourth Revised Sheet No. 414A.01.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list.

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. E7–2256 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–123]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

February 2, 2007.

Take notice that on January 31, 2007, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to be effective April 1, 2007:

Second Revised Sheet No. 26W.16, Second Revised Sheet No. 26W.17, Original Sheet No. 414A.03.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2265 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–124]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate

February 2, 2006.

Take notice that on January 31, 2007, Natural Gas Pipeline Company of America (Natural) tendered for filing are part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to be effective April 1, 2007:

Second Revised Sheet No. 26D.03
Original Sheet No. 414A.02

Natural states that the purpose of this filing is to implement three (3) new negotiated rate transactions entered into by Natural and certain firm storage shippers under Natural's Rate Schedule NSS pursuant to Section 49 of the General Terms and Conditions of its Tariff. Natural states that these negotiated rate transactions also contain non-conforming tariff provisions and are listed on Sheet No. 414A.02, which identifies Natural's non-conforming agreements.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

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. E7–2266 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–163–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 5, 2007.

Take notice that on February 1, 2007, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to be effective April 1, 2007:

26 Revised Sheet No. 54
20 Revised Sheet No. 61
20 Revised Sheet No. 62
24 Revised Sheet No. 63
23 Revised Sheet No. 64

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2275 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–158–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 2, 2007.

Take notice that on January 31, 2007, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Thirty-Fourth Revised Sheet No. 28, to become effective February 1, 2007.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission, LP under its Rate Schedule X–28, the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2. This filing is being made pursuant to tracking provisions under Section 26 of the General Terms and Conditions of Transco's Third Revised Volume No. 1 Tariff.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2263 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–159–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tairff

February 2, 2007.

Take notice that on January 31, 2007, Transcontinental Gas Pipe Line Corporation (Transco) tendered for

filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Second Revised Thirty-Fourth Revised Sheet No. 28, to become effective December 1, 2006.

Transco states that copies of the filing are being mailed to affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2264 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

February 5, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–53–000.
Applicants: Boston Generating, LLC; Mystic I, LLC; Mystic Development, LLC; Fore River Development, LLC; EGB Holdings, LLC.
Description: Boston Generating, LLC, *et al.*, submit an application for order amending blanket authorization for certain future transfers and acquisitions under Section 203 of the FPA.
Filed Date: 01/26/2007.
Accession Number: 20070131–0086.
Comment Date: 5 p.m. Eastern Time on Friday, February 16, 2007.

Docket Numbers: EC07–54–000.
Applicants: Cottonwood Energy Company; Redbud Energy LP; Magnolia Energy LP.
Description: Cottonwood Energy Company LP, *et al.,* submit an Application for authorization pursuant to Section 203 of the FPA.
Filed Date: 01/26/2007.
Accession Number: 20070131–0094.
Comment Date: 5 p.m. Eastern Time on Friday, February 16, 2007.

Docket Numbers: EC07–55–000.
Applicants: HLM Energy, Inc.; Juice Energy, Inc.
Description: HLM Energy, LLC and Juice Energy, Inc. submits an application for authorization for disposition of jurisdictional facilities.
Filed Date: 01/29/2007.
Accession Number: 20070131–0092.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 20, 2007.

Docket Numbers: EC07–56–000.
Applicants: PSEG Lawrenceburg Energy Company LLC; American Electric Power Service Corp; AEP Generating Company.
Description: PSEG Lawrenceburg Energy Co, LLC, *et al.,* submit a joint application seeking authorization for the sale of jurisdictional facilities pursuant to Section 203 of the FPA.
Filed Date: 01/29/2007.
Accession Number: 20070131–0041.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 20, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–36–000.
Applicants: North Wind Cooperative.
Description: North Wind Cooperative submits a Notice of Self-Certification of Exempt Wholesale Generator Status for a wind project in Southwestern Minnesota.
Filed Date: 01/31/2007.
Accession Number: 20070202–0239.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 21, 2007.

Docket Numbers: EG07–37–000.
Applicants: Besicorp-Empire Power Company, LLC.
Description: Besicorp-Empire Power Company, LLC Exempt Wholesale Generator Notice of Self-Certification.
Filed Date: 01/31/2007.
Accession Number: 20070131–5085.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 21, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER91–569–036.
Applicants: Entergy Services Inc.
Description: Entergy Arkansas, Inc and Entergy Gulf States, Inc *et al.* submit non-material change in status pursuant to the requirements of Order 652.
Filed Date: 01/26/2007.
Accession Number: 20070129–0118.
Comment Date: 5 p.m. Eastern Time on Friday, February 16, 2007.

Docket Numbers: ER96–2350–026; ER98–4421–006; ER99–791–004; ER99–806–003; ER99–3677–005; ER01–570–006.
Applicants: Consumers Energy Company.
Description: Consumers Energy Company *et al.* submits their notice of non-material change in status related to the sale of Consumers' 49% ownership interest in the Midland Cogeneration Venture LP.
Filed Date: 01/30/2007.
Accession Number: 20070201–0255.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 20, 2007.

Docket Numbers: ER99–4102–003.
Applicants: Milford Power, LLC.
Description: Milford Power, LLC submits revisions to its market-based rate authority, FERC Electric Tariff, Original Volume 1 to include the reporting requirements for changes in status etc., Order 652.
Filed Date: 01/31/2007.
Accession Number: 20070202–0240.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 21, 2007.

Docket Numbers: ER99–4160–011; ER00–1895–008; ER01–3109–008.
Applicants: Dynegy Power Marketing, Inc.; Dynegy Midwest Generation, Inc.; Renaissance Power, LLC.
Description: Dynegy Power Marketing, Inc. *et al.*, submit a notice of non-material change in status.

Filed Date: 01/30/2007.
Accession Number: 20070130–5064.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 20, 2007.

Docket Numbers: ER00–3240–008; ER01–1633–005; ER96–780–016; ER03–1383–008.
Applicants: Southern Company Services, Inc.
Description: Southern Company Services, Inc., *et al.*, submit a Change in Status Compliance Report.
Filed Date: 01/31/2007.
Accession Number: 20070131–5009.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 21, 2007.

Docket Numbers: ER00–3696–007.
Applicants: Griffith Energy LLC.
Description: Griffith Energy LLC submits an updated market power analysis pursuant to Section 205 of the FPA.
Filed Date: 01/31/2007.
Accession Number: 20070202–0241.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 21, 2007.

Docket Numbers: ER01–1114–007; ER95–1528–014; ER96–1088–041; ER01–2659–008; ER02–2199–006; ER03–54–006; ER03–55–006; ER03–56–006; ER96–1858–019; ER03–674–008; ER99–1936–007; ER97–2758–014; ER05–89–007.
Applicants: Wisconsin Public Service Corporation; WPS Power Development, LLC; Combined Locks Energy Center, LLC; WPS Empire State, Inc.; WPS Beaver Falls Generation, LLC; WPS Niagara Generation, LLC; WPS Syracuse Generation, LLC; Mid-American Power, LLC; Quest Energy, LLC; WPS Canada Generation, Inc.; WPS New England Generation, Inc.; WPS Westwood Generation, LLC; Advantage Energy, Inc.; Upper Peninsula Power Company.
Description: WPS Resources Corporation *et al.*, submit its notice of change in status as set forth in the Commissioner's Order 652.
Filed Date: 01/31/2007.
Accession Number: 20070202–0234.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 21, 2007.

Docket Numbers: ER02–2263–007.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co submits their report of changes in status, pursuant to Order 652.
Filed Date: 01/31/2007.
Accession Number: 20070202–0253.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 21, 2007.

Docket Numbers: ER02–2339–002.
Applicants: Citadel Energy Products LLC.
Description: Citadel Energy Products LLC submits an amendment to its 7/28/05 updated market power analysis filing.
Filed Date: 01/26/2007.
Accession Number: 20070130–0077.
Comment Date: 5 p.m. Eastern Time on Friday, February 16, 2007.

Docket Numbers: ER04–222–004.
Applicants: CPV Milford, LLC.
Description: CPV Milford LLC submits revisions to its market-based FERC Electric Tariff, Original Volume 1 to include the reporting requirements for change in status in its market-based tariff.
Filed Date: 01/31/2007.
Accession Number: 20070202–0235.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 21, 2007.

Docket Numbers: ER04–691–082; EL04–104–069.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits a compliance filing pursuant to FERC's 11/1/06 order.
Filed Date: 01/30/2007.
Accession Number: 20070202–0238.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 20, 2007.

Docket Numbers: ER05–463–003.
Applicants: Mendota Hills, LLC.
Description: Mendota Hills, LLC notification of non-material change in status.
Filed Date: 01/29/2007.
Accession Number: 20070129–5051.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 20, 2007.

Docket Numbers: ER05–1232–003.
Applicants: JP Morgan Ventures Energy Corporation.
Description: JP Morgan Ventures Energy Corp submits a compliance filing to make technical corrections to its Market Based Rate Schedule FERC 1.
Filed Date: 01/30/2007.
Accession Number: 20070131–0022.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 20, 2007.

Docket Numbers: ER06–30–003.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc., submits its Large Generator Interconnection Agreement among itself, Union Electric Company and Central Illinois Public Service Co.
Filed Date: 01/29/2007.
Accession Number: 20070131–0015.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 20, 2007.

Docket Numbers: ER07–142–001.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits a compliance filing pursuant to the Commission's 12/29/06 order.
Filed Date: 01/29/2007.
Accession Number: 20070131–0119.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 20, 2007.

Docket Numbers: ER07–198–002.
Applicants: Highland Energy LLC.
Description: Highland Energy LLC submits First Revised Sheet 1–2 to FERC Electric Tariff, Original Volume 1 pursuant to the Commission's 12/4/06 request.
Filed Date: 01/30/2007.
Accession Number: 20070202–0267.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 20, 2007.

Docket Numbers: ER07–233–002.
Applicants: Occidental Power Services, Inc.
Description: Occidental Power Services, Inc submits an amendment to its 11/17/06 Market-Based Rate Schedule 1 Filing.
Filed Date: 01/29/2007.
Accession Number: 20070131–0118.
Comment Date: 5 p.m. Eastern Time on Friday, February 09, 2007.

Docket Numbers: ER07–472–000; ER99–2342–010.
Applicants: Tampa Electric Company.
Description: Tampa Electric Company submits a revised refund report in compliance with FERC's 2/28/06 Order and a rate schedule FERC No. 85.
Filed Date: 01/29/2007.
Accession Number: 20070131–0013.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 20, 2007.

Docket Numbers: ER07–473–000.
Applicants: Tampa Electric Company.
Description: Tampa Electric Company submits cost-based rate schedule, for sale of electric energy, and proposes that Rate Schedule 86, be accepted as effective on 12/30/06 and canceled on 12/31/06.
Filed Date: 01/29/2007.
Accession Number: 20070131–0014.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 20, 2007.

Docket Numbers: ER07–479–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Co submits an executed Network Integration Transmission Service Agreement with Arizona Public Service Co Marketing & Trading.
Filed Date: 01/30/2007.
Accession Number: 20070131–0085.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 20, 2007.

Docket Numbers: ER07–481–000.
Applicants: E.ON U.S., LLC.
Description: Louisville Gas and Electric Co and Kentucky Utilities Co

submits an unexecuted interconnection agreement with Duke Energy Shared Services, Inc.

Filed Date: 01/30/2007.

Accession Number: 20070131–0027.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 20, 2007.

Docket Numbers: ER07–482–000.

Applicants: Xcel Energy Services Inc.

Description: Xcel Energy Services Inc., on behalf of the NSP Companies submits a notice of termination of the Network Integration Transmission Service Agreement etc with GEN~SYS Energy.

Filed Date: 01/30/2007.

Accession Number: 20070131–0088.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 20, 2007.

Docket Numbers: ER07–483–000.

Applicants: Idaho Power Company.

Description: Idaho Power Co submits a notice of cancellation of Service Agreement with Idaho Power Co-Power Supply (Weiser Loads), Service Agreement, FERC SA 158.

Filed Date: 01/30/2007.

Accession Number: 20070131–0087.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 20, 2007.

Docket Numbers: ER07–484–000.

Applicants: Idaho Power Company.

Description: Idaho Power Co submits Fourth Revised Service Agreement 155 Superseding Third Revised Service Agreement 155 under FERC Electric Tariff, First Revised Volume 5 with Bonneville Power Administration.

Filed Date: 01/30/2007.

Accession Number: 20070131–0090.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 20, 2007.

Docket Numbers: ER07–485–000.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services Inc, agent for Alabama power Company *et al.* submits the Filing of Transmission Service Agreement between Southern Companies and Constellation Energy Group Inc.

Filed Date: 01/31/2007.

Accession Number: 20070201–0213.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 21, 2007.

Docket Numbers: ER07–486–000.

Applicants: Saguaro Power Company, a Ltd. Partnership.

Description: Saguaro Power Company submits a request for market-based rate authority and associated waivers and authorizations.

Filed Date: 01/31/2007.

Accession Number: 20070201–0212.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 21, 2007.

Docket Numbers: ER07–487–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corporation, as agent for Indiana and Michigan Power Company submits an interconnection and local delivery service agreement dated 1/24/07.

Filed Date: 01/31/2007.

Accession Number: 20070201–0252.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 21, 2007.

Docket Numbers: ER07–489–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits an executed EEI Master Power Purchase and Sale Agreement under its FERC Electric Tariff, Volume 5.

Filed Date: 01/31/2007.

Accession Number: 20070201–0253.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 21, 2007.

Docket Numbers: ER07–490–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits an informational report on correction of the Day-Ahead Energy Market results for the 1/18/07 Operating Day.

Filed Date: 01/26/2007.

Accession Number: 20070201–0254.

Comment Date: 5 p.m. Eastern Time on Friday, February 16, 2007.

Docket Numbers: ER07–491–000.

Applicants: Acacia Energy, Inc.

Description: Acacia Energy, Inc. submits a petition for acceptance of initial tariff, waivers and blanket authority of Acacia Energy, Inc pursuant to Section 205 of the Federal Power Act.

Filed Date: 01/31/2007.

Accession Number: 20070202–0226.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 21, 2007.

Docket Numbers: ER07–494–000.

Applicants: Alabama Power Company Services, Inc.

Description: Southern Company Services, Inc agent for Alabama Power Company, Georgia Power Company *et al.* submits Original Sheet 142A.053 *et al.* pursuant to FERC's Order 2006–B.

Filed Date: 02/01/2007.

Accession Number: 20070202–0265.

Comment Date: 5 p.m. Eastern Time on Thursday, February 22, 2007.

Docket Numbers: ER07–495–000.

Applicants: E.ON U.S. LLC.

Description: E.ON U.S. LLC *et al.* submits a notice of termination of KU Rate Schedule 202 w/ PSI Energy Inc pursuant to Sections 35.15 and 131.53 of FERC's Regulations.

Filed Date: 02/01/2007.

Accession Number: 20070202–0264.

Comment Date: 5 p.m. Eastern Time on Thursday, February 22, 2007.

Docket Numbers: ER07–496–000.

Applicants: Alcoa Power Marketing, Inc.

Description: Alcoa Power Marketing LLC submits a notice of succession to notify FERC that as a result of a conversation from a corporation to limited company and resulting name change APM LLC adopts Alcoa Power Marketing Inc. etc.

Filed Date: 02/01/2007.

Accession Number: 20070202–0263.

Comment Date: 5 p.m. Eastern Time on Thursday, February 22, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–17–000.

Applicants: AEP Generating Company.

Description: AEP Generating Co submits an Application under Section 204 of the Federal Power Act for Authorization To Issue Securities.

Filed Date: 01/26/2007.

Accession Number: 20070126–5004.

Comment Date: 5 p.m. Eastern Time on Friday, February 16, 2007.

Docket Numbers: ES07–18–000.

Applicants: Entergy New Orleans, Inc.

Description: Entergy New Orleans, Inc. submits an application to Issue Securities Pursuant to Section 204(a).

Filed Date: 01/30/2007.

Accession Number: 20070130–5043.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 20, 2007.

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. E7–2279 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

February 6, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–57–000.

Applicants: Wisconsin Electric Power Company; FPL Energy Point Beach, LLC.

Description: Wisconsin Electric Power Company and FPL Energy Point Beach, LLC submit a joint application seeking authorization to acquire an existing generating facilities.

Filed Date: 2/1/2007.

Accession Number: 20070206–0008.

Comment Date: 5 p.m. Eastern Time on Thursday, February 22, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–4102–004.

Applicants: Milford Power Company, LLC.

Description: Milford Power Company LLC submits its triennial market power update in support of continued authorization to sell under market-based rates.

Filed Date: 1/31/2007.

Accession Number: 20070202–0237.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 21, 2007.

Docket Numbers: ER02–2536–001.

Applicants: Bank of America.

Description: Bank of America, NA submits a compliance filing to make technical corrections to its Market-Based Rate Schedule 1, Third Revised Sheet 1 *et al.*

Filed Date: 2/1/2007.

Accession Number: 20070206–0106.

Comment Date: 5 p.m. Eastern Time on Thursday, February 22, 2007.

Docket Numbers: ER04–222–005.

Applicants: CPV Milford, LLC.

Description: CPV Milford, LLC submits its triennial market power update in support of continued authorization to sell under market-based rates pursuant to Order 652.

Filed Date: 1/31/2007.

Accession Number: 20070202–0236.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 21, 2007.

Docket Numbers: ER04–691–083; ER04–106–020; EL04–104–070.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits the following proposal regarding the treatment of Grandfathered Agreements in compliance with the Commission's 9/16/04 and 4/15/05 orders.

Filed Date: 2/1/2007.

Accession Number: 20070205–0002.

Comment Date: 5 p.m. Eastern Time on Thursday, February 22, 2007.

Docket Numbers: ER06–275–001.

Applicants: Northeast Utilities Service Company.

Description: Northeast Utilities Service Co., on behalf of The Connecticut Light and Power Company et al submits a report updating the Commission on the status of NU's four major transmission projects in Southwest Connecticut.

Filed Date: 1/30/2007.

Accession Number: 20070206–0104.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 20, 2007.

Docket Numbers: ER06–1420–004.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operation, Inc. on behalf of the Midwest CRSG Parties submits the Midwest Contingency Reserve Sharing Group Agreement.

Filed Date: 1/31/2007.

Accession Number: 20070202–0229.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 14, 2007.

Docket Numbers: ER06–1441–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc. submits its Large Generator Interconnection Agreement among Consumers Energy Company *et al.* under ER06–1441.

Filed Date: 2/1/2007.

Accession Number: 20070206–0101.

Comment Date: 5 p.m. Eastern Time on Thursday, February 22, 2007.

Docket Numbers: ER07–212–003; ER01–1558–004.

Applicants: Wayzata California Power Holdings; NEO California Power, LLC.

Description: Wayzata California Power Holdings, LLC, *et al.* submit FERC Electric rate Schedule 1, with a proposed effective date of Jan. 3, 2007.

Filed Date: 2/5/2007.

Accession Number: 20070205–5005.

Comment Date: 5 p.m. Eastern Time on Monday, February 26, 2007.

Docket Numbers: ER07–232–001.

Applicants: Aragonne Wind LLC.

Description: Aragonne Wind LLC submits a notification of non-material change in status.

Filed Date: 1/29/2007.

Accession Number: 20070129–5049.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 20, 2007.

Docket Numbers: ER07–240–002.

Applicants: Twin Buttes Wind LLC.

Description: Twin Buttes Wind LLC submits typographical revisions to Substitute Original Sheet 1 to FERC Electric Tariff, Original Volume 1, effective 3/1/07.

Filed Date: 2/1/2007.

Accession Number: 20070202–0231.

Comment Date: 5 p.m. Eastern Time on Thursday, February 22, 2007.

Docket Numbers: ER07–242–002.

Applicants: MinnDakota Wind LLC.

Description: MinnDakota Wind LLC submits typographical revisions to Substituted Original Sheet 1 to FERC Electric Tariff, Original Volume 1, effective 3/1/07.

Filed Date: 2/1/2007.

Accession Number: 20070202–0230.

Comment Date: 5 p.m. Eastern Time on Thursday, February 22, 2007.

Docket Numbers: ER07–287–002; ER07–287–001.

Applicants: Klondike Wind Power III LLC.

Description: Klondike Wind Power III LLC submits typographical revisions to Substitute Original Sheet 1 to FERC Electric Tariff, Original Volume 1, and on 2/1/07 submit revisions to its Second Substitute Original Sheet.

Filed Date: 1/23/07 and 2/1/2007.

Accession Number: 20070205–0283 and 20070202–0232.

Comment Date: 5 p.m. Eastern Time on Thursday, February 22, 2007.

Docket Numbers: ER07–415–001.
Applicants: DTE Pontiac North, LLC.
Description: DTE Pontiac North, LLC submits a notice of a Non-Material Change in the Facts Surrounding its Pending Application for Market-Based Authority.
Filed Date: 2/5/2007.
Accession Number: 20070205–5053.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 14, 2007.

Docket Numbers: ER07–416–001.
Applicants: Geneva Roth Holding, LLC.
Description: Geneva Roth Holding, LLC submits an addendum to its FERC Electric Tariff, Original Volume 1.
Filed Date: 1/30/2007.
Accession Number: 20070206–0103.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 20, 2007.

Docket Numbers: ER07–418–001.
Applicants: Western Systems Power Pool.
Description: Western Systems Power Pool submits to amend its 1/8/07 Filing to include Power and Water Resources Pooling Authority as member of the WSPP etc., effective 2/1/07.
Filed Date: 01/26/2007.
Accession Number: 20070130–0257.
Comment Date: 5 p.m. Eastern Time on Friday, February 16, 2007.

Docket Numbers: ER07–493–000.
Applicants: New England Power Pool Participants Committee.
Description: New England Power Pool (NEPOOL) Participants Committee submits the termination of membership for Worcester Energy et al.
Filed Date: 2/1/2007.
Accession Number: 20070202–0228.
Comment Date: 5 p.m. Eastern Time on Thursday, February 22, 2007.

Docket Numbers: ER07–494–000.
Applicants: Southern Company Services, Inc.
Description: Southern Company Services, Inc agent for Alabama Power Company, Georgia Power Company et al submits Original Sheet 142A.053 et al pursuant to FERC's Order 2006-B.
Filed Date: 2/1/2007.
Accession Number: 20070202–0265.
Comment Date: 5 p.m. Eastern Time on Thursday, February 22, 2007.

Docket Numbers: ER07–495–000.
Applicants: E. ON U.S., LLC.
Description: E. ON U.S., LLC et al. submits a notice of termination of KU Rate Schedule 202 w/PSI Energy Inc pursuant to Sections 35.15 and 131.53 of FERC's Regulations under ER07–495.
Filed Date: 2/1/2007.
Accession Number: 20070202–0264.
Comment Date: 5 p.m. Eastern Time on Thursday, February 22, 2007.

Docket Numbers: ER07–496–000.
Applicants: Alcoa Power Marketing, Inc.
Description: Alcoa Power Marketing LLC submits a notice of succession to notify FERC that as a result of a conversation from a corporation to limited company and resulting name change APM LLC adopts Alcoa Power Marketing Inc etc.
Filed Date: 2/1/2007.
Accession Number: 20070202–0263.
Comment Date: 5 p.m. Eastern Time on Thursday, February 22, 2007.

Docket Numbers: ER07–497–000.
Applicants: E. ON U.S. LLC.
Description: E. ON U.S, LLC on behalf of Louisville Gas and Electric Co et al. submits Notice of Termination of LG&E Rate Schedule 24 with Cincinnati Gas & Electric Co.
Filed Date: 2/1/2007.
Accession Number: 20070206–0107.
Comment Date: 5 p.m. Eastern Time on Thursday, February 22, 2007.

Docket Numbers: ER07–498–000.
Applicants: E.ON U.S. LLC.
Description: E.ON US, LLC on behalf of Louisville Gas and Electric Co submits notice of termination of LG&E Rate Schedule 21, as amended w/PSI Energy, Inc etc.
Filed Date: 2/1/2007.
Accession Number: 20070206–0108.
Comment Date: 5 p.m. Eastern Time on Thursday, February 22, 2007.

Docket Numbers: ER07–499–000.
Applicants: American Electric Power System Corporation; Ohio Power Company; Columbus Southern Power Company.
Description: Ohio Power Co and Columbus Southern Power Co submits an Interconnection Agreement with The Dayton Power and Light Co.
Filed Date: 2/1/2007.
Accession Number: 20070206–0105.
Comment Date: 5 p.m. Eastern Time on Thursday, February 22, 2007.

Docket Numbers: ER07–500–000.
Applicants: Xcel Energy Operating Inc.
Description: Public Service Company of Colorado submits copies of proposed revisions to the Fourth Substitute First Revised Sheet 72 et al of the Xcel Energy Operating Companies Joint Open Access Transmission Tariff.
Filed Date: 2/2/2007.
Accession Number: 20070205–0001.
Comment Date: 5 p.m. Eastern Time on Friday, February 23, 2007.

Docket Numbers: ER07–501–000.
Applicants: Birchwood Power Partners, L.P.
Description: Birchwood Power Partners, LP submits an application for market-based rate authority and request for expedited consideration and for waivers and pre-approvals.
Filed Date: 2/2/2007.
Accession Number: 20070206–0125.
Comment Date: 5 p.m. Eastern Time on Friday, February 23, 2007.

Docket Numbers: ER07–502–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits a Transmission Interconnection Agreement dated 6/20/06 and a Facilities Agreement dated 2/13/06 with Murray City Corp.
Filed Date: 2/2/2007.
Accession Number: 20070206–0126.
Comment Date: 5 p.m. Eastern Time on Friday, February 23, 2007.

Docket Numbers: ER07–504–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp submits a Transmission Access Charge Informational Filing, effective 1/1/07.
Filed Date: 2/2/2007.
Accession Number: 20070206–0130.
Comment Date: 5 p.m. Eastern Time on Friday, February 23, 2007.

Docket Numbers: ER07–507–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc submits its proposed revisions to Attachment K of its Market Administration and Control Area Service Tariff and Attachment W of its OATT.
Filed Date: 2/2/2007.
Accession Number: 20070206–0122.
Comment Date: 5 p.m. Eastern Time on Friday, February 23, 2007.

Docket Numbers: ER07–508–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits revisions to its Amended and Restated Operating Agreement and Open-Access Transmission Tariff.
Filed Date: 2/2/2007.
Accession Number: 20070206–0121.
Comment Date: 5 p.m. Eastern Time on Friday, February 23, 2007.

Docket Numbers: ER07–509–000.
Applicants: California Power Holdings, LLC.
Description: California Power Holdings, LLC submits a Notice of Succession to reflect Name Change on Market Based Rate Tariff.
Filed Date: 2/5/2007.
Accession Number: 20070205–5006.
Comment Date: 5 p.m. Eastern Time on Monday, February 26, 2007.

Docket Numbers: ER07–510–000.

Applicants: Avista Corporation.
Description: Avista Corporation submits proposed revision to Exhibit 1A to the Network Integration Transmission Service Agreement with Bonneville Power Administration etc. pursuant to Section 35.12 of FERC's Regulations.
Filed Date: 2/5/2007.
Accession Number: 20070206–0120.
Comment Date: 5 p.m. Eastern Time on Monday, February 26, 2007.

Docket Numbers: ER07–511–000.
Applicants: Avista Corporation.
Description: Avista Corporation submits proposed revisions to Exhibit A to the Interconnection and Operating Agreement with Clearwater Power Co.
Filed Date: 2/5/2007.
Accession Number: 20070206–0123.
Comment Date: 5 p.m. Eastern Time on Monday, February 26, 2007.

Docket Numbers: ER07–512–000.
Applicants: Lockhart Power Company.
Description: Lockhart Power Co submits a request to revise its FERC Electric, Original Volume 1.
Filed Date: 2/2/2007.
Accession Number: 20070206–0124.
Comment Date: 5 p.m. Eastern Time on Friday, February 23, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–19–000.
Applicants: Old Dominion Electric Cooperative, Inc.
Description: Old Dominion Electric Cooperative, Inc. submits an application for Extension of Authority to Issue Short-Term Debt of Old Dominion Electric Cooperative.
Filed Date: 2/2/2007.
Accession Number: 20070202–5004.
Comment Date: 5 p.m. Eastern Time on Friday, February 23, 2007.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC07–7–000.
Applicants: AES Parana Operations, S.R.L.
Description: AES Parana Operations, SRL submits a Notification of Self-Certification of Foreign Utility Company Status.
Filed Date: 2/2/2007.
Accession Number: 20070206–0159.
Comment Date: 5 p.m. Eastern Time on Friday, February 23, 2007.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH07–8–000.
Applicants: Spectra Energy Corp.
Description: Spectra Energy Corp submits its FERC–65A: Notification of Exemption from the requirements of the Public Utility Holding Company Act of 2005.

Filed Date: 2/1/2007.

Accession Number: 20070205–0003.

Comment Date: 5 p.m. Eastern Time on Thursday, February 22, 2007.

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.

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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. E7–2378 Filed 2–9–07; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2413–081–GA]

Georgia Power Company; Notice of Availability of Environmental Assessment

February 5, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application for non-project use of project lands and waters at the Wallace Dam Project (FERC No. 2413), and has prepared an environmental assessment (EA) for the proposal. The proposed non-project use would be located on Lake Oconee in Putnam County, Georgia.

In the application, Georgia Power (licensee) requests Commission authorization to issue a commercial lease to Place Properties (Place) 1.92 acres of project land and water for continued use as a public and commercial/residential marina. Place would reconfigure and expand the existing marina (formerly, Branley's Marina) on the shoreline of Lake Oconee near the confluence of Lick Creek and the Oconee River, near Eatonton, Georgia. The marina's docks would serve the public and residents of a community adjoining the project boundary, known as ''Southbay at Lake Oconee''.

The EA contains the staff's analysis of the potential environmental impacts of the proposal and concludes that approval of the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a Commission Order entitled ''Order Modifying and Approving Non-Project Use Of Project Lands And Waters'' issued on February 2, 2007 (115 FERC ¶ 62,014) which is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number (prefaced by

P–2413) and excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free (866) 208–3676, or for TTY, contact (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2271 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–449–000]

Kinder Morgan Louisiana Pipeline, L.L.C.; Notice of Public Meetings To Receive Comments on the Draft Environmental Impact Statement for the Proposed Kinder Morgan Louisiana Pipeline Project

February 2, 2007.

On January 26, 2007, the staff of the Federal Energy Regulatory Commission issued a draft Environmental Impact Statement (EIS) for the proposed Kinder Morgan Louisiana Pipeline Project. We will hold two public meetings to receive comments on the draft EIS.

The public meetings are designed to provide an opportunity for landowners, concerned citizens, and other stakeholders to offer comments on the draft EIS and environmental issues they believe should be addressed in the final EIS. To ensure that every comment is accurately recorded, a court reporter will be present to prepare an official transcript of each meeting. All interested parties are invited to attend the following public comment meetings:

Monday, February 26th: 6:30–9:30 p.m., Best Western Richmond Suites, Jean Lafitte Rooms I and II, 2600 Moeling Street, Lake Charles, LA.

Tuesday, February 27th: 6:30–9:30 p.m., Holiday Inn, 603 Holiday Drive, Jennings, LA.

For additional information, contact the Commission's Office of External Affairs at 1–866–208–FERC (3372).

Magalie R. Salas,

Secretary.

[FR Doc. E7–2267 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

February 2, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12768–000.

c. *Date filed:* January 11, 2007.

d. *Applicant:* Rochester Gas and Electric Corporation.

e. *Name and Location of Project:* The proposed Station No. 2, Unit 2 Project would be located at the site of the existing Station No. 2 Hydroelectric Project (FERC No. 2582) on the Genesee River in the City of Rochester, Monroe County, New York and would provide additional capacity at that site.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Thomas W. McCollach, Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, NY 14649, (585) 724–8085.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12768–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Proposed Project:* The proposed project would be located at the site of the licensed Station No. 2 Hydroelectric Project and would have the following new facilities: (1) A proposed 235-foot-long, 13-foot-diameter penstock which would include a low-level bifurcation to provide flow to the proposed powerhouse, (2) a proposed powerhouse containing one generating unit with an installed capacity of 6.0 megawatts, (3) a proposed one-mile-long transmission line which would connect to an existing power line; and (4) appurtenant facilities. The project would have an annual generation of 25 gigawatt-hours, which would be sold to a local utility.

k. *Location of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular

application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2259 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

February 2, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Change Project Boundary.

b. *Project No.:* 2333–052.

c. *Date Filed:* January 9, 2007.

d. *Applicant:* Rumford Falls Hydro, LLC.

e. *Name of Project:* Rumford Falls Hydroelectric Project.

f. *Location:* The project is located on the Androscoggin River, in Rumford, Oxford County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant contact:* Amy S. Koch, Patton Boggs LLP, 2550 M Street, NW., Washington, DC 20037, (202) 457–5618.

i. *FERC Contact:* Etta Foster, (202) 502–8769.

j. Deadline for filing comments, protests, and motions to intervene: February 28, 2007.

k. *Description of Request:* Rumford Falls Hydro, LLC filed an amendment to amend Exhibit G of its license to remove a parcel of land not necessary for project purposes.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. Information about this filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rule may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001 (a)(l)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2260 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

February 2, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2503–111.

c. *Date Filed:* January 12, 2007.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Keowee-Toxaway Hydroelectric Project.

f. *Location:* The project is located on Lake Keowee in Pickens County, South Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative, Duke Energy Corporation, P.O. Box 1006, Charlotte, NC 28201–1006. Phone: (704) 382–8576.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502–8674.

j. *Deadline for filing comments and/or motions:* March 2, 2007.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2503–111) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Proposal:* Duke Energy Carolinas, LLC proposes to lease two parcels of project land to The Highlands on Lake Keowee Owner's Association for two proposed cluster docks and a courtesy launch for canoes. The two parcels will total 0.711 acre and will provide 19 boat docking locations for access to the reservoir by residents of The Highlands. Two cluster docks, one with nine docking locations and one with ten docking locations, would be on 0.623 acre of project property, and the canoe launch would be on an 0.088 acre parcel of project property. The licensee consulted with, and incorporated comments received from, various Federal and state agencies including the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, South Carolina Department of Archives and History, South Carolina Department of Natural Resources, South Carolina Department of Parks, Recreation, and Tourism, and the South Carolina Institute of Archaeology and Anthropology.

l. *Locations of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the project number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2261 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

February 5, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No: 2232–531.*

c. *Date Filed:* December 18, 2006.

d. *Applicant:* Duke Power, a division of Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Project.

f. *Location:* This project is located on the Catawba and Wateree Rivers, in nine counties in North Carolina (Burke, Alexander, McDowell, Iredell, Caldwell, Lincoln, Catawba, Gaston, and Mecklenburg Counties) and five counties in South Carolina (York, Chester, Lancaster, Fairfield and Kershaw Counties). This project does not occupy any Tribal or federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a), 825(r), 799 and 801.

h. *Applicant Contact:* Mr. Kelvin K. Reagan, Senior Lake Services Representative; Duke Energy Corporation; P.O. Box 1006; Charlotte, NC; 28201–1006; 704–382–9386.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 502–6175 or by e-mail: *Brian.Romanek@ferc.gov.*

j. *Deadline for filing comments and or motions:* March 5, 2007.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2232–531) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Duke Power, licensee for the Catawba-Wateree Hydroelectric Project, has requested Commission authorization to lease to the Diane Shores Homeowners Association, Inc., 1.218 acres of project lands for use as a Commercial/Residential Marina to serve residents of the Diane Shores Subdivision. The Diane Shores Subdivision is located on Lake Norman in Mecklenburg County, North Carolina. The proposal is to construct 2 cluster docks that would accommodate a total of 22 boats (10 slips are existing). Diane Shores plans to dredge 1,982 cubic yards of lake bottom and haul it off-site. Two hundred and fifty (250) cubic yards of dredged material would be used to construct a berm that would be landscaped.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2270 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

February 5, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No.* 487–063.

c. *Date Filed:* January 19, 2007.

d. *Applicant:* PPL Holtwood, LLC.

e. *Name of Project:* Lake Wallenpaupack Hydroelectric Project.

f. *Location:* The project is located within the Delaware River Basin on Wallenpaupack Creek, and the Lackawaxen River in Pike and Wayne Counties, Pennsylvania. The project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert G. Grassi, Esq., PPL Holtwood, LLC, Two North Ninth Street, Allentown, PA 18101, (610) 774–2907.

i. *FERC Contact:* Jade Alvey, *jade.alvey@ferc.gov,* 202–502–6864.

j. *Deadline for filing comments and or motions:* March 5, 2007.

All documents (original and eight copies) should be filed with Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. Please reference ''Lake Wallenpaupack, FERC Project No. 487–063'' on any comments or motions filed.

k. *Description of Project:* PPL Holtwood, LLC requests Commission approval to permit Palmyra Township to use and occupy certain project lands for construction and operation of a visitor center. The center will provide the public with recreational information and be operated by the Hawley Lake Wallenpaupack Chamber of Commerce and the Pocono Mountain Vacation Bureau.

l. *Locations of the Application:* This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''E-library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR

''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2272 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Reminding Intrastate Pipelines To File FERC–549 (The Intrastate Pipeline Annual Transportation Report)

February 5, 2007.

Take notice that intrastate pipelines transporting natural gas under section 311 of the Natural Gas Policy Act in accordance with the Commission's regulations 18 CFR 284.126(b) (2006), are required to file FERC–549, ''Intrastate Pipeline Annual Transportation Report,'' by March 31, 2007.

The FERC–549 is an annual report filed by intrastate pipelines providing the following information for each transportation service (except storage) provided under § 284.122: (1) The name of the shipper receiving the transportation service; (2) the type of service performed (i.e., firm or interruptible); (3) total volumes transported for the shipper (if it is firm service, the report must separately state reservation and usage revenues); and (4) total revenues received for the shipper (if it is firm service, the report must separately state reservation and usage revenues).

More information on this filing can be found on the Commission's Web site: *http://www.ferc.gov/docs-filing/hard-fil.asp#549.* Questions may be e-mailed to *FERC-549@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E7–2269 Filed 2–9–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0069; FRL–8277–6]

Agency Information Collection Activities; Proposed Collection; Comment Request; The SunWise Program; EPA ICR No. 1940.02, OMB Control No. 2060–0439

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on 9/30/2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 13, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0069, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *A-and-R-Docket@epamail.epa.gov.*
- Fax: 202–566–1741 (temporarily out of service).
- Mail: The SunWise Program, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: EPA Air and Radiation Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0069. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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.*

FOR FURTHER INFORMATION CONTACT: Luke Hall-Jordan, Stratospheric Protection Division, Office of Air and Radiation, Mail code: 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9591; fax number: 202–343–2338; e-mail address: *hall-jordan.luke@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2007–0069, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air and Radiation Docket 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 Air and Radiation Docket is 202–566–1742.

Use *www.regulations.gov* to obtain a copy of the draft collection of

information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES.**
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Docket ID No.: EPA–HQ–OAR–2007–0069

Affected entities: Entities potentially affected by this action are elementary and middle school students, parents, and educators (informal and external educators).

Title: The SunWise Program.

ICR numbers: EPA ICR No. 1940.02, OMB Control No. 2060–0439.

ICR status: This ICR is currently scheduled to expire on September 30, 2007. 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 goal of the SunWise School Program is to teach children and their care givers how to protect themselves from overexposure to the sun. The SunWise Program recognizes the challenge of measuring the progress and evaluating the effectiveness of an environmental and public health education program where the ultimate goal is to reduce risk and improve public health. Therefore, the continual and careful evaluation of program effectiveness through a variety of means, including data from pre- and post-intervention surveys, tracking and monitoring of classroom activities and school policies, and advisory board meetings, is necessary to monitor progress and refine the program. Surveys to be developed and administered include: (1) Student survey to identify current sun safety knowledge and behaviors among students; and (2) Teacher questionnaire for measuring their receptivity to the educational component of the Program. The data will be analyzed and results will indicate the Program's effect on participants' sun-protection attitudes and behaviors. Additionally, information is collected when educators sign up to receive a Tool Kit either on the Web or in person, and when individuals participate in an on-line sun safety tutorial/certification program. Responses to the collection of information are voluntary. All responses to the collection of information remain anonymous and confidential.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average .33 hours per response for the survey, .17 hours per response for the registration, and .02 hours per response for the tutorial/certification. For the survey, it is estimated that a total of 1,333 burden hours from 4,000 respondents will be valued at $26,510.13 per year. For the registration, it is estimated that a total of 595 burden hours from 3,500 respondents will be valued at $45,820.95 per year. For the tutorial/certification, it is estimated that a total of 22 burden hours from 1,100 respondents will be valued at $1,540.02 per year.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 8,600.

Frequency of response: Once per year.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 1,950.

Estimated total annual costs: $73,871.10. This includes an estimated burden cost of $73,871.10 and an estimated cost of $0 for capital investment or maintenance and operational costs.

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.

Are There Changes in the Estimates From the Last Approval?

There is an increase of 117 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. Part of this increase (95 hours) reflects EPA's updating of burden estimates for this collection based upon historical

registration information. Additionally, EPA is adding a new component to this ICR, the tutorial/certification program, and will add an additional 22 burden hours to collect some basic information.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 5, 2007.

Drusilla Hufford,

Director, Stratospheric Protection Division, Office of Air and Radiation, U.S. Environmental Protection Agency.

[FR Doc. E7–2308 Filed 2–9–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Closed Meeting of the Board of Directors

TIME AND DATE: A closed meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, February 14, 2007.

PLACE: Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street NW., Washington DC 20006.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE MEETING: Periodic Update of Examination Program Development and Supervisory Findings.

CONTACT PERSON FOR MORE INFORMATION: Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202–408–2876 or *williss@fhfb.gov.*

By the Federal Housing Finance Board.

Dated: February 7, 2007.

Neil R. Crowley,

Acting General Counsel.

[FR Doc. 07–624 Filed 2–7–07; 4:38 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 9, 2007.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. TIB Financial Corp, Naples, Florida; to acquire 100 percent of the voting shares of the Bank of Venice, Venice, Florida.

2. FMCB Holdings, Inc., Senoia, Georgia; to acquire 100 percent of the voting shares of First Choice Community Bank, Dallas, Georgia (in organization).

3. FBG Holding Corporation, Tampa, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Florida Bank Group, Inc., and thereby indirectly acquire Bank of St. Petersburg, both of Tampa, Florida.

4. FBG Holding Corporation, Tampa, Florida; to acquire 100 percent of the voting shares of The Bank of Tallahassee, Tallahassee, Florida.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Texas BHC, Fort Worth, Texas; to become a bank holding company by acquiring 100 percent of Community Bank of Texas, National Association, Grand Prairie, Texas.

2. Farmers and Merchants Bancshares, Inc., Houston, Texas; to acquire 100 percent of Texas Premier Bank, National Association, Brookshire, Texas.

Board of Governors of the Federal Reserve System, February 7, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–2377 Filed 2–9–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 061 0266]

MiRealSource, Inc.; Analysis of Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 7, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''MiRealSource, Inc., File No. 061 0266,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The

[1] The comment must be accompanied by an explicit request for confidential treatment,

FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Patrick Roach (202/326–2793), Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 5, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/02/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted for public comment an agreement containing consent order with MiRealSource, Inc. (''MiRealSource'' or ''Respondent''). Respondent is a corporation owned by real estate brokers in Southeastern Michigan that operates a multiple listing service (''MLS'') designed to facilitate real estate transactions. The agreement settles charges that Respondent violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, through particular acts and practices of the MLS. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate comment on the proposed consent order. This analysis does not constitute an official interpretation of the agreement and proposed order, and does not modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only, and does not constitute an admission by Respondent that it violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

I. The Respondent

MiRealSource is a Michigan corporation. Its shareholders are real estate brokers doing business in Southeastern Michigan, and they are generally referred to as ''members'' of the Respondent. MiRealSource has approximately 7,000 members, and these members supply real estate brokerage services to home sellers in Southeastern Michigan and to prospective purchasers seeking homes in that area. One of the primary tools utilized by members to carry out their business efficiently is the MiRealSource MLS. This service facilitates the process of matching sellers and buyers for a large number of individual properties. It functions as a clearinghouse through which members regularly and systematically exchange information on property listings.

II. Industry Background

A Multiple Listing Service, or ''MLS,'' is a cooperative venture by which real estate brokers serving a common local market area submit their listings to a central service, which in turn distributes the information, for the purpose of fostering cooperation among brokers in real estate transactions. The MLS facilitates transactions by putting together a home seller, who contracts with a broker who is a member of the MLS, with prospective buyers, who may be working with other brokers who are also members of the MLS. Typically, the MLS rules establish criteria for membership, including the requirement that brokers and agents must be licensed by the applicable state regulatory agency to engage in real estate brokerage services.

Prior to the late 1990s, the listings on an MLS generally were directly accessible only to real estate brokers who were members of a local MLS. At that time, the MLS listings typically were made available through books or dedicated computer terminals, and generally could only be accessed by the public by physically visiting a broker's office or by receiving a fax or hand delivery of selected listings from a broker.

Information from an MLS is now typically available to the general public not only through the offices of real estate brokers who are MLS members, but also through three principal categories of internet Web sites. First, information concerning many MLS listings is available through Realtor.com, a national Web site run by the National Association of Realtors (''NAR''). Realtor.com contains listing information from many local MLS systems around the country and is the largest and most-used internet real estate Web site. Second, information concerning MLS listings is often made available through a local MLS-affiliated Web site. Third, information concerning MLS listings is often made available on the internet sites of various real estate brokers, who choose to provide these Web sites as a way of promoting their brokerage services to potential clients (home buyers and sellers). Most of these various Web sites receive information from an MLS pursuant to a procedure known as Internet Data Exchange (''IDX''), which is typically governed by MLS policies. The IDX policies allow operators of approved Web sites to display MLS active listing information to the public.

including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Today the internet plays a crucial role in real estate sales. According to a 2006 survey by the National Association of Realtors (''NAR''), 80 percent of home buyers used the internet to assist in their home search, with 59 percent reporting frequent internet searches. Twenty-four percent of respondents first learned about the home they selected from the internet, the second most common means behind learning about a home from a real estate agent (36 percent).[2] In all, 73 percent of home buyers found the internet to be a ''very useful'' source of information, and a total of 98 percent found the internet to be either ''very useful'' or ''somewhat useful.'' [3] Moreover, the NAR Survey makes clear that the overwhelming majority of Web sites used nationally in searching for homes contain listing information that is provided by local MLS systems.[4]

A. Types of Real Estate Brokerage Professionals

A typical real estate transaction involves two real estate brokers. These are commonly referred to as a ''listing broker'' and a ''selling broker.'' The listing broker is hired by the seller of the property to locate an appropriate buyer. The seller and the listing broker agree upon compensation, which is determined by written agreement negotiated between the seller and the listing broker. In a common traditional listing agreement, the listing broker receives compensation in the form of a commission, which is typically a percentage of the sales price of the property, payable if and when the property is sold. In such a traditional listing agreement, the listing broker agrees to provide a package of real estate brokerage services, including promoting the listing through the MLS and on the internet, providing advice to the seller regarding pricing and presentation, fielding all calls and requests to show the property, supplying a lock-box so that potential buyers can see the house with their agents, running open houses to show the house to potential buyers, reviewing offers, negotiating with buyers or their agents on offers, assisting with home inspections and other arrangements once a contract for sale is executed, and attending the closing of the transaction.

The other broker involved in a typical transaction is commonly referred to as the selling broker. This selling broker will identify and discuss the properties that may be of interest to the buyer, accompany the buyer to see various properties, try to arrange a transaction between buyer and seller, assist the buyer in negotiating the contract, and help in further steps necessary to close the transaction. In a traditional transaction, the listing broker offers the selling broker a fixed commission, to be paid from the listing broker's commission when and if the property is sold. Real estate brokers typically do not specialize as only listing brokers or selling brokers, but often function in either role depending on the particular transaction.

B. Types of Real Estate Listings

The relationship between the listing broker and the seller of the property is established by agreement. The two most common types of agreements governing listings are Exclusive Right to Sell Listings and Exclusive Agency Listings. An Exclusive Right to Sell Listing is the traditional listing agreement, pursuant to which the property owner appoints a real estate broker as his or her exclusive agent for a designated period of time, to sell the property on the owner's stated terms, and agrees to pay the listing broker a commission if and when the property is sold, whether the buyer of the property is secured by the listing broker, the owner or another broker.

An Exclusive Agency Listing is a listing agreement pursuant to which the listing broker acts as an exclusive agent of the property owner or principal in the sale of a property, but under which the property owner or principal reserves a right to sell the property without assistance of the listing broker, in which case the listing broker is paid a reduced or no commission when the property is sold.

Some real estate brokers have attempted to offer services to home sellers on something other than the traditional full-service basis. Many of these brokers, often for a flat fee paid at the inception of the listing contract and not contingent on whether the home sells during the term of that contract, will offer sellers access to the MLS's information-sharing function as well as a promise that their listing will appear on the most popular real estate Web sites. Under such arrangements, the listing broker does not offer additional real estate brokerage services as part of the flat fee package, but allows sellers to purchase additional services if sellers so desire. These non-traditional arrangements often are structured using Exclusive Agency Listing contracts.

There is a third type of real estate transaction that does not involve a real estate broker or the services of the MLS, and it is known as a ''For Sale By Owner'' or ''FSBO'' transaction. With a FSBO transaction, a home owner will attempt to sell a house without the involvement of any real estate broker and without paying any compensation to such a broker, by advertising the availability of the home through traditional advertising mechanisms (such as a newspaper) or FSBO-specific Web sites.

There are two critical distinctions between an Exclusive Agency Listing and a FSBO for the purpose of this analysis. First, the Exclusive Agency Listing employs a listing broker for access to the MLS and popular Web sites providing MLS listing information open to the public; a FSBO transaction does not. Second, an Exclusive Agency Listing sets terms of compensation to be paid to a selling broker, while a FSBO transaction often does not.

III. The Conduct Addressed by the Proposed Consent Order

The complaint in this matter, issued on October 10, 2006,[5] alleges that MiRealSource has violated the FTC Act by adopting rules or policies that limit the publication and marketing of certain sellers' properties, but not others, based solely on the terms of their respective listing contracts. The complaint alleges that Respondent favored Exclusive Right to Sell Listings and disfavored Exclusive Agency Listings through, among other things, the adoption of a rule excluding the latter listings entirely from the MLS.

The allegations explain that Respondent also adopted a series of further rules to stifle competition from real estate brokers using alternative business models to provide brokerage services in Southeastern Michigan. These rules include: (1) The ''Web Site Policy,'' which limits the publication of certain residential real estate listings on popular real estate Web sites; (2) the ''Listing Broker Policy,'' which requires a Listing Broker to perform a minimum set of services; (3) the ''Physical Office Policy, which requires each member to have an office in the state of Michigan; (4) the ''FSBO Policy,''which restricts how and where home sellers can advertise and market their homes; and (5) the ''Co-Mingling Policy,'' which (for a time) restricted MiRealSource listing information from being searched on public Web sites along side listing information from other sources.

[2] E.g., Paul C. Bishop, Harika Bickicioglu, and Shonda D. Hightower, The 2006 National Association of Realtors Profile of Home Buyers and Sellers (hereinafter, ''NAR Study'') at 3–3, 3–4, 3–6.

[3] Id. at 3–5.

[4] NAR Study at 3–19.

[5] See *http://www.ftc.gov/os/adjpro/d9321/061012admincomplaint.pdf.*

Such rules limit the acceptance, publication, and marketing of certain residential real estate listing contracts, thereby limiting home sellers' ability to choose a listing type that best serves their specific needs. The complaint alleges that the conduct was collusive and exclusionary, because in agreeing to keep non-traditional listings off the MLS and from public Web sites, the brokers enacting the rules were, in effect, agreeing among themselves to limit the manner in which they compete with one another, and withholding valuable benefits of the MLS from real estate brokers who did not go along. In addition, the complaint alleges that MiRealSource actively enforced the anticompetitive rules and policies through violation letters to members and substantial fines.

Some of the conduct at issue in this matter also is similar to the conduct addressed by the Commission in its recent consent orders involving real estate boards and associations operating MLSs in Texas, New Hampshire, New Jersey, Virginia, Wisconsin and Colorado.[6] As in those matters, certain rules or policies of Respondent challenged in the complaint preclude information about properties from being made available on popular real estate Web sites because the listing contracts do not follow the traditional format approved by the MLS. These rules or policies prevent properties with non-traditional listing contracts from being displayed on a broad range of public Web sites, including the national ''Realtor.com'' web site operated by the National Association of Realtors, the local web site operated by MiRealSource, and individual members' Web sites.

A. The Respondent Has Market Power

MiRealSource serves residential real estate brokers in Southeastern Michigan. These professionals compete with one another to provide residential real estate brokerage services to consumers. Membership in the MiRealSource MLS is necessary for a broker to provide effective residential real estate brokerage services to sellers and buyers of real property in this area.[7] By virtue of broad industry participation and control over a key input, MiRealSource has market power in the provision of residential real estate brokerage services to sellers and buyers of real property in the MiRealSource Service Area.

B. Respondent's Conduct

Non-traditional forms of listing contracts, including Exclusive Agency Listings, are used by listing brokers to offer lower-cost real estate services to consumers. The series of rules and policies adopted by Respondent were joint action by a group of competitors to withhold distribution of listing information from rivals who did not contract with their brokerage service customers in a way that the group wished. This type of conduct was condemned by the Commission 20 years ago. In the 1980s and 1990s, several local MLS boards banned Exclusive Agency Listings from the MLS entirely. The Commission investigated and issued complaints against these exclusionary practices, obtaining several consent orders.[8] The complaint alleges that, in addition to following these past practices, MiRealSource also extended its exclusionary rules to the more modern method of distributing listing information publicly via the internet.

C. Competitive Effects of the Respondent's Rules and Policies

The MiRealSource rules and policies have prevented its members from offering or accepting Exclusive Agency Listings. Thus, the rules impede the provision of unbundled brokerage services, and may make it more difficult and costly for home sellers to market their homes. The Respondent's rules and policies have caused some brokers to exit from the real estate business in Southeastern Michigan, or to refrain from offering non-traditional brokerage services in that market or to not enter at all. Furthermore, the rules have caused home sellers to switch away from Exclusive Agency Listings to other forms of listing agreements.

By preventing Exclusive Agency Listings from being included in the MLS and transmitted to public-access real estate Web sites, the MiRealSource rules and policies have adverse effects on home sellers and home buyers. When home sellers switch to full service listing agreements from Exclusive Agency Listings that often offer lower-cost real estate services to consumers, the sellers may purchase services that they would not otherwise buy. This, in turn, may increase the commission costs to consumers of real estate brokerage services. In particular, the rules deny home sellers choices for marketing their homes and deny home buyers the chance to use the internet easily to see all of the houses listed by real estate brokers in the area, making their search less efficient.

D. There Is No Competitive Efficiency Associated With the Web Site Policy

The Respondent's rules at issue here advance no legitimate procompetitive purpose. As a theoretical matter, if buyers and sellers could avail themselves of an MLS system and carry out real estate transactions without compensating any of its broker members, an MLS might be concerned that those buyers and sellers were free-riding on the investment that brokers have made in the MLS and adopt rules to address that free-riding. But this theoretical concern does not justify the rules or policies adopted by MiRealSource. Exclusive Agency Listings are not a credible means for home buyers or sellers to bypass the use of the brokerage services that the MLS was created to promote, because a listing broker is always involved in an Exclusive Agency Listing, and other provisions in the MiRealSource rules ensure that a selling broker—a broker who finds a buyer for the property—is compensated for the brokerage service he or she provides.

Under existing MLS rules that apply to any form of listing agreement, the listing broker must ensure that the home seller pays compensation to the cooperating selling broker (if there is one), and the listing broker may be liable himself for a lost commission if the home seller fails to pay a selling broker who was the procuring cause of

[6] In the Matter of Austin Bd. of Realtors, Docket No. C–4167 (Final Approval, Aug. 29, 2006); In the Matter of Northern New England Real Estate Network, Inc., Docket No. C–4175 (Final Approval, Nov. 22, 2006); In the Matter of Monmouth County Association of Realtors, Inc., Docket No. C–4176 (Final Approval, Nov. 22, 2006); In the Matter of Williamsburg Area Association of Realtors, Inc., Docket No. C–4177 (Final Approval, Nov. 22, 2006); In the Matter of Realtors Association of Northeast Wisconsin, Inc., Docket No. C–4178 (Final Approval, Nov. 22, 2006); In the Matter of Information and Real Estate Services, LLC, Docket No. C–4179 (Final Approval, Nov. 22, 2006). The ABOR consent order was published with an accompanying Analysis To Aid Public Comment at 71 Fed. Reg. 41023 (July 19, 2006). The other five consent orders were published at 71 Fed. Reg. 61474 (October 12, 2006).

[7] As noted, the MLS provides valuable services for a broker assisting a seller as a listing broker, by offering a means of publicizing the property to other brokers and the public. For a broker assisting a buyer, it also offers unique and valuable services, including detailed information that is not shown on public web sites, which can help with house showings and otherwise facilitate home selections.

[8] See, e.g., In the Matter of Port Washington Real Estate Bd., Inc., 120 F.T.C. 882 (1995); In the Matter of United Real Estate Brokers of Rockland, Ltd., 116 F.T.C. 972 (1993); In the Matter of Am. Indus. Real Estate Assoc., Docket No. C–3449, 1993 WL 13009648 (F.T.C. Jul. 6, 1993); In the Matter of Puget Sound Multiple Listing Serv., Docket No. C–3390 (F.T.C. Aug. 2, 1990); In the Matter of Bellingham-Whatcom County Multiple Listing Bureau, Docket No. C–3299 (F.T.C. Aug. 2, 1990); In the Matter of Metro MLS, Inc., Docket No. C–3286, 1990 WL 10012611 (F.T.C. Apr. 18, 1990); In the Matter of Multiple Listing Serv. of the Greater Michigan City Area, Inc., 106 F.T.C. 95 (1985); In the Matter of Orange County Bd. of Realtors, Inc., 106 F.T.C. 88 (1985).

a completed property sale. The possibility of sellers or buyers using the MLS but bypassing brokerage services is already addressed effectively by the Respondent's existing rules that do not distinguish between forms of listing contracts, and does not justify the series of exclusionary rules and policies adopted by MiRealSource. It is possible, of course, that a buyer of an Exclusive Agency Listing may make the purchase without using a selling broker, but this is true for traditional Exclusive Right to Sell Listings as well.

IV. The Proposed Consent Order

The proposed order is designed to ensure that the Respondent does not misuse its market power, while preserving the procompetitive incentives of members to contribute to the MLS.

The proposed order prohibits MiRealSource from adopting or enforcing any rules or policies that deny or limit the ability of MLS members to enter into Exclusive Agency Listings, or any other lawful listing agreements, with sellers of properties. More specifically, the proposed order prohibits MiRealSource from preventing its members from offering or accepting Exclusive Agency Listings or other lawful listing agreements; cooperating with Listing Brokers or agents that offer or accept Exclusive Agency Listings or other lawful listing agreements; publishing Exclusive Agency Listings or other lawful listing agreements on the MLS and approved Web sites; publishing their information concerning listings on public real estate Web sites, including but not limited to *http://www.FSBO.com*; requiring members to have a physical office; and offering unbundled real estate brokerage services, including but not limited to requiring MiRealSource Shareholders to provide a minimum set of real estate brokerage services. The proposed order also prohibits MiRealSource from denying or restricting the services of the MLS to Exclusive Agency Listings or other lawful listings in any way that such services of the MLS are not denied or restricted to Exclusive Right to Sell Listings; or treating Exclusive Agency Listings, or any other lawful listings, in a less advantageous manner than Exclusive Right to Sell Listings, including but not limited to, any policy, rule or practice pertaining to the transmission, downloading, or displaying of information pertaining to such listings.

In addition to these substantive provisions, the proposed order states that, within forty-five days after it becomes final, Respondent shall have conformed its rules to the substantive provisions of the order. Respondent is further required to notify its members of the applicable order through its usual business communications and its Web site. The proposed order requires notification to the Commission of changes in the respondent's structure, and periodic filings of written reports concerning compliance. The relief in the proposed consent order ensures that the Respondent cannot revert to the old rules or policies, or engage in future variations of the challenged conduct.

The proposed order applies to MiRealSource and entities it owns or controls, including its respective MLS and any affiliated Web site it operates. The order does not prohibit members, or other independent persons or entities that receive listing information from Respondent, from making independent decisions concerning the use or display of such listing information on member or third-party Web sites, consistent with any contractual obligations to Respondent.

The proposed order will expire in 10 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–2305 Filed 2–9–07; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-07–0527]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Joan F. Karr, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

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 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. Written comments should be received within 60 days of this notice.

Proposed Project

Human Exposure to Cyanobacterial Toxins in Water (OMB No. 0920–0527)—Reinstatement—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Cyanobacteria (blue-green algae) can be found in terrestrial, fresh, brackish, or marine water environments. Some species of cyanobacteria produce toxins that may cause acute or chronic illnesses (including neurotoxicity, hepatotoxicity, and skin irritation) in humans and animals (including other mammals, fish, and birds). A number of human health effects, including gastroenteritis, respiratory effects, skin irritations, allergic responses, and liver damage, are associated with the ingestion of or contact with water containing cyanobacterial blooms. Although the balance of evidence, in conjunction with data from laboratory animal research, suggests that cyanobacterial toxins are responsible for a range of human health effects, there have been few epidemiologic studies of this association.

During August 2006, we conducted our first study to assess exposure to microcystins in recreational waters with a bloom of Microcystis aeruginosa. We recruited 104 people who gave informed consent to participate. Ninety seven people did their recreational activities on Lake 1, which had a confirmed M. aeruginosa bloom, and 7 others did their activities on Lake 2, which had no bloom. Study participants completed a pre-activity questionnaire, a post-activity questionnaire, provided a 10-ml blood sample, and completed a telephone symptom survey 7–10 days after exposure. The concentrations of microcystins in Lake 1 ranged from 2 to 5 ug/L and in Lake 2 were all below the limit of detection (LOD). When we designed the study, we calculated that a person exposed to recreationally-generated aerosols from water containing 10 ug/L of microcystins should have levels of microcystins in

their blood. However, the microcystin concentrations in Lake 2 were below the LOD and in Lake 1 were actually 2ug/L to 5ug/L, much lower than we anticipated based on data from the previous week. Thus, the recreational exposures were not likely high enough for us to quantify microcystins in blood and the serum samples were all below the LOD for microcystins.

For the new data collection, we will recruit 100 study participants who are at risk for swallowing water or inhaling spray (*i.e.*, water skiers, jet skiers, people sailing small boats) and who would normally be doing these activities, even in the presence of a bloom. We may recruit people who train for organized swimming events (*e.g.*, triathlons) in lakes. In addition, we will recruit 50 study participants from lakes with no blooms as a comparison group to assess the health effects associated with recreational activities on ''clean'' lakes. Study participants will be asked to sign a consent form, complete a symptom survey before and after doing their recreational water activities, provide one 10-ml whole blood sample after their recreational activities, and complete a telephone symptom survey 8–10 days after doing study activities.

The purpose of the new data collection is to continue assessing the public health impact of exposure to the cyanobacterial toxins, microcystins, during recreational activities. We will examine the extent of human exposure to microcystins present in recreational waters and associated aerosols and whether serum levels of microcystins can be used as a biomarker of exposure.

There is no cost to the respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Forms	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Screening Questionnaire	188	1	10/60	31
Pre-exposure Questionnaire	150	1	10/60	25
Post-exposure Questionnaire	150	1	10/60	25
10-day post exposure Questionnaire	150	1	10/60	25
Total				106

Dated: February 6, 2007.

Joan F. Karr,

Acting Reports Clearance Officer. Centers for Disease Control and Prevention.

[FR Doc. E7–2309 Filed 2–9–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-07–0630]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Joan Karr, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

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 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. Written comments should be received within 60 days of this notice.

Proposed Project

Work Organization Predictors of Depression in Women—Extension—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Depression is a costly and debilitating occupational health problem. Research has indicated that the costs to an organization of treatment for depression can rival those for heart disease, and both major depressive disorder and forms of minor depression have been found to be associated with more disability days than other types of health diagnoses. This may be of particular relevance for working women. Various national and international studies indicate that women in developed countries experience depression at up to twice the rate of men. Studies that have examined this gender difference have focused on social, personality, and genetic explanations while few have explored factors in the workplace that may contribute to the gender differential. Examples of workplace factors that may contribute to depression among women include: Additive workplace and home responsibilities, lack of control and authority, and low paying and low status jobs. Additionally, women are much more likely to face various types of discrimination in the workplace than men, ranging from harassment to inequalities in hiring and promotional opportunities, and these types of stressors have been strongly linked with psychological distress and other negative health outcomes. On the positive side, organizations that are judged by their employees to value diversity and employee development engender lower levels of employee stress, and those that enforce policies against discrimination have more committed employees. Such organizational practices and policies may be beneficial for employee mental health, particularly the mental health of women.

This research focuses on the following questions: (1) Which work organization factors are most predictive of depression in women, and (2) are there measurable work organization factors that confer protection against depression in women employees?

The research uses repeated measures, prospective design with data collection at three points (baseline and 1-year and 2-year follow-ups). A 45-minute survey

is being administered by telephone to 400 women and men at 16 different organizations. The survey contains questions about traditional job stressors (e.g., changes in workload, social support, and work roles), stressors not traditionally examined, but which may be linked with depressive symptoms among women (e.g., roles and responsibilities outside of the workplace, discrimination, and career issues) depression symptoms, and company policies, programs and practices. One Human Resource (HR) representative at each company has also been surveyed about company policies, programs and practices. Analyses will determine which work organization factors are linked with depressive symptoms and what effect the organizational practices/policies of interest have on depression. Findings from this prospective study will also help target future intervention efforts to reduce occupationally related depression in women workers. An extension request is being sought for an additional three years, in order to finish data collection. There will be no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Employees	400	3	45/60	900
HR Representatives	16	1	20/60	5
				905

Dated: February 5, 2007.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–2310 Filed 2–9–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0027]

Voluntary Self Inspection of Medicated Feed Manufacturing Facilities; Draft Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft compliance policy guide (CPG) entitled ''Voluntary Self Inspection of Medicated Feed Manufacturing Facilities.'' This draft CPG is intended to provide guidance to the FDA field offices in prioritizing inspections of medicated feed manufacturing facilities for compliance with Current Good Manufacturing Practices for Medicated Feeds regulations (CGMP).

DATES: Submit written or electronic comments on this draft CPG by April 30, 2007 to ensure their adequate consideration in preparation of the final document. Submit written comments on the information collection requirements by April 13, 2007. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of this CPG to the Director, Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–827–0482. Submit written comments on this draft CPG 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*. Comments should be identified with the full title of the CPG and the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the document.

Submit written comments on the guidance to the Division of Dockets Management (address above). Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: *For Technical Questions Concerning This CPG*: Paul Bachman, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9225, e-mail: *Paul.Bachman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In this CPG, we are announcing a new proposed approach to assist in prioritizing inspections to determine an individual facility's compliance with the Federal Food, Drug, and Cosmetics Act (the act) and CGMP regulations published in part 225 (21 CFR part 225) relative to the manufacture and distribution of medicated animal feed. The CPG describes a voluntary self inspection program whereby firms would conduct their own inspection on an annual basis and provide the results of the inspection to us. The proposed CPG states that in determining its inspectional priorities for CGMP inspections for medicated feed manufacturing establishments, FDA intends to consider, among other factors, whether the firm conducts this voluntary self inspection. We are calling this approach ''Voluntary Self Inspection,'' but the idea has also been referred to as ''first-party inspection.''

In addition to seeking comments on this concept, we are considering piloting this new approach for at least 1 year once comments have been received and evaluated. A pilot would be announced in a separate **Federal Register** document.

II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This draft guidance, when finalized, will represent the agency's current thinking on the topic. 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 method may be used as long as it satisfies the requirements of applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined

in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506 (c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, we are publishing a notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Voluntary Self Inspection of Medicated Animal Feed Manufacturing Facilities.

Description: FDA considers a number of factors in determining inspectional priorities and resource allocation for inspections of medicated feed manufacturing establishments. The agency is proposing a new approach to assist in prioritizing inspections to determine an individual facility's compliance with the act, and CGMP regulations published in part 225 relative to the manufacture and distribution of medicated animal feeds. The CPG describes a voluntary self inspection program whereby firms would conduct their own inspection on an annual basis and provide the results of the inspection to us. The proposed CPG states that in determining its inspectional priorities for CGMP inspections for medicated feed manufacturing establishments, FDA intends to consider, among other factors, whether the firm conducts this voluntary self-inspection.

Under this CPG, firms that conduct Voluntary Self Inspection would: (1) Submit written notification to local FDA field office(s) of intent to conduct self inspections for compliance with CGMP; (2) submit written reports of self inspection within sixty (60) days to local FDA Field Offices; (3) report self inspection results through the use of FDA forms 3621 or 3622; and (4) submit written reports of self reinspection within ninety (90) days for facilities that have on going deficiencies which continue to occur.

We expect approximately 1,000 feed mills will conduct Voluntary Self Inspections. Eight hundred of these are expected to be licensed facilities and two hundred to be non-licensed facilities. Completing and sending the notifications to us is estimated to take about 15 minutes or 250 hours for the 1,000 firms. We estimate the time to review any previous self inspections, conduct an inspection and complete the report is 9 hours for licensed facilities and 4 hours for non-licensed facilities. For the 1,000 firms, self inspection burden would be 8,000 hours (9 x 800 = 7,200 hours for licensed facilities; 4 x 200 = 800 hours for non-licensed facilities). Facilities with ongoing deficiencies would self-reinspect and report to us. We estimate that 5 percent or 50 of the facilities will fall into this category with approximately 40 licensed facilities (9 hours x 40 firms = 360 hours) and 10 non-licensed facilities (4 hours x 10 = 40) for a total of 400 hours. Lastly, we estimate that it will take each facility approximately 1 hour (1 hour x 800 facilities = 800 hours for licensed and 1 hour x 200 firms = 200 hours for non-licensed facilities) for a total of 1,000 hours to collect the inspection forms, various reports and submit to FDA. For the 1,000 firms, total annual burden is estimated as 9,650 hours.

Description of Respondents: Manufacturers of medicated animal feeds.

We estimate the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Information	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Written notification of intent to conduct self inspections to local FDA field office	1,000	1	1,000	.0.25	250
FDA Form no. 3621, Self inspection report for FDA licensed facilities	8,000	1	800	9	7,200
FDA Form no 3622; Self inspection report for non-FDA licensed facilities	200	1	200	4	800
Written report of self-reinspection within ninety (90) days for FDA licensed facilities that have ongoing deficiencies that continue to occur.	40	1	40	9	360
Written report of self-reinspection within ninety (90) days for non-FDA licensed facilities that have ongoing deficiencies that continue to occur.	10	1	10	4	40
Written report to local FDA field Office within sixty (60) days of self inspection-FDA licensed facilities	800	1	800	1	800

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

Information	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Written report to local FDA field Office within sixty (60) days of self inspection for non-FDA licensed facilities	200	1	200	1	200
Total					9,650

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimates in table 1 of this document resulted from discussions with industry and our experience in conducting medicated feed facility inspections.

IV. Comments

This draft CPG is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this draft CPG. Submit written or electronic comments by (see **DATES**) to ensure adequate consideration in preparation of the final document. Written comments concerning the information collection requirements must be received by the Division of Dockets Management by (see **DATES**).

Two paper copies of any comments are to be submitted, 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. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Electronic comments may be submitted on the Internet at *http://www.fda.gov/dockets/ecomments*. Once on this site, select [Docket No. 2007D–0027] ''Voluntary Self Inspection of Medicated Feed Manufacturing Facilities; Draft Compliance Policy Guide'' and follow the directions. Copies of the CPG may also be downloaded to a personal computer with access to the Internet. The Office of Regulatory Affairs home pages include this draft CPG and may be accessed at *http://www.fda.gov/ora* under ''Compliance References.''

Dated: January 29, 2007.

Margaret O'K. Glavin,

Associate Commissioner for Regulatory Affairs.

[FR Doc. E7–2232 Filed 2–9–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), 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 a proposed reinstatement, with change, of a previously approved collection for which approval has expired. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning enrollment for students and score assessments for FEMA's Independent Study Program.

SUPPLEMENTARY INFORMATION: FEMA's Emergency Management Institute (EMI) provides a wide variety of training to emergency management personnel throughout the country. The EMI Independent Study (IS) Program is part of the FEMA training program authorized under the Robert T. Stafford Disaster Relief and Emergency Act, Public Law 93–288 as amended. These courses are offered online by the Emergency Management Institute (EMI). The IS Program provides valuable training to Federal, State, local and Tribal emergency management personnel and the general citizenry of the United States without having to attend a resident course at EMI, or at a State-sponsored course. The National Incident Management System (NIMS) is our nation's incident management system. Homeland Security Presidential Directive 5, ''Management of Domestic Incidents'' requires the adoption of NIMS by all Federal departments and agencies. This directive also requires that Federal preparedness assistance funding for States, Territories, local jurisdictions and Tribal entities be dependent on NIMS compliance.

Collection of Information

Title: EMI Independent Study Course Enrollment and Test Answer Sheet.

Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Number: 1660–0046.

Form Numbers: FEMA Form 95–23.

Abstract: The IS program office collect data from FEMA Form 95–23 to create and update student records and provide students with credit for training completion. The system also allows FEMA to track completions and failures of course exams. The data on the electronic form will be encrypted and sent to the server to be parsed into the Independent Study database. The paper version of the form will be scanned and parsed into the database or key entered into the database.

Affected Public: Individuals or Households, Federal Government, and State, Local or Tribal Government.

Estimated Total Annual Burden Hours:

ANNUAL BURDEN HOURS

Project/activity (survey, form(s), focus group, etc.)	Number of respondents (A)	Frequency of responses (B)	Burden hours per respondent (C)	Annual responses (A × B)	Total annual burden hours (A × B× C)
FEMA Form 95–23 Paper	88,312	4	45 mins	353,248	264,936
FEMA Form 95–23 Electronic	794,805	4	30 mins	3,179,220	1,589,610
Total	883,117			3,532,468	1,854,546

Estimated Cost: FEMA has estimated a total annual cost burden of $137,767 will be used by students who will mail FEMA Form 95–23 (353,248 × .39 cents stamp = $137,767). The hour burden cost to respondents using wage rates has estimated to be 28% ($9,668,863) of Individuals and Households and 72% ($31,125,213) of State, Local, Tribal and Federal Officials will enroll in Independent Study courses.

Comments: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments must be submitted on or before April 13, 2007.

ADDRESSES: Interested persons should submit written comments to Chief, Records Management and Privacy, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, 500 C Street, SW., Room 609, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Jennifer A. Ogle, Independent Study Project Officer, Distant Learning Section, Emergency Management Institute, at (301) 447–1585 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: February 2, 2007.

John A. Sharetts-Sullivan,

Chief, Records Management and Privacy Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–2288 Filed 2–9–07; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1678–DR]

Oklahoma; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–1678–DR), dated February 1, 2007, and related determinations.

EFFECTIVE DATE: February 2, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 1, 2007:

Adair, Atoka, Bryan, Cherokee, Coal, Cotton, Craig, Haskell, Hughes, Johnston, Latimer, Mayes, Okfuskee, Okmulgee, Ottawa, Seminole, Sequoyah, and Wagoner Counties for Public Assistance.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E7–2287 Filed 2–9–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Sunshine Act Meetings

TIME AND DATE: 8:30 a.m. to 5:30 p.m. March 1; and 8:30 a.m. to 12:30 p.m. March 2, 2007.

PLACE: Department of the Interior Auditorium, 1849 C Street, NW. Washington, DC 20240.

STATUS: The Department of the Interior, as co-chair with the Department of Commerce, on behalf of the U.S. Coral Reef Task Force, announces a public meeting of the Task Force.

MATTERS TO BE CONSIDERED: Updates on implementation of Local Action Strategies, including a focus on selected issues and future needs; consideration of alternative non-regulatory approaches to coral reef conservation; member accomplishments; and public comments on coral reef issues generally. The agenda will be available from the contact person below and published on the Task Force Web site at *http://www.coralreef.gov* when finalized.

REGISTRATION AND EXHIBITS: There is no charge to attend this meeting. Limited space is also available for those desiring to have exhibits. Registration information for attendance and for exhibits, along with information on rooms, parking and related items, is available on the Task Force Web site noted above. Exhibits must be registered well in advance of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Those desiring to obtain additional information should contact Randal Bowman at the office of the Assistant Secretary for Fish and Wildlife Parks, Department of the Interior, 1849 C Street NW., MS–MIB–3156, Attn: CRTF, Washington, DC 20240, telephone 202–219–1037, e-mail *Randal_Bowman@ios.doi.gov;* or consult the above Web site.

PUBLIC COMMENTS: Written statements of any length may be submitted to the Task Force at the above address, or delivered to the Task Force staff at the meeting. Those desiring to testify before the Task Force should register to do so at the meeting, and should summarize their actual statements in 5 minutes. All written statements will be considered in their entirety. Wherever possible, those with similar viewpoints or messages are encouraged to make joint statements. Comments will be received on the afternoon of March 1.

Dated: January 26, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07–637 Filed 2–8–07; 12:47 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19155–16; AK–964–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited. The lands are in the vicinity of Galena, Alaska, and are located in:

Mineral Survey No. 2368, Alaska.
Containing 61.34 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until 30 days after publication in the **Federal Register** to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Jenny M. Anderson,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E7–2230 Filed 2–9–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Policy Committee; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: The OCS Policy Committee will meet at the Loews Annapolis Hotel in Annapolis, Maryland.

DATES: Wednesday, February 21, 2007, 8:30 a.m. to 4 p.m. and Thursday, February 22, 2007, from 8 a.m. to 1:15 p.m.

ADDRESSES: The Loews Annapolis Hotel, 126 West Street, Annapolis, Maryland 21401, telephone (410) 263–7777.

FOR FURTHER INFORMATION CONTACT: Ms. Jeryne Bryant at Minerals Management Service, 381 Elden Street, Mail Stop 4001, Herndon, Virginia 20170–4187. She can be reached by telephone at (703) 787–1211 or by electronic mail at *jeryne.bryant@mms.gov.*

SUPPLEMENTARY INFORMATION: The OCS Policy Committee represents the collective viewpoint of coastal states, local government, environmental community, industry and other parties involved with the OCS Program. It provides policy advice to the Secretary of the Interior through the Director of the MMS on all aspects of leasing, exploration, development, and protection of OCS resources.

The agenda for Wednesday, February 21 will cover the following principal subjects:

OCS Alternative Energy and Alternative Use (AEAU) Program. This presentation will provide an update on the MMS's OCS AEAU Program that is being developed to manage access and balance competing uses of the OCS while ensuring appropriate environmental safeguards. This management authority was granted to the Secretary of the Interior under the Energy Policy Act of 2005. The OCS Policy Committee's Alternative Energy/Use Subcommittee will also report on its activities and future plans.

Update on the ''Proposed Program, Outer Continental Shelf Oil and Gas Leasing Program, 2007–2012.'' This presentation will provide an update on the leasing program and the next phase in the 5-year process. The OCS Policy Committee's 5-Year OCS Oil and Gas Leasing Program Subcommittee will also report on its activities and future plans.

State Members' Round Table Discussion of Offshore Energy Issues. State representatives to the OCS Policy Committee will discuss offshore energy development (conventional and alternative) issues from the perspective of their respective states. This session will provide Committee members, MMS representatives, and other participants with a better and more comprehensive understanding of the various issues as perceived by the states.

MMS Regional Issues. The Regional Directors will highlight activities off the California and Alaska coasts.

The agenda for Thursday, February 22 will cover the following principal subjects:

OCS Scientific Committee Update. This presentation will address the current activities of the OCS Scientific Committee and its subcommittees.

Gulf of Mexico (GOM) Oil and Gas Situation. This presentation will provide a summary and overview of the GOM oil and gas situation, including the new GOM Energy Security Act. It will also address industry recovery from hurricanes and new requirements; and the petroleum system of the lower tertiary.

Coastal Impact Assistance Program (CIAP). This presentation will provide an update on the MMS's CIAP which was authorized under the Energy Policy Act of 2005. The CIAP will distribute $1 billion to coastal states and localities for approved projects related to the conservation, restoration, or protection of coastal areas, wildlife, and natural

resources. The Committee will also hear from a recipient state, Louisiana, on the development of its state plan.

OCS Natural Gas Production Issues. This presentation will address the decline in OCS gas production and prospects for production in the future; gas supply issues from the industrial consumer perspective; and reductions in the rig count, access, and related issues.

Marine Minerals Program. This presentation will address coastal environments and the increasing need for sand and gravel; environmental studies; post-GOM hurricane sand resource identification projects; Florida and Louisiana Sand Management Working Groups; and non-sand and gravel projects. The OCS Policy Committee's Hard Minerals Subcommittee will also report on its activities and future plans.

Committee Business. The Committee will review current operating procedures and elect officers.

The meeting is open to the public. Approximately 100 visitors can be accommodated on a first-come-first-served basis.

Upon request, interested parties may make oral or written presentations to the OCS Policy Committee. Such requests should be made no later than February 15, 2007, to Jeryne Bryant. Requests to make oral statements should be accompanied by a summary of the statement to be made. Please see **FOR FURTHER INFORMATION CONTACT** section for address and telephone number.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at the MMS in Herndon, Virginia.

Authority: Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: January 26, 2007.

L. Keith Good,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. E7–2297 Filed 2–9–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on January 4, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cable Television Laboratories, Inc. (''CableLabs''), 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, StarHub Cable Vision Ltd, Singapore, Singapore, 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 CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs 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 September 7, 1988 (53 FR 34593).

The last notification with respect to membership changes was filed with the Department on June 8, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 11, 2005 (70 FR 39796).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–605 Filed 2–9–07; 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—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on December 26, 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''), IMS Global Learning 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, Learning Objects, Inc., Washington, DC; ACT, Iowa City, IA; Compass Knowledge, Orlando, FL; Elsevier, Inc., St. Louis, MO; Harcourt Education, Orlando, FL; Jenzabar, Cambridge, MA; Moodle, East Perth, Western Australia, Australia; and Ucompass.com, Tallahassee, FL have been added 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 Global Learning Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, Global Learning 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 September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on September 28, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 30, 2006 (71 FR 63358).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–607 Filed 2–9–07; 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—International Electronics Manufacturing Initiative (Formerly National Electronics Manufacturing Initiative)

Notice is hereby given that, on December 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''), International Electronics Manufacturing Initiative (formerly National Electronics Manufacturing Initiative) (''iNEMI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Comission 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, Albemarle Corporation, Baton Rouge, LA; Analogic, Peabody, MA; Ciba Speciality Chemicals Corporation, Tarrytown, PA; Micro Systems Engineering, Inc. (MSEI), Lake Oswego, OR; Rambo Chemicals (HK) Ltd., Kwai Chung, Hong Kong-China;

STATS ChipPAC Ltd., Singapore, Singapore; Supresta, Ardsley, NY; and UGS Corporation, Milford, OH have been added as parties to this venture.

Also, Heraeus, Inc., West Conshohocken, PA; Total Parts Plus, Fort Walton Beach, FL; and Nortel, Toronto, Ontario, CANADA have withdrawn as parties to this venture. In addition, Alcatel and Lucent Technologies have merged with the name of the combined companies changed to Alcatel-Lucent, Paris, France.

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 iNEMI intends to file additional written notifications disclosing all changes in membership.

On June 6, 1996, iNEMI 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 28, 1996 (61 FR 33774).

The last notification was filed with the Department on January 5, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 8, 2006 (71 FR 6522).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–604 Filed 2–9–07; 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—Spray Drift Task Force

Notice is hereby given that, on December 29, 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''), Spray Drift Task Force (''SDTF'') 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 the antitrust plaintiffs to actual damages under specified circumstances. Specifically, AgValue Enterprises, Inc., Visalia, CA joined SDTF and was subsequently acquired by United Phosphorous, Inc., Trenton, NJ. Also, the membership formerly owned by AgValue Enterprises, Inc., Visalia, CA, but acquired by United Phosphorous, Inc., Trenton, NJ, was transferred to Etigra, LLC, Cary, NC. The membership formerly held by Griffin Corporation, Valdosta, GA, but acquired by E.I. duPont de Nemours and Company, Newark, DE, was transferred to Mitsui Chemicals, Tokyo, Japan. The membership formerly held by Alsan Research, Ankeny, IA, but acquired by Dow AgroSciences LLC, Indianapolis, IN, was transferred to Isagro, Morrisville, NC. The membership formerly held by Nations Ag II, LLC, Knoxville, TN, but acquired by Makhteshim-Agan of North America, Inc., Raleigh, NC, was transferred to Zhejiang Tide Crop Science Co., Ltd., Hangzhou, People's Republic of China. Futhermore, UCB Chemicals Corporation, Gent, Belgium transferred its membership to Taminco, Inc., Gent, Belgium. Also, Arvesta Corporation, San Francisco, CA changed its name to Arysta LifeScience North America Corporation, and relocated to Cary, NC; Crompton Corporation, Bethany, CT changed its name to Chemtura Corporation; and Chimac-Agriphar SA, Ougree, Belgium changed its name to Agriphar SA.

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 SDTF intends to file additional written notifications disclosing all changes in membership.

On May 15, 1990, SDTF 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 5, 1990 (55 FR 27701).

The last notification was filed with the Department on August 25, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 26, 2003 (68 FR 55657).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–606 Filed 2–9–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 22, 2006, Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Phenylacetone (8501)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sales to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than April 13, 2007.

Dated: February 5, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–2317 Filed 2–9–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on October 31, 2006, Fisher Clinical Services Inc., 7554 Schantz Road, Allentown, Pennsylvania 18106, made application by letter to the Drug Enforcement

Administration (DEA) to be registered as an importer of Noroxymorphone (9668), a basic class of controlled substance listed in schedule II.

The company plans to import the listed substance for analytical research and clinical trials.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than March 14, 2007.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: February 5, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–2328 Filed 2–9–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on December 14, 2006, Mallinckrodt Inc., 3600 North Second Street, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Opium, raw (9600)	II
Poppy Straw (9650)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances for the manufacture of controlled substances in bulk for distribution to its customers.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Attention: DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than March 14, 2007.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: February 5, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–2326 Filed 2–9–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 12, 2006, Orasure Technologies, Inc., Lehigh University, Seeley G Mudd-Building 6, 220 East First Street, Bethlehem, Pennsylvania 18015, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Lysergic acid diethylamide (LSD) (7315).	I
4–Methoxyamphetamine (7411)	I
Normorphine (9313)	I
Tetrahydrocannabinols (THC) (7370).	I
Alphamethadol (9605)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Cocaine (9041)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Oxycodone (9143)	II
Meperidine (9230)	II
Methadone (9250)	II
Oxymorphone (9652)	II

The company plans to manufacture the listed controlled substances in bulk to manufacture controlled substance derivatives. These derivatives will be used in diagnostic products created specifically for internal use only.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator,

Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than April 13, 2007.

Dated: February 5, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–2320 Filed 2–9–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated October 12, 2006 and published in the **Federal Register** on October 19, 2006, (71 FR 61800–61801), Tocris Cookson, Inc., 16144 Westwoods Business Park, Ellisville, Missouri 63021–7683, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of Marihuana (7360), a basic class of controlled substance listed in schedule I.

The company plans to import this product for non-clinical laboratory based research only.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. § 823(a) and 952(a) and determined that the registration of Tocris Cookson, Inc. to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Tocris Cookson, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: February 5, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–2330 Filed 2–9–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket Nos. 02–09, 02–43]

Edmund Chein, M.D.; Revocation of Practitioner's Registration, Denial of Application for Exporter's Registration

Introduction and Procedural History

This is a consolidated proceeding. On November 7, 2001, the then Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Notice of Immediate Suspension of the practitioner's Certificate of Registration, AC1643661, issued to Edmund Chein, M.D. (Respondent) of Palm Springs, California. The Notice of Immediate Suspension was based on the Administrator's preliminary conclusion that Respondent's continued registration constituted ''an imminent danger to the public health and safety because of the substantial likelihood that [Respondent would] continue exporting and diverting controlled substances.'' Order to Show Cause and Notice of Immediate Suspension at 6 (2001 OSC). The Order further proposed to revoke Respondent's practitioner's registration and deny any pending applications for renewal of the registration on the ground that Respondent's continued registration would be inconsistent with the public interest. *See id.* at 1; *see also* 21 U.S.C. 823(f) & 824(a)(4).

Subsequently, on May 24, 2002, the Deputy Assistant Administrator, Office of Diversion Control, issued an additional Order to Show Cause (hereinafter 2002 OSC) to Respondent. This Show Cause Order proposed to deny Respondent's pending application for a registration as an exporter on the ground that issuance of a registration would be inconsistent with the public interest. 2002 OSC at 1; *see also* 21 U.S.C. 958(c) &(d); *id.* 823(d).

The 2001 OSC alleged that Respondent had purchased ''large amounts of anabolic steroids'' from a Mexican pharmacy and ''other illegitimate sources'' and had distributed these substances to individuals who did not have a legitimate medical need for them. 2001 OSC at 2. The OSC further alleged that on May 28, 1996, Federal agents executed a search warrant at Respondent's medical office and seized several vials of steroids for which there were no records. *Id.* The OSC further alleged that in June 1996, DEA obtained from Henry Schein, Inc., copies of invoices which documented that Respondent had purchased controlled substances on nine different occasions between January 1995 and May 1996. *Id.* at 3. The OSC alleged that Respondent had failed to keep accurate records of the purchase, inventory, and dispensation of controlled substances. *Id.*

The 2001 OSC next alleged that on January 31, 2001, DEA Diversion Investigators (DIs) went to Respondent's Palm Springs medical office, the Palm Springs Life Extension Institute (hereinafter PSLEI), to conduct an administrative inspection. *Id.* The OSC alleged that the invoices documenting the purchases of controlled substances were at an accounting firm and not at the office. *Id.* The 2001 OSC further alleged that ''none of [the] required controlled substance records were accessible,'' because the records were stored in a computer and none of the office personnel then present were capable of retrieving them. *Id.* The OSC thus alleged that Respondent had violated the Controlled Substance Act by failing ''to maintain in a readily available condition'' initial and biennial inventory records, purchase invoices, and dispensing records. *Id.*

The 2001 OSC further alleged that on February 5, 2001, DEA personnel returned to Respondent's office and obtained an inventory of controlled substances that was dated February 5, 2001, dispensing records for the period July 1, 2000, through February 1, 2001, and invoices for purchases of controlled substances from Barnes Wholesale, Inc., for the period January 1, 1999, through February 4, 2001. *Id.* The OSC also alleged that the dispensing records showed that between July 1, 2000, and February 5, 2001, Respondent dispensed anabolic steroids, a Schedule III controlled substance, and phentermine, a Schedule IV controlled substance, to persons in Korea, Belgium, Indonesia, Canada, Japan, Spain, Germany, Switzerland, Mexico, England, and Hong Kong. *Id.* at 3–4.

More specifically, the OSC alleged that Respondent had made 328 illegal exports comprised of 20 exports of phentermine 30 mg., 58 exports of phentermine 15 mg., 73 exports of testosterone gel 8 mg., 12 exports of testosterone gel 100 mg., 50 exports of testosterone estradiol gel 4 mg, 113 exports of Depo testosterone 200 mg., and two exports of testosterone 50 mg.

Id. at 4. The OSC alleged that these exports were illegal because Respondent was not registered as an exporter, *see* 21 U.S.C. 957(a), and had failed to file the necessary declarations. *See id.* section 953(e); *see also* 2001 OSC at 4. The OSC also alleged that Respondent had failed to maintain proper records of the exports. *See* 2001 OSC at 4.

The 2001 OSC alleged that upon discovering the exports, a DI contacted Dr. Darryl Garber, an associate of Respondent, who informed the DI that Respondent's clinic had patient records for each recipient of the shipments, that some of the recipients were seen at the clinic and others were seen by video conferencing, and that the controlled substances were shipped by Federal Express. *See id.* The OSC alleged that the DI instructed Dr. Garber that the shipments ''violated the Controlled Substances Act and must be stopped immediately,'' and that the DI subsequently faxed Dr. Garber the applicable provisions of the United States Code. *Id.*

The 2001 OSC next alleged that on August 23, 2001, DEA personnel visited the PSLEI and conducted a management conference with Respondent. *Id.* The OSC alleged that during this meeting, the DI told Respondent that the required records ''were not readily retrievable on the date of the inspection[ ] as required'' by Federal law and that Respondent acknowledged that he had discussed his non-compliance with Dr. Garber. *Id.* at 5. The OSC alleged that during the conference, Respondent admitted that based on the records provided to DEA in February 2001, he ''had at least 150 exporting violations already on record.'' *Id.* The OSC further alleged that Respondent admitted that he had ''continued to export controlled substances'' notwithstanding the March 2001 warning that the shipments were illegal, and that he would continue to do so until he ''received written instructions from DEA.'' *Id.* The OSC also alleged that when DEA personnel requested that Respondent produce his controlled substance shipping records, Respondent refused to do so and invoked the Fifth Amendment. *Id.*

The 2001 OSC alleged that on various dates following the August 23rd, 2001 meeting, DEA personnel faxed Respondent the applicable provisions of the United States Code and instructed him that he was not authorized to either export or import controlled substances and ''must immediately cease'' all such activity. *Id.* Based on the above allegations, the Administrator made the preliminary finding that Respondent was ''responsible for the diversion of large quantities of controlled substances in violation of 21 U.S.C. 953, 957 and 958.'' *Id.* at 6. Concluding that there was a ''substantial likelihood that [Respondent would] continue exporting and diverting controlled substances,'' the Administrator ordered the immediate suspension of Respondent's practitioner's registration. *Id.*

The 2002 OSC, which proposed the denial of Respondent's application for an exporter's registration, repeated many of the above allegations. In addition, the 2002 OSC alleged that on April 27, 2001, Respondent had applied for a registration as an exporter of Schedule III (non-narcotic) and Schedule IV controlled substances and that DEA had received the application on May 7, 2001. 2002 OSC at 2. The OSC alleged that the ''application was not accepted for filing'' and that Respondent's filing fee had been refunded. *Id.* The OSC also alleged that on December 17, 2001, DEA received from Respondent an undated application for a registration to export controlled substances in Schedule III (non-narcotic) and Schedule IV. *See id.* at 3.

The 2002 OSC further alleged that on March 13, 2002, DEA DIs executed an administrative inspection warrant at the PSLEI. *See id.* at 3. The OSC alleged that during the inspection, the DIs seized samples of controlled substances for analysis and obtained copies of invoices, inventories, dispensing logs and patient records. *Id.* The OSC alleged that these records showed that notwithstanding the previous DEA warnings that his exports were illegal, Respondent had ''continued to dispense controlled substances * * * to overseas patients until November 14, 2001,'' the date he was served with the Notice of Immediate Suspension. *Id.* Finally, the OSC alleged that ''DEA reviewed the patient records of selected overseas patients and determined that [Respondent had] deviated from the appropriate standard of care for the dispensation of controlled substances.'' *Id.* The OSC thus concluded that Respondent had ''committed acts that would render the approval of [his] pending DEA export application to be inconsistent with the public interest.'' *Id.* at 3.

Respondent timely requested a hearing on the allegations of each Show Cause Order; the cases were assigned to Administrative Law Judge (ALJ) Gail Randall. The hearing on the issues raised by the 2001 Show Cause Order was initially scheduled to begin on July 9, 2002, in Riverside, California. However, on June 6, 2002, the parties filed a joint motion to consolidate the cases and to continue the hearing. On June 13, 2002, the ALJ granted the motions. ALJ Decision at 2 (ALJ).

The first stage of the hearing was held in Riverside, California, on January 28–31, and February 3–6, 2003. During this portion of the hearing, Respondent objected to DEA's proposed eliciting of testimony of an expert witness, Dr. Robert Zipser, on the issue of whether Respondent's dispensing practices were within the standard of care. Among other things, Respondent asserted that the proposed testimony related to an issue that was outside the subject matter jurisdiction of this Agency. While the ALJ overruled Respondent's objection, she granted Respondent leave to file an interlocutory appeal on the issue. The ALJ further barred Dr. Zipser from testifying about Respondent's dispensing practices until the interlocutory appeal was resolved.

On June 23, 2003, the Acting Administrator denied Respondent's appeal. Thereafter, the second stage of the hearing was held in Arlington, Virginia, on September 9–10, 2003, and the final stage was held in Riverside on December 9 through 11, 2003.

During the hearing, both parties called witnesses and introduced documentary evidence. Following the hearing, both parties submitted proposed findings, conclusion of law, and argument.

On July 28, 2005, the ALJ issued her recommended decision. In that decision, the ALJ recommended that I revoke Respondent's practitioner's registration. ALJ at 82. The ALJ further recommended that I deny Respondent's application for an export registration. *See id.* Neither party filed exceptions.

Thereafter, the ALJ forwarded the record to me for final agency action. On December 29, 2005, Respondent's counsel submitted a letter to me setting forth various ''issues for review, exception, appeal and judicial review,'' Resp. Ltr. at 1, and including as attachments copies of various filings and motions that were previously submitted during the course of this all too lengthy proceeding. To the extent Respondent's letter raises ''exceptions'' as that term is used in the Administrative Procedure Act, *see* 5 U.S.C. 557(c), it is out of time.[1] *See* 21 CFR 1316.66(a) (requiring filing of exceptions ''[w]ithin twenty days after the date upon which a party is served a copy of the report of the'' ALJ).

Having carefully considered the record as a whole, I hereby issue this

[1] Respondent's letter does not specify which of the ALJ's findings of fact and conclusions of law he is excepting to. Nor does it provide ''a statement of supporting reasons for such exceptions, together with evidence of record * * * and citations of authorities relied upon.'' 21 CFR 1316.66(a).

final order. For the reasons set forth below, I concur with the ALJ's conclusion that Respondent's continued registration as a practitioner would be inconsistent with the public interest and therefore adopt the ALJ's recommendation that Respondent's registration should be revoked. I further concur with the ALJ's conclusion that granting Respondent's application for registration as an exporter would be inconsistent with the public interest and therefore adopt the ALJ's recommendation that the application be denied. I make the following findings.

Findings of Fact

Respondent is a medical doctor and holds a license with the Medical Board of California. Gov. Exh. 3, at 1. Respondent graduated in 1980 from the American University of the Caribbean School of Medicine and also holds a law degree. *Id.; see also* ALJ at 5. Respondent practices anti-aging medicine and is the owner of the Palm Springs Life Extension Institute (PSLEI). ALJ at 5–6.

Respondent has developed a treatment protocol called Total Hormone Replacement Therapy and obtained various patents for it.[2] *See generally* Resp. Exh. 1017. Respondent's practice involves using blood tests to determine the levels of various hormones in a person and prescribing various substances including hormones such as Human Growth Hormone and Estrogen to a patient based on the level of these hormones found in a healthy young adult. *See generally id.* Most significantly, as part of his treatment protocol, Respondent frequently prescribed and dispensed several controlled substances including testosterone in various formulations, a Schedule III anabolic steroid (*see* 21 CFR 1308.13(f)), and phentermine, a Schedule IV stimulant. *See* 21 CFR 1308.14(e). Respondent used the term ''adrenal extract'' for phentermine. *See* Gov. Exh. 117; Gov. Exh. 135.

Respondent holds a DEA Certificate of Registration as a practitioner, No. AC1643661, which authorizes him to dispense controlled substances in Schedules II, II–N, III, III–N, IV and V. Gov. Exh. 2. Respondent's registered location is 2825 Tahquitz Canyon Building A, Palm Springs, CA, 92262. *Id.*

The First Investigation

Respondent first came to the attention of DEA in 1994, when a U.S. Food and Drug Administration (FDA) Special Agent (SA) contacted Robert Brasich, a Diversion Investigator assigned to the San Diego Field Division, seeking a person to assist in an undercover investigation of Respondent. Tr. 112. The FDA SA asked the DI whether he knew of any DEA SA who could pose as body builder and perform an undercover visit with Respondent. *Id.* at 118. The FDA SA told the DI that he had personally conducted an undercover meeting during which he told Respondent that he played rugby and wanted to increase his strength and endurance. *Id.* at 120. At the end of the visit, Respondent's staff gave the FDA SA human growth hormone (HGH) and the FDA SA subsequently received shipments of HGH on several occasions.[3] *Id.; see also* Gov. Exh. 35, at 23.

On October 17, 1994, another FDA SA also performed an undercover visit with Respondent. *Id.* at 24. This SA told Respondent that he had an injured disc, that he lifted weights, and that he wanted to increase his muscle mass, and that he had taken steroids previously ''but wanted a safer alternative.'' *Id.* at 25; *see also* Tr. at 121. According to an affidavit filed to obtain a search warrant, Respondent told the SA that ''the problem with anabolic steroids in the past was their use without medical supervision, but they weren't bad if administered by a doctor.'' Gov. Ex. 35, at 25. At the end of the consultation, Respondent gave the SA prescriptions for various items including testosterone gel, a Schedule III controlled substance. *Id.* at 26. While Respondent obtained a blood sample, he issued the prescription for testosterone without obtaining the results. *Id.* at 26; *see also* Tr. at 149.

On March 17, 1995, a Customs SA performed an undercover visit with Respondent. The Customs SA told Respondent that he was a competitive powerlifter and used anadrol, an anabolic steroid, but that he wanted HGH because he had lost competitions ''to guys who [were] 'on the juice.' '' Gov. Exh. 35, at 32. During the visit, Respondent told the SA that ''[a]fter 1990, the whole body-building industry had switched to natural testosterone, and the 'new power lifting people use testosterone and HGH.' '' *Id.* Respondent also told the SA that the ''most effective treatment for [his] goal would involve both [HGH] and natural testosterone administered through the skin by means of a patch or gel.'' *Id.* Respondent further told the SA that the ''testosterone would not show up in drug testing at competitions if [he] followed [Respondent's] instructions.'' *Id.* at 33. While Respondent drew blood from the SA during this visit to determine his testosterone and HGH levels, the results were not available by the end of the consultation. *Id.* at 33–34; *see also* Tr. at 149. Respondent nonetheless gave the SA prescriptions for various items including testosterone. *Id.* at 34.

Moreover, Respondent gave the SA a letter entitled ''testosterone Replacement Therapy,'' which stated that the SA ''had been diagnosed with hypogonadism for which testosterone replacement therapy was required.'' *Id.* The letter further stated that all the testosterone prescriptions and refills would be filled by a pharmacy in Fairfax, Virginia, and that Respondent would send the SA's prescription directly to the pharmacy. *Id.* at 34–35.

Finally, on July 20, 1995, a DEA SA conducted an undercover visit with Respondent. *Id.* The SA told Respondent that he was a powerlifter and was training to make the Olympic team. *Id.* Respondent told the SA that because he ''had not done a lot of steroids in the past,'' his ''testosterone would be low which would provide a justification for prescribing testosterone.'' *Id.* at 36. Respondent drew blood from the SA, *id.* at 37, and told him that ''if the results came back low'' he would also ship him HGH. *Id.* at 36. Respondent also gave the SA ''a letter entitled 'testosterone Replacement Therapy.' '' *Id.* at 37. The letter ''was identical in substance to the letter given to'' the Customs SA during the third undercover visit. *Id.* Thereafter, the same Fairfax, Virginia pharmacy mentioned in the letter Respondent gave the Customs SA sent 50 mg. of testosterone gel to the DEA SA. *Id.* at 38.

Subsequently, on May 23, 1996, the FDA SA obtained a search warrant for the PSLEI. *Id.* at 2. Two DEA DIs participated in the execution of the search. Tr. at 130. During the search, controlled substances, which included testosterone gel, testosterone cypionate and nandrolone decanoate, were found on the premises. *Id.* at 132; Gov. Exh. 35, at 71. Moreover, while the CSA requires a registrant to maintain at his registered location purchase records, an inventory, and a dispensing log, *see* 21 CFR 1304.03 & 1304.04, no such records were found on the premises during the search. Tr. at 134. The investigation also determined that on numerous occasions between January 1, 1995, and June 3, 1996, Respondent had purchased controlled substances including diazepam (Schedule IV) and various

[2] To obtain a U.S. patent, Respondent was not required to demonstrate the safety or effectiveness of his protocol. *See* Gov. Exh. 138, at 4 (*Manual of Patent Examining Procedure* § 2107.03).

[3] HGH is not a controlled substance. The facts surrounding this visit are related solely to provide context.

anabolic steroids including deca-durabolin, nandrolone decanoate, and testosterone cypionate from Henry Schein, Inc. *See* Tr. 135, Gov. Exh. 36.

The Second Investigation

On June 29, 1998, the Medical Board of California initiated proceedings against Respondent which resulted in an administrative hearing before a state ALJ. Govt. Exh. 3, at 1; Gov. Exh. 125. In a decision dated December 27, 1999, the state ALJ issued a decision which proposed the revocation of Respondent's state medical license. Gov. Exh. 4, at 67. On January 19, 2000, the Medical Board's Division of Medical Quality entered an order adopting the ALJ's decision with an effective date of February 18, 2000.[4] *See id.* at 32

On July 20, 2000, Respondent submitted an application to renew his practitioner's registration (DEA From 224a). Gov. Exh. 1, at 1. His California license having been revoked, Respondent gave the address of his proposed registered location as 201 South Main, Suite 900, Salt Lake City, UT 84111. *Id.* at 2; Gov. Exh. 18, at 1. Moreover, in response to a question on the application, Respondent indicated that his California license had been revoked but that his Utah license was ''not affected.'' *See* Gov. Exh. 1, at 2.[5] Because Respondent had indicated that California had revoked his license, the application was not automatically renewed but forwarded to the DEA Salt Lake City office and then to the DEA Riverside, California field office, for further investigation, where it was assigned to Diversion Investigator Doris DeSantis. Tr. at 216–17.

No longer holding a valid California medical license, on or about February 16, 2000, Respondent sold the PSLEI to his sister Connie Chein, a board certified physician who practices obstetrics and gynecology in Beverly Hills, California. ALJ at 6–7. Dr. Connie Chein testified that she purchased PSLEI because under California law, ''you have to be a licensed physician to own a medical facility.'' Tr. 1087. The ALJ found that during this period, PSLEI was operated by Dr. Darryl Garber, an associate of Respondent. *See* ALJ at 13 (citing Tr. 1050). On or about December 20, 2000 (and following the Superior Court's granting of judgment setting aside the State Board's revocation order), Dr. Connie Chein sold the PSLEI back to Respondent. *Id.* at 7.[6]

Dr. Connie Chein holds a DEA Certificate of Registration as a practitioner, No. AC7093292, with a registered location in Beverly Hills, California. Gov. Exh. 43, at 8. On various occasions, PSLEI ordered controlled substances using Dr. Connie Chein's DEA registration. *See* Gov. Exh. 43, at 2–6; Gov. Exh. 17 (invoices ordering phentermine from Barnes Wholesale); Gov. Exh. 44(d), 44(g), 44(l), & 45(a) (invoices for testosterone ordered from Amend Drug & Chemical Co., Inc.); Gov. Exh. 31 (Letter dated Dec. 17, 2001, from Marshall Gilbert, Administrator, PSLEI, to Spectrum Chemicals) (''Dr. Connie Chein is no longer with [PSLEI]. Dr. Darryl Garber is now in charge of ordering all controlled substance[s].'').

During a December 13, 2001, interview with DEA Diversion Investigators (DIs) at which she was represented by counsel, Dr. Connie Chein stated that she never gave Respondent permission to use her DEA registration to order controlled substances for PSLEI. Gov. Exh. 28, at 15. Moreover, Dr, Connie Chein stated that she never received controlled substances at her Beverly Hills registered location which were intended for PSLEI and was unaware of the fact that someone at PSLEI was using her DEA registration to order controlled substances for the clinic. *Id.* at 15–17, 19.

At the hearing, Dr. Connie Chein testified that she never treated patients at PSLEI. Tr. 1092. When asked, however, as to whether she had ever prescribed or dispensed controlled substances for patients of the PSLEI, Dr. Connie Chein asserted the Fifth Amendment privilege against self-incrimination. *Id.* at 1093. Moreover, when asked whether she had ever ordered controlled substances for PSLEI, Dr. Connie Chein again invoked her Fifth Amendment privilege. *Id.* at 1094. Dr. Connie Chein also asserted her Fifth Amendment privilege when the Government attempted to question her regarding various invoices and purchase orders which used her DEA number and related documents. Tr. 1111–12; 1116–19; 1121–36.

The Government contends that notwithstanding Connie Chein's ownership, Respondent remained in charge of the Palm Springs Clinic during the period in which his state license was revoked. There is substantial evidence in the record that supports this contention.

For example, on February 27, 2000, Respondent wrote an ''Interoffice Memo'' directing the Oral/Growth Hormone Department to not ''ship any bottle to Japan, if the bottles do not appear clean to you, because the Japanese custom is extremely clean.'' Gov. Exh. 136, at 14. The memo further instructed that ''testosterone tubes frequently have adhesive that appears black to them'' and that ''it must be removed * * * before it can be shipped out.'' *Id.* The memo directed clinic employees to ''sign that you have read this letter/memo, and return it to my desk. From, Dr. Edmund Chein.'' *Id.* The memo also stated that if there were ''any questions about the quality or the product, you must let Charlie or Vanessa or me know, before'' shipping the products. *Id.* Respondent's secretary, who worked at PSLEI's Palm Springs, Cal. clinic, was Vanessa Koloen. Tr. 1331–36

Thereafter, in an Interoffice Memo dated February 29, 2000, Respondent directed the Growth Hormone Department to ship phentermine to a patient in Japan. *See* Gov. 105, at 36.

[4] Respondent, however, sought judicial review in the California state courts. On September 26, 2000, the Superior Court granted Respondent's petition in part and ordered the Medical Board to set aside its decision revoking Respondent's license and remanded the case for further proceedings; on November 9, 2000, a judgment to this effect was entered. *See* Gov. Exh. 4, at 25–26. On January 4, 2001, the Medical Board subsequently vacated and set aside its decision. *Id.* at 1.

Subsequently, on August 15, 2002, the Medical Board filed an additional accusation against Respondent which alleged thirteen grounds for discipline including incompetence, prescribing without medical indication, ''obtaining controlled substances by deceit, misrepresentation and subterfuge,'' ''dispensing controlled substances without proper privileges,'' and failing to maintain adequate controlled substance records. Govt. Exh. 124, at 18; *see also id.* at 10–11. This matter was still pending at the time the record closed. *See* ALJ at 15.

Pursuant to 5 U.S.C. 556(e), I take official notice of the fact that on September 22, 2005, Respondent entered into a Stipulation Settlement and Disciplinary Order with the State of California, which became effective on March 16, 2006. *See In the Matter of the Accusation Against: Edmund Chein, M.D.,* File No. 19–2000–107723, Decision at 1, Stipulated Settlement and Disciplinary Order at 14. I further note language in the stipulation asserting that it ''is intended to resolve'' not only California's disciplinary action but also ''any disciplinary action taken by another state or the federal government based on the conduct alleged in * * * In the Matter of Edmund Chein, M.D., Docket No. 02–9 and 02–43 pending before the United States Drug Enforcement Administration.'' Stipulated Settlement at 2–3. In accordance with the Administrative Procedure Act, publication of this order will be withheld for a fifteen day period in order to provide Respondent with ''an opportunity to show the contrary.'' 5 U.S.C. 556(e).

The ALJ also found that on June 30, 1995, the Medical Board placed Respondent on probation for a three year period for false advertising and failing to obtain a fictitious name permit. *See* ALJ at 12–13.

[5] On March 5, 2001, DEA received from Respondent a letter which requested a modification of his registration back to 2825 Tahquitz Canyon Way, Building A, Palm Springs, CA, 92262, because he had ''since * * * regained [his] California Medical License.'' Gov. Exh. 18.

[6] Given the circumstances surrounding Respondent's sale of the clinic to his sister and her sale back to him, the transaction may well have been a sham. But the Government did not attempt to prove that it was.

Specifically, the Memo reads: ''Mandy, please ship one (1) bottle of phentermine to Ms. [K. H.] immediately.[7] However, ship the oral hormone, phentermine to Yamamoto Medical Clinic, instead of to her home address.'' *Id.* Other documents in the record establish that Ms. Mandy Boriski was involved in the filling of orders for Respondent's patients and worked out of the Palm Springs, Cal. clinic. *See* Gov. Ex. 96, at 32, 33, 34, 36, 38.

One of these documents is a July 14, 2000 memo from Ms. Boriski to Dr. S.K., a German patient. The memo, which used the clinic's Palm Springs, California address states: ''I have received your fax re: the order with the pharmacy. *I am awaiting approval from Dr. Chein* for me to send the prescriptions you requested. I apologize for the delay but I am unable to send anything *without his approval.*'' Gov. Exh. 96, at 32 (emphasis added).

The record also contains a December 13, 2000 e-mail from Bob Jones, a consultant and spokeperson for PSLEI to various employees of the Palms Springs location, which discussed missing testosterone shipments to a German citizen, R.D. The e-mail, which was copied to Respondent and his Secretary Vanessa Koloen, states: ''Per Dr. Chein please send duplicates of their last shipments of these items today.'' Gx. 107, at 23. As these various documents indicate, Respondent was still the boss during the period in which his sister putatively owned the clinic and continued to direct the clinic's employees in the handling of controlled substances.

It is acknowledged that during this period, Respondent sometimes used letterhead that referred to PSLEI's ''International Division'' and gave an address in Salt Lake City, Utah, and typically used a prescription form that included his Utah medical license number. But even if Respondent actually maintained a medical practice in Utah, his doing so does not exclude a finding that during this period, Respondent continued to direct his employees regarding the distribution of drugs from the clinic's Palm Springs, California location.[8]

Indeed, in the case of patient N.K., a Japanese citizen, Respondent wrote a letter (dated October 11, 2000) to the patient on Palm Springs, California letterhead discussing the results of a ''hormonal screening panel test''; the letter also recommended that the patient take testosterone gel and Adrenal Extract (phentermine). Gov. Exh. 93, at 6. Respondent also prepared a form on ''Palm Spring Life Extension Institute, Utah'' letterhead, which prescribed numerous products including testosterone gel and phentermine (Adrenal Extract). *Id.* at 13. Both documents were faxed on October 19, 2000, and bear initials showing that the same person faxed both documents. *Compare id.* at 6, *with id.* at 13. Subsequently, on November 22, 2000, the Palm Springs, California location dispensed testosterone gel to this patient. *See* Gov. Exh. 15, at 20.

I further note that notwithstanding her putative ownership of the clinic, Respondent's sister could not provide DEA investigators with copies of the documents that transferred ownership. *See* ALJ at 20 (¶ 74). Furthermore, Respondent's sister told DEA investigators that she had been out to the clinic's Palm Springs location once in five years. *See id.* The ALJ also found that Dr. Garber operated the clinic during this period. *Id.* at 13 (¶ 52). But during this period, Dr. Garber's registered location was at his residence and not at the clinic. *Id.* at 21 (¶ 76). In any event, the ALJ's finding that Dr. Garber operated the clinic does not preclude the additional finding that Respondent continued to exercise control over the Palm Spring location's handling of controlled substances during the period in which his sister owned the clinic.

The ALJ found that Respondent dispensed controlled substance from PSLEI while his California medical license was revoked. *See* ALJ at 13–14, ¶ 52 (citing Tr. 827–29; Gov. Exh. 105, at 36, 45–46). I adopt this finding. As found above, a February 29, 2000 memo from Respondent directed an employee in the ''Growth Hormone Department'' to ''ship one (1) bottle of phentermine to [Ms. K. H., a Japanese patient] immediately.'' Gov. Exh. 105, at 36. *See also id.* at 45–46 (Feb. 29, 2000 letter from Respondent to Ms. K. H.; ''due to your twenty pound weight gain, I will add phentermine adrenal hormone immediately.''). Moreover, as explained above, the evidence shows that Respondent dispensed testosterone Gel to patient N.K. from the Palm Springs location while his California medical license was revoked.

The ALJ also found that ''on August 11, 2000, the Respondent, without a DEA registration entitling him to so act, sent controlled substances from PSLEI, International Division, in Salt Lake City, Utah, to Japan.'' *See* ALJ at 14, ¶ 53 (citing Gov. Exh. 105, at 39–42). I do not adopt this finding. While the documents which the ALJ relied on establish that HGH and ''oral hormones'' were to be shipped, they do not establish that the ''oral hormones'' included a controlled substance.

The ALJ also made a finding that ''[s]ome of the shipments sent from PSLEI were mislabled to avoid disclosing that the package contained controlled substances.'' ALJ 57, ¶ 192. Relatedly, the Government argues that various documents ''reflect[ ] PSLEI's willingness to fraudulently misidentify shipments of drugs to mislead customs officials.'' Govt. Br. at 50, ¶ 98.

The document cited by the ALJ does suggest that testosterone gel was labeled as '' 'a Skin Cream' and as a 'gift' for Customs purpose.'' Gov. Ex. 107, at 21. A subsequent e-mail, dated December 13, 2000, which was copied to Respondent, indicated that the substances had not been received and directed the Palm Springs staff to send a new shipment that day. *Id.* at 23. The e-mail further included ''guidelines for shipping to Germany'' from the patient's secretary, which stated that the goods should be declared as a ''sample'' with a value of ''$ 5.00.'' *Id.* But while the invoice that accompanied the shipment declared its value at $5.00, it also clearly described the goods as ''testosterone.'' *Id.* at 20. This document thus does not support the ALJ's finding.

The Government also points to a September 8, 2000 fax from Ms. Boriski to a Belgian citizen informing him that his order for melatonin had been shipped and ''labeled as [a] Dietary supplement * * * per your request. I

[7] To protect patient privacy, patients will be referred to by their initials.

[8] Other documents support the conclusion that Respondent remained active in practicing medicine out of the Palm Springs, California location. On May 22, 2000, Respondent sent a letter by fax to Dr. S.K. Gov. Exh. 96, at 41. In this letter, Respondent advised Dr. S.K. that her mother was ''not too old for the program'' and that ''[s]he may want to be on the silver program, which is the basic hormone-balancing program without the growth hormone.'' *Id.* Significantly, while this document was not written on PSLEI's letterhead, Respondent used the clinic's Palm Springs fax number.

The record also contains correspondence written by Respondent during this period on letterhead using the clinic's Palm Springs, Ca. address. *See* Gov. Exh. 94, at 8. In an October 6, 2000 letter, Respondent rendered medical advice to a Japanese clinic regarding patient M.I. *See id.* Subsequently, on October 13, 2000, Dr. Chein wrote this patient on PSLEI's Palm Springs, CA letterhead advising that there was a dispute between himself and the doctors at the Aoyama Medical Clinic. *Id.* at 6.

Thereafter, on December 5, 2000, Respondent wrote a letter on the clinic's Palm Springs, Ca. letterhead notifying the patient that ''starting from 9th November 2000 the relation between Aoyama Clinic and *my Institute* (Palm Springs Life Extension Institute, CA, U.S.A.) has come to an end.'' *Id.* at 5 (emphasis added). Respondent thus represented to others that he was the owner of the clinic during the period in which his sister putatively owned it. Moreover, the statement shows Respondent's continued involvement in the business affairs of the Palm Springs clinic.

hope this does eliminate any delay with customs.'' Gov. Ex. 91, at 22. However, melatonin is not a controlled substance and it is arguably accurate to describe it as a ''dietary supplement.'' Moreover, even if it was improper to declare it as a dietary supplement, this document does not establish that Respondent was aware of this practice, and a single document does not prove that it was the clinic's policy or practice to falsify customs declarations.

Finally, the record contains a letter from Dr. S.K. ordering estradiol/testosterone creme and suggesting that ''it might be [declared as] a cosmetic product.'' Gov. Exh. 96, at 45a. The Government, however, produced no evidence showing that the clinic did, in fact, mislabel the shipment. Accordingly, the ALJ's finding is not supported by substantial evidence. *See NLRB* v. *Columbian Enameling & Stamping Co.*, 306 U.S. 292, 300 (1939) (''Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established.'').

The DEA On-Site Inspections and Their Aftermath

As stated above, because Respondent's state license had been revoked, DI DeSantis was assigned to conduct an investigation regarding his renewal application. On January 31, 2001, the DI went to the PSLEI in Palm Springs to interview Respondent and inspect his recordkeeping. Tr. 263; Gov. Exh. 5. Respondent was not present. Tr. 264. The DI met with Dr. Darryl Garber and presented him with a Notice of Inspection. Gov. Exh. 5.

The DI asked to see various records including invoices for the purchase of controlled substances, inventories, and dispensing logs. Tr. 268–69. Dr. Garber told the DI that he could not provide the records because PSLEI had a new computer system and no one was present who could access the records. *Id.* at 269. One of PSLEI's employees told the DI that the invoices were not on-site but rather were at the office of its accountant. *Id.* at 273. The only records the DI received were two purchase orders but these had been generated by the PSLEI and were not the invoices provided by the distributor. *See* Gov. Exh.6; Tr. 274–75. The purchase orders did, however, establish that the PSLEI had recently bought phentermine. *See* Gov. Exh.6.

The DI told Dr. Garber that the clinic was in violation of the CSA's implementing regulations because the invoices were required to be kept on-site. Tr. 274–76. The DI also informed Dr. Garber that the clinic was in violation because the records were not readily retrievable for inspection and copying. *Id.* at 274.

On February 5, 2001, the DI returned to the PSLEI to obtain the records that the clinic was required to maintain. Once again, Respondent was not present. *Id.* at 279. The DI again met with Dr. Garber and asked for the records. *Id.* Dr. Garber asked the DI to sit in the office while he retrieved the records. *Id.* The DI waited two to three hours while Dr. Garber printed out the records. *Id.* at 280.

Dr. Garber provided the DI with a one page inventory report which was dated February 5, 2001. *See* Gov. Exh. 8. Dr. Garber also provided the DI with four invoices for phentermine. Tr. 331–33; Gov. Exh. 17(a)–17(d). Although the DI had requested the invoices for all controlled substances purchased by the clinic, no invoices for the purchase of testosterone were provided. Tr. 334.

Dr. Garber also provided the DI with a dispensing log for various controlled substances including testosterone gel, testosterone estradiol gel, Subligual testosterone, testosterone, and depo testosterone. *See* Gov. Exhs. 9–16; Tr. 284. Most of the dispensing logs, however, only covered the period from July 1, 2000, through February 5, 2001.[9] *See* Gov. Exhs. 9–16. Moreover, none of the logs indicated the name of the physician who had authorized each dispensing. *See id.* The logs also included the names of numerous patients who resided in foreign countries including Belgium, France, Germany, Great Britain, Spain, Switzerland, China (Hong Kong), Indonesia, Japan, South Korea, and Canada. *See* Gov. Exhs.10, 11, 12, 15, & 16. The Government subsequently compiled from these records a separate document which listed each dispensing. *See* Gov. Exh. 46. According to this document, the dispensing logs showed that Respondent's clinic exported controlled substances 317 times during the period from July 1, 2000, through February 5, 2001.[9] *See id.*; *see also* ALJ at 57, ¶ 191. Neither Respondent nor Dr. Garber had an export registration as required under 21 U.S.C. 957 & 958.[10]

[9] The dispensing log for phentermine 15 mg. covered the period from July 26, 1999, through February 1, 2001. *See* Gov. Exh. 10. This log, however, had no entries before August 22, 2000. *See id.* The dispensing log for Depo testosterone covered the period July 1, 2000, through February 1, 2001. *See* Gov. Exh. 16.

[10] While Dr. Garber held a DEA practitioner's registration, at the time of the January 31 and February 5, 2001 visits, his registered location was his residence in Rancho Mirage, California. *See* ALJ at 21, ¶ 76. Dr. Garber did not change his registered location to the PSLEI until February 12, 2001, after the two visits. *See id.*

On March 9, 2001, DI DeSantis contacted Dr. Garber by telephone and told him that PSLEI must stop exporting controlled substances. Tr. 1245. The DI also faxed to Dr. Garber various provisions of Federal law pertaining to the exporting of controlled substances including 21 U.S.C. 953 & 960. *Id.*; *see also* Gov. Exh. 19. On the same day, Vanessa Koloen, a PSLEI employee, faxed to the DI copies of various documents including purchase orders and invoices related to the clinic's purchase of testosterone. *See* Gov. Exh. 20. The earliest documents were, however, dated November 20 & 21, 2000, *see* Gov. Exhs. 20(J) & 20(K), and the dispensing records indicated that testosterone had been dispensed before these dates. *See*, *e.g.*, Gov. Exh. 15, at 21–26. Two other documents provided by PSLEI used Dr. Garber's residence as the billing and shipping address. *See* Gov. Exhs. 20(F) & 20(G). The remaining documents were for purchases that occurred in mid to late February 2001, following the DI's second visit. *See* Gov. Exhs. 20(a), 20(b), 20(c), 20(d), 20(e).

Subsequently, on April 27, 2001, Respondent applied for a registration to export Schedule III Non-Narcotic and Schedule IV controlled substances. *See* Gov. Exh. 48, at 3–4. According to a date stamp, the application was received at DEA in May 7, 2001, and Respondent's credit card was charged on May 15, 2001. *See id.* at 3. The application, however, was never processed and the application fee was refunded through a credit to Respondent's credit card. Tr. 2092–94 The application bears the notation ''Already Have DEA#.'' Gov. Exh. 48, at 3. The application was not returned to Respondent, and no one at DEA ever notified him that the application had been rejected. *See* Gov. Exh. 34 & 39; *see also* Resp. Proposed Findings at 12 (¶ 94). In December 2001, Respondent submitted a second application for registration as an Exporter. *See* Gov. Exh. 48 at 7–8.

On August 23, 2001, DI DeSantis (accompanied by another DI) returned to PSLEI to conduct a conference with Respondent regarding the violations that had been found during the inspection. Tr. 545–47. The DI told Respondent that the violations included the clinic's lack of readily retrievable records, its lack of a biennial inventory, and its exporting of controlled substances to persons residing in foreign countries without an export registration. *Id.* at 547–48, 559.

During the meeting, Respondent produced the statutes that the DI had faxed to Dr. Garber and acknowledged that he had discussed the violations with Dr. Garber. *Id.* at 548. Respondent admitted that he did not have an

exporter's registration and claimed that under either 21 U.S.C. 953(a)(3) or (a)(4) he could export without a registration because he was sending the controlled substances to another doctor, who was legally authorized to handle controlled substances. Tr. 551–55. The DI informed Respondent that he would still need an export permit under 21 U.S.C. 953(a)(5). *Id.* at 554. These provisions, however, address the exportation of narcotic drugs and not the non-narcotic controlled substances (testosterone and phentermine) that Respondent was exporting. Rather, the export of these controlled substances is governed by 21 U.S.C. 953(e), which requires the filing of a declaration and documentary proof that the importation into the destination country is not illegal.[11] Moreover, a registration is required to export both narcotic and non-narcotic controlled substances. *See* 21 U.S.C. 957 & 958.

During the meeting Respondent did not mention that he had applied for an exporter's registration. Moreover, Respondent told the DI that he had continued to export controlled substances notwithstanding her earlier admonition to Dr. Garber to stop. Tr. 557. Respondent further admitted that there had probably been many more violations in the interim but that he would not stop until ''he received something in writing from'' the DEA. *Id.* at 558.

The other DI asked Respondent how he was shipping the controlled substances overseas. *Id.* Respondent refused to answer and invoked his Fifth Amendment privilege against self-incrimination. *Id.* He also told the investigators that ''it was up to [DEA] to find out how he was shipping [the controlled substances] overseas.'' *Id.* at 559.

During the meeting, Respondent provided the DI with several invoices for controlled substances. One of the invoices documented that on March 14, 2001, PSLEI had purchased five kilograms of micronized testosterone from Pharmacia and Upjohn and that the product was shipped to Dr. Garber's residence. *See* Gov. Exh. 21.5, at 2. At the time, Respondent owned PSLEI and Dr. Garber was no longer registered at his residence. *Id.*

Respondent also provided the DI with an invoice from Farmacias Castaneda, a pharmacy located in Tijuana, Mexico. *See* Gov. Exh. 22, Tr. 576. The invoice, which is dated June 26, 2001, indicated that the PSLEI had purchased 120 units of Depo testosterone and 40 units of Decadurabolin, two anabolic steroids and Schedule III controlled substances, from the Tijuana pharmacy. *See* Gov. Exh. 22. The pharmacy did not hold a DEA registration because DEA does not register foreign pharmacies or distributors. Tr. 573–74. Neither Respondent, nor Mr. Romero, the pharmacy's owner, was registered as an importer. *See* ALJ at 60, ¶ 205 (citing Tr. 167 & 970); Gov. Exh. 2.

On August 31, 2001, DI DeSantis sent an additional fax to Respondent which included copies of 21 U.S.C. 823, 952, 953, 954 and 958. The ''Comments'' portion of the Cover Sheet included the following statement:

> I have attached all the registration requirements . * * * concerning applicants to import or export controlled substances. You are not currently registered with DEA as an exporter/importer (nor do you possess any permits to export issued by the Attorney General), thus you are not authorized to perform either activity. You must immediately cease all [activity] in these areas as previously instructed on 02/13/01 and 8/23/01 by D/I DeSantis.

Gov. Exh. 23, at 1. On September 5, 2001, DeSantis sent an additional fax that included a copy of 21 U.S.C. 957 (Persons required to register), which had been omitted from the previous fax. *See* Gov. Exh. 24.

On November 12, 2001, DI DeSantis along with other DEA personnel, served the first Order to Show Cause and Notice of Immediate Suspension. Tr. 591. Upon her arrival at the PSLEI, the DI was informed that Respondent was out of the country and was not expected to return for possibly two weeks. *Id.* at 592. The DI then met with Dr. Garber and asked for Respondent's DEA Certificate of Registration. *Id.* at 592. Neither Dr. Garber, nor Respondent's secretary, Vanessa Koloen, knew where the certificate was. *Id.* at 593.

The DI also sought to seize the controlled substances on the premises. *Id.* Dr. Garber told the DI that Respondent ''had not purchased any controlled substances'' and that controlled substances at the clinic were purchased by him. *Id.* at 593–94. Dr. Garber refused to turn over the controlled substances. *Id.*

The DI then requested to see the invoices for controlled substance purchases to verify Dr. Garber's statement. *Id.* at 594. Clinic personnel gave the DI various invoices. *Id; see also* Gov. Exh. 45. The first of these invoices documented that on March 26, 2001, PSLEI had purchased two kilograms of testosterone (which was received on March 30, 2001) using Connie Chein's DEA number. *See* Gov. Exh. 45a. The next three invoices documented that on three dates in February and March 2001 (Feb. 16 & 21, Mar. 13, 2001), PSLEI purchased various quantities of testosterone which was shipped to Dr. Garber's residence. *See* Gov. Exh. 45(b), (c), & (d). The first two of these invoices (the Mar. 14 Pharmacia & Upjohn and the Feb. 16 Gallipot) did not have a DEA number. The third invoice (the Feb. 21 Gallipot) used Respondent's DEA number even though the controlled substances were shipped to Dr. Garber's residence. *See* Gov. Exh. 45(d), Gov. Exh. 2.

Finally, the seventh invoice documents a March 2, 2001, purchase by Dr. Garber of testosterone from Paddock Laboratories, which was shipped to Dr. Garber's residence. *See* Gov. Exh. 45(g). Of note, the invoice gives the name ''Vanessa'' in the box which includes purchase order information; in the ''Ship To Party Address'' box, the invoice gives Dr. Garber's name followed on the next line with the notation ''c/o Angela Santana.'' *Id.* The invoice also includes the handwritten notation: ''Received by Angie 3/5/01.'' *Id.* Both these individuals were PSLEI employees. Tr. 598. There is no dispute that Respondent was the owner of the PSLEI when these four purchases were made.

Thereafter, on three occasions between January and March 2002, the DI (accompanied by another DI) went to PSLEI to search through its trash. Tr. 686. During the February trash run, the DIs found 50 empty boxes for a testosterone product that had been

[11] The record contains letters from the governments of Japan and Taiwan to Respondent's associate (Dr. Garber) establishing the illegality of PSLEI's exportation of phentermine to persons residing in these countries. In a December 11, 2001 letter, the Government of Japan notified Dr. Garber that ''[w]ith regard to the medicine containing phentermine, you must not send the medicine to your patient in Japan.'' Gov. Exh. 38(C) (Tab D) (Letter from Kaoru Misawa, Deputy Director, Compliance and Narcotics Division, Pharmaceutical and Food Safety Bureau, Ministry of Health, Labor, and Welfare of Japan, to Darryl J. Garber). According to this letter, a ''patient can import the medicine into Japan if he carries the medicine containing less than 1.125 grams of phentermine by himself when entering into Japan.'' *Id.* This letter further states that while the Government of Japan did not object to the exportation of testosterone gel to a patient in Japan, the medicine must be ''for his personal use and of the amount within one-month['s] consumption.'' *Id.*

In a January 4, 2002 letter, the Government of Taiwan informed Dr. Garber that ''phentermine * * * has been prohibited for use by the Department of Health since December 8, 1980, and is not allowed for importation.'' Gov. Exh. 38(C) (Tab E) (Letter, Kai-Yuan Tan, M.D., Director-General, Bureau of Medical Affairs, Department of Health, Taiwan, to Darryl J. Garber, M.D.).

The record also contains a letter dated July 26, 2001 from Dr. Garber to Raymond A. Conner, Diversion Group Supervisor in DEA's Riverside, California, office. In this letter, Dr. Garber acknowledged that ''[i]n Japan and Korea it is against the law to prescribe Anabolic Steroids * * * and phentermine * * * for the purpose of Anti-Aging Medicine.'' Gov. Exh. 38(C) (Tab C).

manufactured by Brovel, S.A., a Mexican firm. Tr. 709, Gov. Exh. 58. The DI subsequently had someone translate the boxes' label, which was written in Spanish. Tr. at 711. The label indicated that the testosterone was not for human consumption but rather for animal use. *See* Gov. Exh. 58, at 4; Tr. 711; *see also* Gov. Exh. 116, at 4 (declaration of FDA Associate Chief Counsel James Smith).

I do not, however, adopt the ALJ's finding that because ''Respondent does not treat animals[,] * * * the records supports an inference that this non-human use testosterone was compounded into a testosterone gel which was dispensed to the Respondent's human patients.'' ALJ at 62. I acknowledge that the existence of the boxes does create a suspicion that the substances were dispensed to human patients. But the Government produced no additional evidence that PSLEI used this testosterone to create products that were dispensed to humans. Moreover, Respondent produced credible evidence that he performed research into the development of a more effective delivery system for testosterone. The Government did not foreclose the possibility that the testosterone was used for that purpose by producing evidence that the quantity represented by the boxes was in excess of what would be needed for research purposes. While this is a close call, it is the Government that bears the burden of proof on the issue, and I therefore conclude that the ALJ's finding is not supported by a preponderance of the evidence.

During this trash run, the DIs also found a fax for an invoice documenting PSLEI's sale of various products to a resident of Japan. *See* Gov. Exh. 70. The invoice was dated October 17, 2001, and lists ''Testosterone/estradiol Gel 20 ml.'' and ''Adrenal Extract 15 mg. # 30'' as among the products sold. *Id.* As found above, PSLEI used the term ''Adrenal Extract'' for phentermine. Of further significance, the invoice establishes that PSLEI continued to export controlled substances following the August 23, 2001 conference and the August 31 and September 5, 2001 faxes which told Respondent to cease the exports.

Another document found during this trash run bears the caption ''HORMONE DEPARTMENT PRESCRIPTION SHEET.'' Gov. Exh. 73. The document, which is dated October 29, 2001, makes reference to a Japanese patient and instructs a PSLEI employee to ''Please ship Ms. [S.] a tube of female strength testosterone to Ginza at no charge, immediately.'' *Id.* The document is signed ''E. Chein, M.D.'' *Id.*

Following a third trash run, see Gov. Exh. 121, DI DeSantis obtained an Administrative Inspection warrant which was executed at PSLEI on March 13, 2002. Tr. 721. During the inspection, DEA personnel asked for the biennial inventories that are required by DEA regulations. *Id.* at 759–60. The clinic did not have them, id. at 760, and instead provided the investigators with a document entitled ''Instant Inventory Report.'' Gov. Exh. 82, at 7; Tr. at 760. DEA personnel also obtained dispensing logs and approximately 100 patient files for patients who lived outside the United States. *Id.* at 764 & 811.

The dispensing logs document hundreds of instances in which Respondent dispensed/exported controlled substances to residents of foreign countries. *See, e.g,* Gov. Exh. 84 (dispensing log for testosterone-estrogen (4mg.–50 mg. 20 ml.) covering period May 1, 2001, through December 31, 2001).[12] Many of the dispensings/ exports occurred following the August 23rd conference and the subsequent faxes. *See id.* at pp.1–15. Moreover, the log indicates that on November 13 and 14, 2001, the day after service of the Notice of Immediate Suspension, Respondent dispensed/exported this controlled substance thirteen times. *See id.* at 3–4.

The dispensing log for testosterone gel (0.8% 20 ml.) also documents that Respondent dispensed and/or exported following the service of the Notice of Immediate Suspension. *See* Gov. Exh. 87. Of note, Respondent dispensed to a Japanese patient on November 13, 2001, after service of the Notice of Immediate Suspension. *See id.* at 6.

The dispensing log for phentermine 15 mg. likewise documents that Respondent made numerous dispensings and/or exports of this controlled substance to foreign patients. *See generally* Gov. Exh. 88. Moreover, it also documents that Respondent made several dispensing/ exports after service of the Notice of Immediate Suspension. *See id.* For example, on November 13, 2001, Respondent made eight dispensings to foreign patients, and on November 14, 2001, Respondent made five dispensings to foreign patients. *See id.* at 6–7. Furthermore, on November 27, 2001, Respondent dispensed to a New Jersey patient. *See id.* at 6.[13] This dispensing occurred more than two weeks after service of the Notice of Immediate Suspension.

On October 3, 2002, an additional search warrant was executed at the PSLEI. Tr. 836. During the search, DEA investigators seized approximately 83 pill containers labeled as ''Adrenal Extract 15 mg,'' which held approximately 4300 pills, and 63 pill containers labeled as ''Adrenal Extract 30mg,'' which held approximately 3150 pills. Gov. Exh. 135. The pills were sent to the DEA Southwest Regional Laboratory for analysis. *See id.* The lab determined that the pills contained phentermine HCL. *See id.*

During the search, DEA also seized a variety of documents. Among them is the previously described ''Interoffice Memo'' from Respondent, which is dated February 27, 2000, and which directed PSLEI's oral/growth hormone departments to ensure the cleanliness of the testosterone products that were shipped to Japan. Gov. Exh. 136, at 14.

The investigators also obtained several other memos on PSLEI's letterhead that were written from ''Dr. Chein'' on March 6, April 14, and July 3, 2000, that discuss shipments to Japan and Taiwan. *See id.* at 11–13. The memos, however, are not signed and do not indicate whether the memo was created by Respondent or his sister.

DEA also seized another memo, which is dated January 14, 2002, and which is signed ''Edmund Chein MD.'' *Id.* at 10. The memo stated that ''[e]ffective January 15th, all medicines being shipped to Tokyo goes [sic] directly to the patient address, except for patients with the chart number LEI–Y.'' *Id.* The memo then directed that ''[a]ll medicines for the patients with the chart number LEI–Y will be shipped directly to the Osaka clinic address[.]'' *Id.* Finally, the memo directed that shipments for two patients should not be addressed ''as Ever young Technologies'' because the patients ''have to pay taxes on the shipments that are addressed to Ever young Technologies.'' *Id.* Respondent prepared this memo, which is signed as having been received by an employee, following the service of the Notice of Immediate Suspension.[14]

[12] The cover sheet of this document indicates that the period it covered was from ''11/30/01–5/1/01.'' Gov. Exh. 84. The document, however, also includes dispensings that occurred in December 2001. *See id.* at .5 & 1.

[13] Like the dispensing logs that were obtained in February 2001, some of the logs also failed to contain the name of the dispensing physician. *See* Gov. Exh. 86, at pp. 1–29 (testosterone gel 8mg./ml., 20 ml.); Gov. Exh. 89, at 2–8 (phentermine 15 mg.).

[14] Both the Government and Respondent elicited extensive expert testimony on whether Respondent's dispensing of testosterone and phentermine to six patients who resided in foreign countries was for a legitimate medical purpose and within the usual course of professional practice. In light of Respondent's flagrant and repeated

Continued

Discussion

Respondent's Challenges to the Proceeding

In the course of this matter, Respondent filed numerous motions challenging various aspects of this proceeding. In light of my conclusion that there is no need to consider the expert testimony regarding Respondent's practices with respect to foreign patients, many of the issues raised in these motions are now moot. Respondent also filed motions seeking to dismiss various allegations or to bar the Government from introducing evidence on various issues. Upon reviewing the record, I am satisfied that the ALJ's rulings on these motions were correct and that further discussion is not warranted.

One of the motions, however, challenges the integrity of this proceeding and therefore requires further discussion before proceeding to the merits. More specifically, Respondent alleges that the Office of Chief Counsel ''engaged in a pattern of unlawful and unethical misconduct in the instant proceeding mandating the disqualification of that office.'' Resp. Memorandum of Points and Authorities in Support of Respondent's Motion To Disqualify Office of Chief Counsel and Dismiss Administrative Proceeding at 1. The alleged ''pattern'' involves two statements in an affidavit prepared by an attorney in the Office of Chief Counsel and signed by a DEA employee which discussed the circumstances surrounding DEA's failure to process Respondent's application for an Exporter's Registration. Specifically, the employee stated that she was the acting unit chief of the registration unit when she signed the declaration (and was not), and that ''the reason why Dr. Chein obtained a refund of his registration fee was 'unexplained,' '' Resp. Memo. at 1, when there was an explanation.

Respondent argues that this amounts to the subornation of perjury and that it ''mandate[s] the disqualification of [the Office of Chief Counsel] and its replacement with * * * private counsel.'' *Id.* Respondent contends that this is so because ''[t]he Office of Chief Counsel shall defend, cover up and represent its own interests in relation to the felony perjury charge and it will also be called to testify regarding the Respondent's Complaint that is to be filed in the District Court.'' *Id.* at 3.[15] Therefore, Respondent maintains that ''private counsel * * * should be required to continue with any prosecution of this matter.'' *Id.* Respondent further asserts that it is not enough to simply ''disregard'' the ''offending evidence'' because this would not be an ''effective discouragement of the wrong.'' *Id.* at 5. Respondent thus argues that I should take the extraordinary step of dismissing the entire proceeding which took thirteen days of hearings and produced a record that includes a nearly three thousand page transcript and hundreds of exhibits.

As a component of the Department of Justice, this agency takes most seriously allegations of employee misconduct. Respondent's offer of proof, however, falls far short of establishing that an employee of the Chief Counsel's office suborned perjury. Moreover, even if Respondent could make out a prima facie case of subornation of perjury, he offers no authority that supports his proposed remedy.

[P]roof of actual perjury is a necessary element of subornation'' of perjury, *United States* v. *Hairston,* 46 F.3d 361, 376 (4th Cir. 1995), and proof of perjury requires a showing that ''[a] witness testifying under oath or affirmation * * * [gave] false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory.'' *United States* v. *Dunnigan,* 507 U.S. 87, 94 (1993). Respondent, however, cannot show either willfulness on the part of the employee or that her statements were material.

The most common formulation'' of the concept of materiality is that ''a concealment or misrepresentation is material if it 'has a natural tendency to influence, or was capable of influencing, the decision of' the decisionmaking body to which it was addressed.'' *Kungys* v. *United States,* 485 U.S. 759, 770 (1988) (quoting *Weinstock* v. *United States,* 231 F.2d 699, 701 (D.C. Cir. 1956)) (other citation omitted); see also *United States* v. *Wells,* 519 U.S. 482, 489 (1997) (quoting *Kungys,* 485 U.S. at 770). The evidence must be ''clear, unequivocal, and convincing.'' *Kungys,* 485 U.S. at 772; *see also Herring* v. *United States,* 424 F.3d 384, 386–87 (3d Cir. 2005) (''[A] determination of fraud on the court may be justified only by the most egregious misconduct directed to the court itself, and * * * it must be supported by clear, unequivocal and convincing evidence.'') (int. quotations and citation omitted); *In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions,* 538 F.2d 180, 195 (8th Cir. 1976).

Moreover, ''although the materiality of a statement rests upon a factual evidentiary showing, the ultimate finding of materiality turns on an interpretation of substantive law.'' *Kungys,* 485 U.S. at 772 (int. quotations and citation omitted). As the ALJ pointed out, the issues in this case are whether Respondent's continued registration as a practitioner ''is inconsistent with the public interest as that term is defined in 21 U.S.C. 823(f),'' and whether issuing Respondent a registration as an exporter ''would be inconsistent with the public interest as that term is defined in 21 U.S.C. 958(c) and 823(d).'' ALJ Notice and Order Denying Respondent's Motion to Disqualify Office of Chief Counsel and to Dismiss Administrative Proceedings, at 7. Applying these principles, I conclude that the two statements at issue here are not material to the resolution of the issues in this case.

The first allegedly perjurious statement is the employee's assertion that ''I am the Acting Unit Chief of the Registration Unit,'' Gov. Exh. 48, when, in fact, the employee served in this capacity on the day she was approached by the attorney about Respondent's exporter application, but served in this capacity for only a few days and was not the Acting Unit Chief on the day she signed the declaration. Tr. 2198–99. The employee did, however, investigate the facts surrounding the non-acceptance of Respondent's application. Ultimately, whether the employee was still serving as Acting Unit Chief on the day she signed the declaration is of no consequence in deciding any issue in this case. In short, the assertion is not the type of statement that ''has a natural tendency to influence'' the decision in this case because what matters is not her specific title on the date she signed the declaration but the fact that she investigated the incident. *See Kungys,* 485 U.S. at 770 (int. quotations and other citations omitted). Moreover, Respondent has produced no evidence, let alone that which is ''clear, unequivocal, and convincing'' that shows that when the employee signed the declaration, she did so with the intent to deceive. *Id.* at 772.

The second allegedly perjurious statement is the employee's assertion that ''[f]or an unexplained reason, DEA did not accept the application for filing'' and the employee's further statement speculating that ''it is likely that [Respondent] or someone from his office contacted DEA to request the refund.'' Gov. Exh. 48; Resp. Memo at 1. According to Respondent, the statement

violations of federal law, I conclude that it is not necessary to make any findings on this issue.

[15] Respondent did not submit a copy of the purported ''felony perjury charge'' for the record. He did, however, submit a copy of a proposed complaint for a *Bivens* action.

was perjurious because another employee had told the declarant ''that a Registration Unit supervisor had instructed her to refund [Respondent's] money because he already had a DEA number'' and the employee knew ''that neither [Respondent] nor anyone from his office had contacted the DEA to request a refund.'' *Id.*

Respondent's argument as to why this statement is material to any issue in the case is somewhat opaque. Apparently, Respondent believes that there was a ''mandatory'' statutory duty to register him as an exporter ''unless there was a finding that to do so would not be in the public interest'' and that ''there was no such finding'' here. Reply to Govt. Resp. to Motion to Disqualify Office of Chief Counsel at 3. Respondent further asserts that ''[i]f the DEA had acted properly, and had corrected its mistake, the Respondent would have been registered.'' *Id.*

Under longstanding DEA policy, the approval of an application for an Exporter's registration is not a ministerial act. Rather, the application is subject to an extensive pre-registration investigation which includes a review of the six statutory factors set forth in 21 U.S.C. 823(d). *See* 21 U.S.C. 958(c). Although Respondent's application should have been processed, the violations uncovered during the January and February 2001 visits, as well as the information Respondent provided on his application regarding prior disciplinary actions of the state authorities, would have supported a finding that granting his registration would be inconsistent with the public interest. Indeed, that is why the second Show Cause Order (which proposed to deny his second application for an Exporter's registration) was issued. Respondent's assertion that his application would have been granted had DEA not mistakenly failed to process his application is thus wishful thinking.

More importantly, Federal law makes clear that ''[n]o person may * * * export from the United States any controlled substance * * * unless *there is in effect* with respect to such person a registration issued by the Attorney General under section 958 of this title, or unless such person is exempt from registration under subsection(b) of this section.'' *Id.* section 957(a). DEA's regulations further state that ''[n]o person required to be registered shall engage in any activity for which registration is required *until the application for registration is granted* and a Certificate of Registration *is issued* by the Administrator to such person.'' 21 CFR 1301.13(a) (emphasis added).

Furthermore, Federal law does not provide an exemption from registration because one has submitted an application which was subsequently mishandled. *See Dennis Robert Howard, M.D.*, 62 FR 32658, 32661 (1997) (''there is no 'good faith' exemption from liability in administrative proceedings'' under the CSA). And while DEA has recognized that acting with a ''good faith belief that [one is] properly registered with DEA * * * is a mitigating factor in determining the public interest,'' *id.*, DEA has recognized this defense in only two situations. The first is where a person had previously held a registration for the activity and believed it to be still valid pending an appeal of a final order of revocation. *See Stanley Alan Azen, M.D.*, 61 FR 57893, 57895–96 (1996). The second is where an applicant applied for a registration and received from DEA controlled substance order forms that were imprinted with a new DEA number. *See Howard,* 62 FR at 32660.[16] *Howard* is thus properly understood as a case involving reliance on an affirmative act of the government.

The good faith defense recognized in *Azen* is not applicable to Respondent's situation because Respondent never held an Exporter's Registration. Nor can Respondent claim that the allegedly perjurious statement is material under the defense recognized in *Howard.* While Respondent's application fee was refunded based on an employee's mistaken belief that Respondent already had a DEA number, *see* Resp. Memo at 1, Respondent does not claim that DEA personnel told him that he did not need a separate Exporter's registration and Respondent has produced no evidence that the application form was returned to him. Indeed, in his brief, Respondent concedes that DEA ''never informed him'' that his application had been rejected. Resp. Br. 24.

Furthermore, Respondent has offered no testimony to the effect that he relied on DEA's refunding of his application fee in concluding that he did not need an Exporter's registration. In fact, during the August 2001 management conference, Respondent asserted that he was not required to obtain an Exporter's registration because he qualified for a statutory exemption under 21 U.S.C. 957(b); he did not claim that he did not need the registration because his application fee had been refunded or that the application had been returned to him and that he had relied on the handwritten statement on the application. Accordingly, because Respondent makes no claim of reliance on any act of DEA, he cannot establish the materiality of the statements regarding DEA's failure to process his application.

Finally, even if Respondent had made out a prima facie case with respect to the declarant and could show that the government counsel who prepared the affidavit also intended to deceive—a point on which Respondent offers nothing more than conclusory assertions—Respondent provides no authority to support his proposed remedy of dismissing the entire proceeding. Doing so would be an especially untoward result in light of the statutory purpose to protect the public interest. Furthermore, the Government made available the declarant and Respondent was able to thoroughly examine her and demonstrate the inaccuracies in her declaration. Under these circumstances, no further relief is warranted.

The Statutory Factors

Respondent's Practitioner's Registration

Section 304(a) of the Controlled Substances Act provides that a registration to ''dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). In making the public interest determination, the Act requires the consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id. section 823(f).

''[T]hese factors are * * * considered in the disjunctive.'' *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[ ] appropriate in

[16] I decline to extend the good faith defense beyond these situations. Indeed, to do so in a case like this would create an incentive for applicants to engage in activities before they had obtained the required registration and demonstrated their fitness to perform the activity. Such a rule would clearly threaten public safety.

determining whether a registration should be revoked or an application for registration [should be] denied.'' *Id.* Moreover, case law establishes that I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005).

Factor One—The Recommendation of the State Licensing Board

As explained above, on three occasions the Medical Board of California has imposed sanctions against Respondent. At the time the ALJ rendered her decision, the the most recent accusation had not been resolved. The ALJ nonetheless concluded that ''[t]hroughout the Medical Board's proceedings, the Respondent has exhibited an unwillingness to practice medicine in a manner consistent with the California Medical Board's rules and regulations,'' and that Respondent's ''attitude'' and ''conduct[ ] demonstrate that [his] continued dispensing of controlled substances is not in the public interest.'' ALJ at 66–67.

There is some merit to the notion that if one is not willing to comply with State law they are not likely to comply with Federal law either. I conclude, however, that it is unnecessary to decide whether a registrant's unwillingness to comply with State rules that are unrelated to controlled substances can be considered under the Act when the registrant maintains a valid State license.

In any event, the ALJ did not have the benefit of knowing the outcome of the most recent State proceeding which placed Respondent on probation for a variety of acts that included several related to his handling of controlled substances. *See* n.4. The Stipulated Settlement and Disciplinary Order further states that it ''is intended to resolve * * * any disciplinary action taken by another State or the Federal government based on conduct alleged in * * * In the Matter of Edmund Chein, M.D., Docket No. 02–9 and 02–43 pending before the United States Drug Enforcement Administration.'' Stipulated Settlement at 2–3.

I acknowledge that the Medical Board acted within its sovereign prerogatives when it resolved matters arising under State law and decided to continue to license Respondent as a medical doctor. Moreover, a State can also adopt Federal standards as part of its State law. The Controlled Substance Act does not, however, delegate to State officials the authority to decide whether the continuation of a DEA registration is consistent with the public interest. *See* 21 U.S.C. 824. Rather, Congress entrusted that authority with the Attorney General of the United States, and that authority has been delegated solely to the officials of this Agency. *See id.*; *see also* 28 CFR 0.100(b). State officials therefore lack authority to resolve a matter pending before the Drug Enforcement Administration and the Stipulated Settlement cannot bind this agency. See, *e.g.*, *Fourth Street Pharmacy* v. *DEA,* 836 F.2d 1137, 1139 (8th Cir. 1988).

Moreover, even viewing the stipulated settlement as, in effect, nothing more than a recommendation to continue Respondent's registration, I decline to give it deference. As will be explained below, the record is replete with evidence of Respondent's repeated and flagrant violations of Federal law. Therefore, I conclude that it would be inconsistent with the public interest to defer to the Medical Board's recommendation and give it no weight in the public interest analysis.

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and His Record of Compliance With Laws Relating To Controlled Substances

The Dispensing and Export Violations

As the ALJ found, on March 17, 1995, and July 20, 1995, Respondent dispensed testosterone, an anabolic steroid and Schedule III controlled substance, to two undercover agents. As the record establishes, Respondent wrote each special agent a prescription for the steroids in response to each of the agent's representations that they were competitive powerlifters and were seeking the steroids to improve their performance in athletic competitions. Respondent also issued each agent a letter stating that they had been diagnosed with hypogonadism notwithstanding that he did not have the test results. Based on this evidence, I conclude that the prescriptions violated Federal law because Respondent issued them without a legitimate medical purpose. *See* 21 CFR 1306.04(a).[17]

The record further establishes that on February 29, 2000, Respondent directed his California employees to dispense phentermine, a Schedule IV controlled substance, to a patient in Japan. On that date, Respondent's state license had been revoked and Respondent was therefore without authority under the CSA to dispense. *See* 21 U.S.C. 802(21) (''The term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to * * * dispense * * *.''); *id.* section 802(10) (''The term 'dispense' means to deliver a controlled substance to an ultimate user * * * by, or pursuant to the lawful order of, a practitioner * * *.'').

Finally, the record establishes that Respondent repeatedly dispensed controlled substances to persons residing in foreign countries. As explained more fully below, Respondent violated Federal law because he was not registered as an exporter and did not file the required declarations. Moreover, the record shows that Respondent did so even after having been notified that his conduct was illegal. Finally, Respondent did so even after he was served with the Notice of Immediate Suspension.

Respondent contends that his practitioner's registration ''authorize[d] him as a registered doctor to dispense to his patient, wherever that patient is located.'' Resp. Exh. 75, at 4 (Resp. Memo. Pts. & Auth. in Support of Motion to Dismiss Export Charges); *see also* Resp. Br. at 22. According to Respondent, ''[e]xporting and dispensing to an individual simply are two completely different matters,'' Resp. Exh. 75, at 3, and ''[t]hese terms simply contemplate different conduct.'' *Id.* at 4.

Respondent further argues that under 21 U.S.C. 822(b), a registered physician is authorized to dispense to the extent authorized by his registration and in conformity with the other provisions of subchapter I. *See* Resp. Br. at 23. In Respondent's view, under the statute he was only required to comply with subchapter I, which ''expressly authorizes physicians to dispense to their patients,'' and because the export statutes are located in subchapter II, he was not required to obtain an export registration and comply with the other requirements of that subchapter. *Id.* Perhaps recognizing how unpersuasive this argument is, Respondent further claims that the statute is ambiguous and that his interpretation of section 822(b) is reasonable. *Id.*

The starting point in statutory construction is the language of the statute. *Ardestani* v. *INS,* 502 U.S. 129, 135 (1991) (other citations omitted). Section 302(b) of the CSA provides that:

[17] While these incidents occurred some time ago, there is no statute of limitations applicable to these proceedings, which are remedial in nature and are instituted to protect the public interest. *See Pettigrew Rexall Drugs,* 64 FR 8855, 8859 (1999). While the passage of time since the wrongdoing is a factor to be considered, the statute expressly directs that a registrant's ''experience in dispensing'' be considered, an inquiry which necessarily requires some review of a registrant's history. If Respondent's misconduct was limited to these two instances, this would be a different case.

Persons registered by the Attorney General under this subchapter to manufacture, distribute, or dispense controlled substances * * * are authorized to possess, manufacture, distribute or dispense such substances * * * to the extent authorized by their registration and in conformity with the other provisions of this subchapter.

21 U.S.C. 822(b).

As the Supreme Court has recognized, ''[t]his is a qualified authorization of certain activities, not a blanket authorization of all acts by certain persons.'' *United States* v. *Moore,* 423 U.S. 122, 131 (1975). The statute grants a registrant authority only to perform those acts ''authorized by their registration.'' 21 U.S.C. 822(b).

Contrary to Respondent's understanding, the ''in conformity with the provisions of this subchapter'' clause is a further ''limitation'' on a registrant's authority. *Moore,* 423 U.S. at 131. It compels a registrant to obey the requirements contained in Subchapter I. What it does not do is excuse a registrant from complying with other requirements of federal law such as those imposed by Subchapter II, the Controlled Substances Import and Export Act (CSIEA). Indeed, under Respondent's interpretation, any entity which possessed a distributor's registration would also be exempt from the requirement of obtaining an exporter's registration (as well as obtaining the permits or filing the necessary declarations) because the term ''distribute'' is broadly defined as ''mean[ing] to deliver * * * a controlled substance,'' 21 U.S.C. 802(11), which is what an exporter does when it ships a product to a foreign entity.

DEA has never interpreted the Act in this manner for obvious reason—it would render the CSIEA a nullity. And contrary to Respondent's second contention that Federal law is ambiguous, both the statutes and our regulations make clear that Respondent was required to obtain an Exporter's registration to ship controlled substances to foreign countries.

Indeed, Respondent completely ignores the clear text of the Export Registration provision, 21 U.S.C. 957(a). This section expressly provides that ''[n]o person may * * * export from the United States *any controlled substance* * * * unless there is in effect with respect to such person a registration issued by the Attorney General *under section 958 of this title,* or unless such person is exempt from registration under subsection(b) of this section.'' 21 U.S.C. 957(a) (emphasis added).

While the statute does not define the term ''export,'' the regulations do. *See* 21 CFR 1300.01(b)(12). ''The term * * * means, with respect to any article, any taking out or removal of such article from the jurisdiction of the United States (whether or not such taking out or removal constitutes an exportation within the meaning of the customs and related laws of the United States).'' *Id.* Relatedly, the regulations define ''[t]he term *exporter* [to] include[ ] every person who exports * * * controlled substances listed in any schedule.'' *Id.* 1301(b)(13). Shipping a controlled substance to a person residing in a foreign country is to take out or remove the ''article from the jurisdiction of the United States,'' *id.* 1301(b)(12), even if the person the drug is being shipped to is an ultimate user.

Beyond that, Congress clearly stated that a person may not export a controlled substance, ''unless there is in effect with respect to such person a registration issued * * * under section 958 of this title.'' 21 U.S.C. 957(a). A practitioner's registration is not issued under section 958, but rather under section 823(f). It thus does not provide its holder with authority to export.

Nor is there any merit to Respondent's contention that because he shipped out only small amounts of controlled substances, he was not engaged in exporting. Section 957(a) clearly provides that exporting ''any controlled substance'' triggers the registration requirement unless a person falls within one of the three statutory exemptions. As the plain language demonstrates, there is no threshold amount which triggers the registration requirement. Rather, to export any amount, no matter how small, a person must first obtain an exporter's registration.[18]

The exemptions to the export registration requirement also foreclose Respondent's interpretation. While the statute exempts from registration ''[a]n ultimate user who possesses'' a controlled substance for lawful use by themselves or a family member, this provision does not apply to Respondent. 21 U.S.C. 957(b)(1)(C). Under this exemption, an ultimate user must have the controlled substance ''in his possession'' at the time of export from the United States. *Id.* section 956(a)(1). Shipping controlled substances to persons in foreign countries is thus not within this exemption; the other exemptions are not remotely applicable to Respondent's conduct. *See id.* Section 957(b)(1).

DEA's Regulations also provided clear notice to Respondent that he was required to register as an Exporter. Under 21 CFR 1301.13(e), ''[a]ny person who is required to be registered and who is not so registered, shall make application for registration for one of the following groups of controlled substance activities, which are *deemed to be independent of each other.*'' (emphasis added). The regulation then provides a table that lists each activity and the coincident activities that are permissible under a registration for a particular activity. As the table makes clear, dispensing and exporting are independent activities. *See id.* Moreover, exporting is not included in the Regulation's discussion of the ''[c]oincident activities allowed'' for a registration which authorizes dispensing. *See id.*

As the foregoing demonstrates, the law and regulations provided clear notice to Respondent that he could not ship controlled substances to persons residing in foreign countries without obtaining an export registration. And while it is true that Respondent was not required to obtain an Export Permit for either the testosterone or phentermine he exported,[19] he was still required to file an Export Declaration (DEA—Form 236) and submit ''documentary proof that [the] importation is not contrary to the laws or regulations of the country of destination'' for each shipment. 21 U.S.C. 953(e).[20]

As the record demonstrates, phentermine is a controlled substance in Belgium, Canada, Germany, Indonesia, Japan, the Republic of Korea, and Taiwan. Gov. Exh. 38(c), at 5. The record also establishes that both Japan and Taiwan prohibit the importation of this drug. *Id.* at Tabs D & E. Furthermore, testosterone is controlled in both Canada and the United Kingdom. *See id.* at 5.

Respondent's failure to declare these shipments to DEA prevents the United

[18] Indeed, each exportation was a felony under Federal law. *See* 21 U.S.C. § 960.

[19] While the DI may have misinformed Respondent that he was required to obtain a permit, she did not tell him that he had no obligation to comply with Federal law.

[20] Respondent also contends that he was not required to file the declarations (DEA Form 236) because the form ''requires the listing of the name and address of the 'foreign consignee/consignor,'" and that ''[i]n this case, there is no 'foreign consignee/consignor,' since the recipients are end user patients.'' Resp. Br. 26. Respondent further contends that these ''terms are used in trade to describe the persons from whom and to whom goods are shipped for sale to third parties.'' *Id.*

The short answer to this contention is that in common usage, the term ''consignee'' means ''one to whom something is consigned or shipped.'' *Merriam-Webster's Collegiate Dictionary* 246 (10th ed. 1998). Beyond that, the record contains a copy of the ''Commercial Invoice'' form that Respondent used to ship products (including testosterone) to his foreign patients. Gov. Exh. 107, at 20. Under this form, which used the term ''consignee,'' Respondent's clinic inserted the patient's name. *See id.*

States from fulfilling its treaty obligations and denies the country of destination the opportunity to determine whether a shipment of a controlled substance is permissible before it occurs. *See id.* at 3. It thus undermines the system of international cooperation to prevent the illegal flow of controlled substances. *See, e.g.,* Convention on Psychotropic Substances, 1971, Art. 21 (''[T]he Parties shall * * * [a]ssist each other in the campaign against the illicit traffic in psychotropic substances * * * [and] [c]o-operate closely with each other * * * with a view to maintaining a co-ordinated campaign against the illicit traffic.'').

Respondent further contends that he acted in good faith to obtain an Export registration. But as explained above, Federal law makes clear that ''[n]o person may* * * export from the United States any controlled substance * * * unless [a registration] is in effect,'' 21 U.S.C. 957(b), and the regulations further provide that a person cannot ''engage in any activity for which registration is required until the application * * * is granted and a Certificate of Registration is issued.'' 21 CFR 1301.13(a). Determining whether the granting of an application for an export registration is consistent with the public interest requires an extensive and time consuming investigation into the same criteria that apply to manufacturers. 21 U.S.C. 958(c) & 823(d). Granting such a registration is not a ministerial act, and in this case, the conduct uncovered before Respondent even applied for the registration was enough to deny his application.

Furthermore, the record establishes that Respondent subsequently acted with deliberate disregard for the requirements of federal law. Both during the August 2001 management conference, and in several faxes thereafter, Respondent was warned by the DI to stop the foreign shipments. He nonetheless continued to send controlled substances to persons in foreign countries. Furthermore, notwithstanding the service of the Notice of Immediate Suspension of his registration, Respondent made further dispensings of controlled substances to persons who resided both within the U.S. and abroad. Respondent's conduct demonstrates that he acted with a deliberate disregard for the law.

The Import Allegations

The record also contains evidence suggesting that Respondent obtained testosterone products from Mexico. This evidence includes the invoice which Respondent gave the DI during the August 2001 management conference. Specifically, the invoice, which was dated June 26, 2001, indicated that PSLEI had purchased 120 units of Depo testosterone and 40 units of Decadurabolin from Farmacias Castaneda, which listed its address as Tijuana, Mexico. Gov. Exh. 22. Moreover, during the February 2002 trash run, the DIs found 50 empty boxes of a testosterone product that had been manufactured by Brovel, S.A., a Mexican firm. Tr. 709, Gov. Exh. 58.

The ALJ concluded that the Government had failed to prove that Respondent ''received imported controlled substances from Mexico,'' apparently because the record ''contains evidence that the owner of the Mexican pharmacy, Dr. Romero, may have shipped the controlled substances from a location in San Diego.'' ALJ 75. The ALJ further explained that ''[t]here are no shipping documents in the record to refute this evidence.'' *Id.*

Romero was not, however, a registered importer. And even accepting the ALJ's finding that the drugs may have been shipped to Respondent from a location in San Diego, I do not find persuasive the ALJ's reasoning that Respondent therefore did not engage in importation. Indeed, I conclude that the ALJ's reasoning is contrary to well settled authority and that adopting it would gut Federal drug laws.

''Importation is a continuing crime that is not complete until the controlled substance reaches its final destination.'' *United States* v. *Camargo-Vergara*, 57 F.3d 993, 1001 (11th Cir. 1995); *see also United States* v. *Martinez,* 763 F.2d 1297, 1304 (11th Cir. 1985). The fact that someone else brought the drugs across the border, or that the drugs were shipped from a way station within the United States, does not make the final intended recipient any less an importer. As the Fifth Circuit has explained, one ''need not have participated directly in the physical movement of the [controlled substance] across the border to be convicted under 21 U.S.C. 952(a).'' *United States* v. *Lopez-Escobar,* 920 F.2d 1241, 1245 (1991). Indeed, drug dealers frequently use third parties to smuggle controlled substances into this country. That does not make them any less an importer.

Rather, the Government need only show that ''the defendant knowingly played a role in bringing the substance from a foreign country into the United States,'' *United States* v. *Jackson,* 55 F.3d 1219, 1225 (6th Cir. 1995); or that ''the defendant either imported the substance or caused it to be imported.'' *United States* v. *Nusraty,* 867 F.2d 759, 766 (2d Cir. 1989); *Accord United States* v. *Samad,* 754 F.2d 1091, 1096 (4th Cir. 1984). *See also United States* v. *Diaz-Carreon* 915 F.2d 951, 953 (5th Cir. 1990). The Government's proof satisfies either standard.

The Farmacia Castaneda invoice clearly establishes that: (1) Two controlled substances were shipped to Respondent, and (2) that the source of the controlled substances was a Mexican based pharmacy notwithstanding that the substances may have been shipped from Mr. Romero's San Diego address. The invoice further establishes that (3) Respondent caused the controlled substances to be imported by ordering them from the pharmacy. Finally, Respondent does not dispute that he received these two controlled substances but rather only whether the substances ''came from San Diego, [and] not Mexico.'' Resp. Proposed Findings at 14. The record thus contains substantial evidence that Respondent imported controlled substances.

Under Federal law, ''[n]o person may * * * import into the United States from any place outside thereof, any controlled substance * * * unless there is in effect with respect to such person a registration issued * * * under section 958 of this title'' or the person ''is exempt from registration under subsection(b).'' 21 U.S.C. 957(a). Respondent was not registered as an importer, Gov. Exh. 2, and does fall within any of the three exemptions. *See* 21 U.S.C. 957(b). I thus conclude that Respondent violated federal law when he imported depo testosterone and decadurabolin from Mexico without being registered to do so.[21]

The Record Keeping Violations

The record further establishes that Respondent committed numerous recordkeeping violations. Beginning

[21] I have reviewed Respondent's contention that these allegations should be dismissed because they were not alleged in the Order to Show Cause. While it is true that our regulations and the Administrative Procedure Act require that an Order to Show Cause contain ''a summary of the matters of fact and law asserted,'' 21 CFR 1301.37(c), an agency is not required ''to give every [Respondent] a complete bill of particulars as to every allegation that [it] will confront.'' *Boston Carrier, Inc.* v. *ICC,* 746 F.2d 1555, 1560 (D.C. Cir. 1984).

Having reviewed the pre-hearing statements, I conclude that the Government gave Respondent fair notice that the import allegations would be raised and litigated. I further conclude that Respondent had ''a meaningful opportunity to litigate the * * * issue in the hearing itself.'' *NLRB* v. *Blake Construction Co., Inc.*, 663 F.2d 272, 279 (D.C. Cir. 1981). The Government's refusal to turn over FedEx documents that would have shown that the two controlled substances had been shipped from Romero's San Diego location did not deny Respondent a meaningful opportunity to litigate the issue; indeed, I accept that the steroids may have been shipped to Respondent from a San Diego address.

with the 1994–95 investigation, during the execution of the search warrant, none of the required records were found even though Respondent had purchased a variety of controlled substances included various anabolic steroids and diazepam.

Moreover, on January 31, 2001, DEA visited Respondent's clinic and requested to see its controlled substance records. The invoices for the purchase of controlled substance were not on-site, but rather were at the office of the clinic's accountant. This violated 21 CFR 1304.04(a). Moreover, the inventory records and dispensing logs were stored in a computer system and no one was present at the clinic who could access them. Tr. 269.

DEA regulations require that ''each registered individual practitioner required to keep records'' shall maintain the records ''either separately from all other records of the registrant or in such form that the information required is readily retrievable from the ordinary business records of the registrant.'' 21 CFR 1304.04(g) & (f)(2). As relevant here, DEA regulations define the term ''readily retrievable'' to mean ''that certain records are kept by automatic data processing systems or other electronic or mechanized record-keeping systems in such a manner that they can be separated out from all other records *in a reasonable time*.'' *Id.* § 1300.01(b)(38) (emphasis added).

Respondent is correct that this regulation does not require that records be ''instantaneously produced.'' Resp. Br. 9. Moreover, the record does not indicate how long DEA personnel were at the clinic during the January 31, 2001 visit. Accordingly, there is no basis to conclude that the inventory and dispensing records were not readily retrievable on that date.

I nonetheless note Respondent's argument that he ''was not required to produce his records on the same day as the DEA's demand.'' *Id.* at 17. This is so, Respondent contends, because ''[n]either the statute nor the regulation prescribes a time limit within which a practitioner must produce his controlled substance records upon the DEA's request to examine them.'' *Id.*

The regulation does, however, require that records be retrievable in ''a reasonable time.'' While what constitutes ''a reasonable time'' necessarily depends on the circumstances, under normal circumstances if a practice is open for business, it should be capable of producing a complete set of records within several hours of the request. In this case, I conclude that on the second visit, the clinic's provision of the records within two to three hours complied with the regulation but barely so. To allow a registrant an even greater period of time to produce the records would create an incentive for those who are engaged in illegal activity to obstruct investigations by stalling for time in the hopes that DEA personnel would eventually give up and leave.

Most significantly, the records that were provided did not comply with DEA's regulations. The ''inventory report'' was dated February 5, 2001. It did not include a DEA number for either Respondent or his associate and did not indicate that it had been done at the opening or closing of business. 21 CFR 1304.03(a) & 1304.11(a). Furthermore, the dispensing logs did not reflect the name of the dispensing registrant. *Id.* § 1304.03(b). Moreover, the logs covered only a period of approximately seven months and not the required two years. *Id.* § 1304.04(a). Finally, no invoices for testosterone were provided even though the other records clearly showed that the PSLEI had testosterone products on hand and was actively dispensing them. *Id.* § 1304.21(a).

Nor were Respondent's recordkeeping violations limited to this time period. During the March 2002 Administrative Inspection, DEA personnel again requested to inspect Respondent's records including the required inventories. While Respondent was not available, the clinic could not provide the required inventories for the various controlled substances that were being dispensed. *See* ALJ 23.

Other Violations

The record contains evidence of further violations of DEA regulations during the period of Respondent's ownership. In March 2001, Respondent's clinic used Connie Chein's DEA number to order controlled substances even though Ms. Chein did not practice at the clinic and the clinic was not her registered location. *See* Gov. Exh. 45(a). This was a violation of 21 U.S.C. 843(a)(2) (prohibiting use of a registration number ''issued to another person'' for purpose of obtaining controlled substances). Moreover, Respondent's employees ordered controlled substances for the clinic using Dr. Garber's registration and had them shipped to Dr. Garber's residence, which was no longer a registered location. *See* Gov. Exh 45(b), (c), (d) & (g). This conduct undermines the CSA's closed system of distribution which requires that a registrant maintain a registration at each place of business from where a registrant distributes controlled substances. 21 U.S.C. 822(e); 21 CFR 1301.12. Under DEA precedents, a registrant is responsible for violations of the CSA committed by his employees and his practice's failure to comply with the Act. *See Leonard Merkow*, 60 FR 22075, 22076 (1995).

In conclusion, the evidence of Respondent's non-compliance with applicable laws related to controlled substances is extensive and shocking. Taken as a whole, Respondent's record reflects a flagrant disregard for the requirements of Federal law. Accordingly, I conclude that Respondent's continued registration as a practitioner would be inconsistent with the public interest.[22]

Respondent's Export Application

Section 1008 of the Controlled Substances Act provides that ''[t]he Attorney General may deny an application for registration [to export controlled substances in schedule III or IV] * * * if he determines that such registration is inconsistent with the public interest * * * or with the United States obligation under international treaties, conventions, or protocols in effect on May 1, 1971.'' 21 U.S.C. 958(d)(2). In making the public interest determination for an application to export Schedule III and IV controlled substances, Congress further directed that the Attorney General consider the factors applicable to manufacturers of Schedule III through V controlled substances. *Id.* section 958(c)(1). The factors are:

(1) Maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule III, IV or V compounded therefrom into other than legitimate medical, scientific, or industrial channels;

(2) Compliance with applicable State and local law;

(3) Promotion of technical advances in the art of manufacturing these substances and the development of new substances;

(4) Prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(5) Past experience in the manufacture, distribution, and dispensing of controlled substances, and the existence in the establishment of effective controls against diversion; and

(6) Such other factors as may be relevant to and consistent with the public health and safety.

[22] I acknowledge that Respondent has not been convicted under either Federal or State law of a controlled substances offense. Given Respondent's extensive record of non-compliance with applicable laws, this factor is entitled to no weight. Moreover, because Respondent's record of violations is extensive enough to support the revocation of his registration, it is not necessary to discuss whether he engaged in other conduct which threatens public health and safety.

21 U.S.C. 823(d). As with the public interest determinations applicable to other categories of registrants, ''these factors are * * * considered in the disjunctive.'' *ALRA Laboratories, Inc.,* 59 FR 50620, 50621 (1994). I ''may * * * rely on any one or a combination of factors, and give each factor the weight [I] deem appropriate'' in considering whether to grant Respondent's application. *Id.* Moreover, case law establishes that I am ''not required to make findings as to all of the factors.'' *Hoxie*, 419 F.3d at 482.

Here, while Congress has directed a slightly different analysis than that applicable to Respondent's practitioner's registration, I conclude that the same reasons that support the revocation of that registration also require the conclusion that granting Respondent's application for an export registration would be inconsistent with the public interest. There is no need to engage in a lengthy rehashing of those factors (such as Respondent's past experience and lack of compliance with Federal law) which have already been discussed; that discussion is therefore incorporated by reference.

Both factors one and five inquire into whether an applicant has effective controls against diversion. Respondent clearly does not as demonstrated by his clinic's repeated failure to provide DEA with either initial or biennial inventories that complied with the regulations. Accurate inventories are essential to conduct accountability audits and to determine whether diversion has occurred.

Respondent asserts that ''[t]here was no diversion of controlled substances from the legitimate chain of distribution.'' Resp. Br. 6. That is not so. The record contains abundant evidence that phentermine was sent to patients in Japan, Korea, and Taiwan. *See* Gov. Exh. 128. As demonstrated by a letter from a Japanese Ministry of Health official, it was illegal to export phentermine to Japan (although a person is allowed to bring in a small amount of the drug on his person). *See* Gov. Exh. 38(C). Furthermore, Taiwan had prohibited the use of phentermine and its importation. Finally, the record indicates that it is illegal to prescribe phentermine for anti-aging purposes in Korea and Japan.

Both Japan and the United States have ratified the 1971 Convention on Psychotropic Substances, which regulates phentermine; the Republic of Korea has also become a party to the Convention by accession.[23] As explained above, under the Convention, the United States agreed to undertake certain measures including assisting other parties ''in the campaign against the illicit traffic in psychotropic substances.'' Convention on Psychotropic Substances Art. 21(b).

In light of the authority that an export registration grants, as well as our treaty obligations, it is appropriate to consider the potential impact of Respondent's conduct not only on this country, but also on other parties to the Convention.[24] The statements of various government officials regarding the prohibition on the exportation of phentermine to their countries, as well as other evidence that it is illegal to prescribe phentermine for anti-aging purposes in several of these countries, establish that Respondent's exports of phentermine to foreign patients were not within the legitimate chain of distribution and were not for a legitimate medical purpose. The shipments thus establish that Respondent has engaged in diversion. I therefore conclude that Respondent's past experience in distributing and dispensing controlled substances demonstrates that his practice lacks effective controls against diversion—indeed, he is the cause of the diversion—and that this factor further supports a finding that granting Respondent's application would be inconsistent with the public interest. For the same reason, factor one supports a finding that granting Respondent's application would be inconsistent with the public interest.

The ALJ found that Respondent has promoted technical advances in the development of new substances (Factor 3) as demonstrated by his obtaining of several patents including one for his total hormone replacement therapy. *See* ALJ at 80. The ALJ further concluded that granting Respondent an export registration ''would enhance his ability to continue to develop [the] therapy for his patients.'' *Id.*

I acknowledge that Respondent has obtained various patents for his treatment regimen and had applied for a patent for a particular testosterone composition. *See* Resp. Ex. 1016. Even so, Respondent's contributions in this area are greatly outweighed by his record of misconduct and his flagrant disregard for the requirements of federal law. This factor is thus entitled to no weight. I further note, however, that denying Respondent's application for an export registration (and revoking his practitioner's registration) does not preclude him from developing new treatment protocols. Respondent can continue to do so as long as he limits his research to non-controlled substances.

Finally, in discussing other relevant factors (Factor 6), the ALJ found ''that the public has an interest in the continued access to Respondent's total hormone replacement therapy,'' and suggested that I could consider this in deciding whether to deny Respondent's application for an export registration (as well as to revoke his practitioner's registration). ALJ at 81. I need not decide whether this is an appropriate consideration under the statute because even if it is, Respondent's extensive history of misconduct clearly outweighs any benefit to the public that would accrue from allowing Respondent to handle controlled substances as either an exporter or practitioner. And in any event, Respondent can always license his patents to other physicians or offer to teach them his medical discoveries.

Considering all of the factors, I conclude that Respondent's past experience in distributing and dispensing controlled substances is entitled to dispositive weight in the public interest determination applicable to his application for registration as an Exporter. Because that experience manifests a sustained and flagrant disregard for the requirements of Federal law, I conclude that granting Respondent's application would be inconsistent with the public interest.[25]

[23] Taiwan was also a signatory to the Convention on Psychotropic Substances. It is acknowledged that Republic of China has declared Taiwan's ratification of the Convention to be null and void.

[24] *Noramco* v. *DEA,* 375 F.3d 1148, 1156 (D.C. Cir. 2004), is not to the contrary. That case involved an assertion by a competitor of a domestic manufacturer that granting the latter an importer's registration would lead to increased diversion of narcotic raw materials in India, the country of origin. *See Penick Corp., Inc.,* 68 FR 6947, 6951 (2003). While this assertion was entirely speculative, my predecessor further ruled that DEA was not required to consider the impact on diversion in the country of origin. *See id.* In affirming that interpretation as a reasonable construction of the statute, the court of appeals reasoned that ''Congress was concerned with preventing diversion in this country rather than abroad.'' 375 F.3d at 1156.

Here, however, Federal law expressly requires that an exporter, before exporting any nonnarcotic controlled substance in schedules III or IV, ''furnish'' to DEA ''documentary proof that importation is not contrary to the laws or regulations of the country of destination for consumption for medical, scientific, or other legitimate purposes.'' 21 U.S.C. 953(e)(1). Thus, in contrast to the situation at issue in *Penick,* here, other provisions of the CSIEA suggest that in assessing Respondent's application, it is appropriate to consider the potential for diversion of the controlled substance in the destination country.

[25] Even if the Court of Appeals was to disagree with my finding that Respondent was still in charge of the Palm Springs clinic's dispensation of controlled substances during the period of his

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate of Registration, AC1643661, issued to Edmund Chein, M.D., be, and it hereby is, revoked. I also order that any pending applications for renewal or modification of such registration be, and they hereby are, denied.

Pursuant to the authority vested in me by 21 U.S.C. 958(d), as well as 28 CFR 0.100(b) & 0.104, I further order that the application of Edmund Chein, M.D., for a DEA Certificate of Registration as an Exporter of controlled substances be, and it hereby is, denied.

Dated: January 19, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–2217 Filed 2–9–07; 8:45 am]

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sister's putative ownership, the scope of his misconduct during the periods in which he owned the clinic is so extensive and egregious that I would still revoke his practitioner's registration and deny his exporter's application.

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2007–03; Exemption Application No. D–11381]

Grant of Individual Exemption Involving The Bear Stearns Companies, Inc. (BS), Bear Stearns Asset Management Inc. (BSAM), and Bear, Stearns & Co. Inc. (BSC) (Collectively, the Applicants) Located in New York, NY

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains a final exemption issued by the Department of Labor (the Department) that provides relief from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1986 (the Code). The exemption permits the purchase of certain securities (the Securities), by an asset management affiliate of BS from any person other than such asset management affiliate of BS or any affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such Securities, where a broker-dealer affiliated with BS (the Affiliated Broker-Dealer) is a manager or member of such syndicate and the asset management affiliate of BS purchases such Securities, as a fiduciary: (a) On behalf of an employee benefit plan or employee benefit plans (Client Plan(s)); or (b) on behalf of Client Plans, and/or in-house plans (In-House Plans) which are invested in a pooled fund or in pooled funds (Pooled Fund(s)); provided certain conditions as set forth, below are satisfied (An affiliated underwriter transaction (AUT)).[1] The exemption affects Client Plans and In-House Plans and their participants and beneficiaries.

EFFECTIVE DATE: This exemption is effective as of the date it is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8540. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 24, 2006, the Department published a Notice of Proposed Exemption (the Notice) in the **Federal Register** at 71 FR 67904. The document contained a proposed individual exemption from the restrictions of section 406 of the Act and section 4975(c)(1)(A) through (F) of the Code. The proposed exemption had been requested in an application filed by the Applicants, pursuant to section 408(a) of the Act, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this exemption is being issued solely by the Department.

The proposed exemption gave interested persons an opportunity to comment and to request a hearing. In this regard, all interested persons were invited to submit written comments or requests for a hearing on the pending exemption on or before January 8, 2007.

The Applicants informed the Department in a letter dated January 5, 2007, that the Notice along with the supplemental statement (the Supplemental Statement), described at 29 CFR 2570.43(b)(2) of the Department's regulations, was sent by December 9, 2006, via first class mail to all Interested Persons with the exception of two (2) such Interested Persons. The Applicant further informed the Department that the Notice and the Supplemental Statement was sent by December 13, 2006, via first class mail to these two (2) remaining Interested Persons. In light of the fact that notification to these Interested Persons was delayed and in order to allow such Interested Persons the benefit of the full thirty (30) day comment period, the Department required, and the Applicants agreed to, an extension of the deadline within which these two (2) Interested Persons could comment or request a hearing on the proposed exemption. In this regard, in accordance with the Department's instructions, the Applicants sent a letter on December 19, 2006, to these Interested Persons notifying them that the comment period was extended until January 15, 2007. All comments were made part of the record.

During the comment period, the Department received no requests for a hearing. The Department did receive a comment letter from the Applicants. The written comments and the responses are discussed below.

Written Comments

In a letter dated, January 5, 2007, the Applicants' suggested revisions of the language in paragraph 19 of the Summary of Facts and Representations, as published in the Notice at 71 FR 67907, column 1, lines 58–69, and column 2, lines 1–22, in order to reflect changes in the law regarding ''hot issues.''

The Department concurs with the Applicants' suggested revisions. In this regard, paragraph 19 of the Summary of Facts and Representations, as set forth in the Notice, should have read as follows:

19. Assuming that the marketing efforts have produced sufficient indications of interest, the Applicants represent that the issuer of the securities and the selling syndicate managers together will set the price of the securities and ask the SEC to declare the registration effective. After the registration statement becomes effective and the underwriting agreement is executed, the underwriters contact those investors that have indicated an interest in purchasing securities in the offering to execute the sales. The Applicants represent that offerings are often oversubscribed, and many have an over-allotment option that the underwriters can exercise to acquire additional shares from the issuer. Where an offering is oversubscribed, the underwriters decide how to allocate the securities among the potential purchasers. However, pursuant to the National Association of Securities Dealers Rule 2790, new issue securities (as defined under such rule) may not be sold directly to:

[1] For purposes of this exemption an In-House Plan may engage in AUT's only through investment in a Pooled Fund.

Officers, directors, general partners or associated persons of any broker-dealer (other than limited business broker-dealers); any person who has the authority to buy or sell securities for: A bank, saving and loan institution, insurance and investment companies, investment advisors and collective investment accounts; and certain of the family members of such persons (collectively, ''restricted persons''). Restricted persons may still participate, to a limited extent, in allocations of ''new issues'' through pooled investment vehicles in which they invest and may receive directly new issue allocations in certain other limited circumstances.

In addition to the comment letter submitted by the Applicants, the Department received a telephone inquiry from a commentator seeking clarification of Section II(b) of the exemption. Section II(b), as set forth in the Notice, at 71 FR 67910, column 1, lines 31–55, reads as follows:

(b) The issuer of the Securities to be purchased has been in continuous operation for not less than three years, including the operation of any predecessors, unless—

(1) Such Securities are non-convertible debt securities rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, *i.e.*, Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors (collectively, the Rating Organizations); or

(2) Such Securities are issued or fully guaranteed by a person described, above, in Section II(a)(1)(i)(A); or

(3) Such Securities are fully guaranteed by a person described, above, in Section II(a)(1)(i)(B), (C), or (D), who has issued the Securities and who has been in continuous operation for not less than three years, including the operation of any predecessors.

The Department has determined to amend the language of Section II(b), as set forth in this exemption, as follows:

(b) The issuer of the Securities to be purchased pursuant to this exemption must have been in continuous operation for not less than three years, including the operation of any predecessors, unless the Securities to be purchased —

(1) are non-convertible debt securities rated in one of the four highest rating categories by Standard & Poor's Rating Services, Moody's Investors Service, Inc., FitchRatings, Inc., Dominion Bond Rating Service Limited, Dominion Bond Rating Service, Inc., or any successors thereto (collectively, the Rating Organizations); provided that none of the Rating Organizations rates such securities in a category lower than the fourth highest rating category; or

(2) are debt securities issued or fully guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; or

(3) are debt securities which are fully guaranteed by a person (the Guarantor) that has been in continuous operation for not less than three years, including the operation of any predecessors, provided that such Guarantor has issued other securities registered under the 1933 Act; or if such Guarantor has issued other securities which are exempt from such registration requirement, such Guarantor has been in continuous operation for not less than three years, including the operation of any predecessors, and such Guarantor:

(a) is a bank; or

(b) is an issuer of securities which are exempt from such registration requirement, pursuant to a Federal statute other than the 1933 Act; or

(c) is an issuer of securities that are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such securities and that has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding twelve (12) months.

Further, the Department has amended the definition of Rating Organizations in Section III(k) of this exemption and has changed the reference to the Rating Organizations found in Section II(b)(1) of this exemption. In this regard, the Department has added Dominion Bond Rating Service Limited and Dominion Bond Rating Service, Inc. to the list of Rating Organizations. In addition, the Department has reflected the recent merger of Duff & Phelps Credit Rating Co. and Fitch IBCA, Inc., by including the name of the surviving organization, FitchRatings, Inc., and deleting Duff & Phelps Credit Rating Co. from the list of Rating Organizations.

For further information regarding the comments or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11381) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, is made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, including the written comments received, the Department has decided to grant the exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest from certain other provisions of the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act.

(2) The exemption does not extend to transactions prohibited under section 406(b)(3) of the Act.

(3) In accordance with section 408(a) of the Act, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) The exemption is in the interest of the plans and of their participants and beneficiaries; and

(c) The exemption set forth herein is protective of the rights of participants and beneficiaries of the plans.

(4) The exemption is supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Accordingly, the following exemption is granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Exemption

Section I—Transactions

The restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the purchase of certain securities (the Securities), as defined, below in Section III(h), by an asset management affiliate of BS, as ''affiliate'' is defined, below, in Section III(c), from any person other than such asset management affiliate of BS or any affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such Securities, where a broker-dealer affiliated with BS (the Affiliated Broker-Dealer), as defined, below, in Section III(b), is a manager or member of such syndicate and the asset management

affiliate of BS purchases such Securities, as a fiduciary:

(a) On behalf of an employee benefit plan or employee benefit plans (Client Plan(s)), as defined, below, in Section III(e); or

(b) on behalf of Client Plans, and/or In-House Plans, as defined, below, in Section III(l), which are invested in a pooled fund or in pooled funds (Pooled Fund(s)), as defined, below, in Section III(f); provided that the conditions as set forth, below, in Section II, are satisfied (An affiliated underwriter transaction (AUT)).[2]

Section II—Conditions

The exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following requirements:

(a)(1) The Securities to be purchased are either—

(i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a *et seq.*). If the Securities to be purchased are part of an issue that is exempt from such registration requirement, such Securities:

(A) Are issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States,

(B) Are issued by a bank,

(C) Are exempt from such registration requirement pursuant to a federal statute other than the 1933 Act, or

(D) Are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such Securities and that has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding twelve (12) months; or

(ii) Part of an issue that is an Eligible Rule 144A Offering, as defined in SEC Rule 10f–3 (17 CFR 270.10f–3(a)(4)). Where the Eligible Rule 144A Offering of the Securities is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) The Securities to be purchased are purchased prior to the end of the first day on which any sales are made, pursuant to that offering, at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities, except that—

(i) If such Securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such Securities are debt securities, they may be purchased at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, pursuant to that offering, provided that the interest rates, as of the date of such purchase, on comparable debt securities offered to the public subsequent to the end of the first day on which any sales are made and prior to the purchase date are less than the interest rate of the debt Securities being purchased; and

(3) The Securities to be purchased are offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the Securities being offered, except if—

(i) Such Securities are purchased by others pursuant to a rights offering; or

(ii) Such Securities are offered pursuant to an over-allotment option.

(b) The issuer of the Securities to be purchased pursuant to this exemption must have been in continuous operation for not less than three years, including the operation of any predecessors, unless the Securities to be purchased—

(1) are non-convertible debt securities rated in one of the four highest rating categories by Standard & Poor's Rating Services, Moody's Investors Service, Inc., FitchRatings, Inc., Dominion Bond Rating Service Limited, Dominion Bond Rating Service, Inc., or any successors thereto (collectively, the Rating Organizations); provided that none of the Rating Organizations rates such securities in a category lower than the fourth highest rating category; or

(2) are debt securities issued or fully guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; or

(3) are debt securities which are fully guaranteed by a person (the Guarantor) that has been in continuous operation for not less than three years, including the operation of any predecessors, provided that such Guarantor has issued other securities registered under the 1933 Act; or if such Guarantor has issued other securities which are exempt from such registration requirement, such Guarantor has been in continuous operation for not less than three years, including the operation of any predecessors, and such Guarantor:

(a) Is a bank; or

(b) is an issuer of securities which are exempt from such registration requirement, pursuant to a Federal statute other than the 1933 Act; or

(c) is an issuer of securities that are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such securities and that has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding twelve (12) months.

(c) The aggregate amount of Securities of an issue purchased, pursuant to this exemption, by the asset management affiliate of BS with: (i) the assets of all Client Plans; and (ii) the assets, calculated on a *pro-rata* basis, of all Client Plans and In-House Plans investing in Pooled Funds managed by the asset management affiliate of BS; and (iii) the assets of plans to which the asset management affiliate of BS renders investment advice within the meaning of 29 CFR 2510.3–21(c) does not exceed:

(1) 10 percent (10%) of the total amount of the Securities being offered in an issue, if such Securities are equity securities;

(2) 35 percent (35%) of the total amount of the Securities being offered in an issue, if such Securities are debt securities rated in one of the four highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the fourth highest rating category; or

(3) 25 percent (25%) of the total amount of the Securities being offered in an issue, if such Securities are debt securities rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the sixth highest rating category; and

(4) The assets of any single Client Plan (and the assets of any Client Plans and any In-House Plans investing in

[2] For purposes of this exemption an In-House Plan may engage in AUT's only through investment in a Pooled Fund.

Pooled Funds) may not be used to purchase any Securities being offered, if such Securities are debt securities rated lower than the sixth highest rating category by any of the Rating Organizations;

(5) Notwithstanding the percentage of Securities of an issue permitted to be acquired, as set forth in Section II(c)(1), (2), and (3), above, of this exemption, the amount of Securities in any issue (whether equity or debt securities) purchased, pursuant to this exemption, by the asset management affiliate of BS on behalf of any single Client Plan, either individually or through investment, calculated on a *pro-rata* basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such Securities being offered in such issue, and;

(6) If purchased in an Eligible Rule 144A Offering, the total amount of the Securities being offered for purposes of determining the percentages, described, above, in Section II(c)(1)–(3) and (5), is the total of:

(i) The principal amount of the offering of such class of Securities sold by underwriters or members of the selling syndicate to ''qualified institutional buyers'' (QIBs), as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) The principal amount of the offering of such class of Securities in any concurrent public offering.

(d) The aggregate amount to be paid by any single Client Plan in purchasing any Securities which are the subject of this exemption, including any amounts paid by any Client Plan or In-House Plan in purchasing such Securities through a Pooled Fund, calculated on a *pro-rata* basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan or In-House Plan, as of the last day of the most recent fiscal quarter of such Client Plan or In-House Plan prior to such transaction.

(e) The covered transactions are not part of an agreement, arrangement, or understanding designed to benefit the asset management affiliate of BS or an affiliate.

(f) The Affiliated Broker-Dealer does not receive, either directly, indirectly, or through designation, any selling concession, or other compensation or consideration that is based upon the amount of Securities purchased by any single Client Plan, or that is based on the amount of Securities purchased by Client Plans or In-House Plans through Pooled Funds, pursuant to this exemption. In this regard, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation or consideration that is attributable to the fixed designations generated by purchases of the Securities by the asset management affiliate of BS on behalf of any single Client Plan or any Client Plan or In-House Plan in Pooled Funds.

(g)(1) The amount the Affiliated Broker-Dealer receives in management, underwriting, or other compensation or consideration is not increased through an agreement, arrangement, or understanding for the purpose of compensating the Affiliated Broker-Dealer for foregoing any selling concessions for those Securities sold pursuant to this exemption. Except as described above, nothing in this Section II(g)(1) shall be construed as precluding the Affiliated Broker-Dealer from receiving management fees for serving as manager of the underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other compensation or consideration that is not based upon the amount of Securities purchased by the asset management affiliate of BS on behalf of any single Client Plan, or on behalf of any Client Plan or In-House Plan participating in Pooled Funds, pursuant to this exemption; and

(2) The Affiliated Broker-Dealer shall provide to the asset management affiliate of BS a written certification, signed by an officer of the Affiliated Broker-Dealer, stating the amount that the Affiliated Broker-Dealer received in compensation or consideration during the past quarter, in connection with any offerings covered by this exemption, was not adjusted in a manner inconsistent with Section II(e), (f), or (g) of this exemption.

(h) The covered transactions are performed under a written authorization executed in advance by an independent fiduciary of each single Client Plan (the Independent Fiduciary), as defined, below, in Section III(g).

(i) Prior to the execution by an Independent Fiduciary of a single Client Plan of the written authorization described, above, in Section II(h), the following information and materials (which may be provided electronically) must be provided by the asset management affiliate of BS to such Independent Fiduciary:

(1) A copy of the Notice of Proposed Exemption (the Notice) and a copy of the final exemption as published in the **Federal Register**; and

(2) Any other reasonably available information regarding the covered transactions that such Independent Fiduciary requests the asset management affiliate of BS to provide.

(j) Subsequent to the initial authorization by an Independent Fiduciary of a single Client Plan permitting the asset management affiliate of BS to engage in the covered transactions on behalf of such single Client Plan, the asset management affiliate of BS will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary requests the asset management affiliate of BS to provide.

(k)(1) In the case of an existing employee benefit plan investor (or existing In-House Plan investor, as the case may be) in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this exemption, unless the asset management affiliate of BS provides the written information, as described, below, and within the time period described, below, in this Section II(k)(2), to the Independent Fiduciary of each such plan participating in such Pooled Fund (and to the fiduciary of each such In-House Plan participating in such Pooled Fund).

(2) The following information and materials (which may be provided electronically) shall be provided by the asset management affiliate of BS not less than 45 days prior to such asset management affiliate of BS engaging in the covered transactions on behalf of a Pooled Fund, pursuant to this exemption:

(i) A notice of the intent of such Pooled Fund to purchase Securities pursuant to this exemption, a copy of this Notice, and a copy of the final exemption, as published in the **Federal Register**;

(ii) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund requests the asset management affiliate of BS to provide; and

(iii) A termination form expressly providing an election for the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund to terminate such plan's (or In-House Plan's) investment in such Pooled Fund without penalty to such plan (or In-House Plan). Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that such plan (or such In-House Plan) has an opportunity to withdraw its assets from a Pooled Fund for a period of no more than 30 days after such plan's (or such In-House

Plan's) receipt of the initial notice of intent, described, above, in Section II(k)(2)(i), and that the failure of the Independent Fiduciary of such plan (or fiduciary of such In-House Plan) to return the termination form to the asset management affiliate of BS in the case of a plan (or In-House Plan) participating in a Pooled Fund by the specified date shall be deemed to be an approval by such plan (or such In-House Plan) of its participation in the covered transactions as an investor in such Pooled Fund.

Further, the instructions will identify BS, the asset management affiliate of BS, and the Affiliated Broker-Dealer and will provide the address of the asset management affiliate of BS. The instructions will state that this exemption may be unavailable, unless the fiduciary of each plan participating in the covered transactions as an investor in a Pooled Fund is, in fact, independent of BS, the asset management affiliate of BS, and the Affiliated Broker-Dealer. The instructions will also state that the fiduciary of each such plan must advise the asset management affiliate of BS, in writing, if it is not an ''Independent Fiduciary,'' as that term is defined, below, in Section III(g).

For purposes of this Section II(k), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I of this exemption for each plan be independent of the asset management affiliate of BS shall not apply in the case of an In-House Plan.

(l)(1) In the case of each plan (and in the case of each In-House Plan) whose assets are proposed to be invested in a Pooled Fund after such Pooled Fund has satisfied the conditions set forth in this exemption to engage in the covered transactions, the investment by such plan (or by such In-House Plan) in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary representing such plan (or the prior written authorization by the fiduciary of such In-House Plan, as the case may be), following the receipt by such Independent Fiduciary of such plan (or by the fiduciary of such In-House Plan, as the case may be) of the written information described, above, in Section II(k)(2)(i) and (ii).

(2) For purposes of this Section II(l), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I of this exemption for each plan proposing to invest a Pooled Fund be independent of BS and its affiliates shall not apply in the case of an In-House Plan.

(m) Subsequent to the initial authorization by an Independent Fiduciary of a plan (or by a fiduciary of an In-House Plan) to invest in a Pooled Fund that engages in the covered transactions, the asset management affiliate of BS will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary of such plan (or the fiduciary of such In-House Plan, as the case may be) requests the asset management affiliate of BS to provide.

(n) At least once every three months, and not later than 45 days following the period to which such information relates, the asset management affiliate of BS shall furnish:

(1) In the case of each single Client Plan that engages in the covered transactions, the information described, below, in this Section II(n)(3)-(7), to the Independent Fiduciary of each such single Client Plan.

(2) In the case of each Pooled Fund in which a Client Plan (or in which an In-House Plan) invests, the information described, below, in this Section II(n)(3)-(6) and (8), to the Independent Fiduciary of each such Client Plan (and to the fiduciary of each such In-House Plan) invested in such Pooled Fund.

(3) A quarterly report (the Quarterly Report) (which may be provided electronically) which discloses all the Securities purchased pursuant to the exemption during the period to which such report relates on behalf of the Client Plan, In-House Plan, or Pooled Fund to which such report relates, and which discloses the terms of each of the transactions described in such report, including:

(i) The type of Securities (including the rating of any Securities which are debt securities) involved in each transaction;

(ii) The price at which the Securities were purchased in each transaction;

(iii) The first day on which any sale was made during the offering of the Securities;

(iv) The size of the issue of the Securities involved in each transaction;

(v) The number of Securities purchased by the asset management affiliate of BS for the Client Plan, In-House Plan, or Pooled Fund to which the transaction relates;

(vi) The identity of the underwriter from whom the Securities were purchased for each transaction;

(vii) The underwriting spread in each transaction (*i.e.*, the difference, between the price at which the underwriter purchases the securities from the issuer and the price at which the securities are sold to the public);

(viii) The price at which any of the Securities purchased during the period to which such report relates were sold; and

(ix) The market value at the end of the period to which such report relates of the Securities purchased during such period and not sold;

(4) The Quarterly Report contains:

(i) A representation that the asset management affiliate of BS has received a written certification signed by an officer of the Affiliated Broker-Dealer, as described, above, in Section II(g)(2), affirming that, as to each AUT covered by this exemption during the past quarter, the Affiliated Broker-Dealer acted in compliance with Section II(e), (f), and (g) of this exemption, and

(ii) a representation that copies of such certifications will be provided upon request;

(5) A disclosure in the Quarterly Report that states that any other reasonably available information regarding a covered transaction that an Independent Fiduciary (or fiduciary of an In-House Plan) requests will be provided, including, but not limited to:

(i) The date on which the Securities were purchased on behalf of the Client Plan (or the In-House Plan) to which the disclosure relates (including Securities purchased by Pooled Funds in which such Client Plan (or such In-House Plan) invests;

(ii) The percentage of the offering purchased on behalf of all Client Plans (and the *pro-rata* percentage purchased on behalf of Client Plans and In-House Plans investing in Pooled Funds); and

(iii) The identity of all members of the underwriting syndicate;

(6) The Quarterly Report discloses any instance during the past quarter where the asset management affiliate of BS was precluded for any period of time from selling Securities purchased under this exemption in that quarter because of its status as an affiliate of an Affiliated Broker-Dealer and the reason for this restriction;

(7) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each single Client Plan that engages in the covered transactions that the authorization to engage in such covered transactions may be terminated, without penalty to such single Client Plan, within five (5) days after the date that the Independent Fiduciary of such single Client Plan informs the person identified in such notification that the authorization to engage in the covered transactions is terminated; and

(8) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each Client Plan (and to the fiduciary of each In-House Plan) that engages in the covered transactions through a Pooled Fund that the investment in such Pooled Fund may be terminated, without penalty to such Client Plan (or such In-House Plan), within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans, after the date that that the Independent Fiduciary of such Client Plan (or the fiduciary of such In-House Plan, as the case may be) informs the person identified in such notification that the investment in such Pooled Fund is terminated.

(o) For purposes of engaging in covered transactions, each Client Plan (and each In-House Plan) shall have total net assets with a value of at least $50 million (the $50 Million Net Asset Requirement). For purposes of engaging in covered transactions involving an Eligible Rule 144A Offering,[3] each Client Plan (and each In-House Plan) shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be) (the $100 Million Net Asset Requirement).

For purposes of a Pooled Fund engaging in covered transactions, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets with a value of at least $50 million. Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets with a value of at least $50 million, the $50 Million Net Asset Requirement will be met, if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (or by In-House Plans) each of which has total net assets with a value of at least $50 million. For purposes of a Pooled Fund engaging in covered transactions involving an Eligible Rule 144A Offering, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be). Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or In-House Plan, as the case may be), the $100 Million Net Asset Requirement will be met if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (or by In-House Plans) each of which have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be), and the Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(F)).

For purposes of the net asset requirements described, above, in this Section II(o), where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 Million Net Asset Requirement (or in the case of an Eligible Rule 144A Offering, the $100 Million Net Asset Requirement) may be met by aggregating the assets of such Client Plans, if the assets of such Client Plans are pooled for investment purposes in a single master trust.

(p) The asset management affiliate of BS qualifies as a ''qualified professional asset manager'' (QPAM), as that term is defined under Part V(a) of PTE 84–14. Notwithstanding the fact that the asset management affiliate of BS satisfies the requirements, as set forth in Part V(a) of PTE 84–14, such asset management affiliate of BS must also have total client assets under its management and control in excess of $5 billion, as of the last day of it most recent fiscal year and shareholders' or partners' equity in excess of $1 million. Furthermore, the requirement that the asset management affiliate of BS must have total client asset under its management and control in excess of $5 billion, as of the last day of it most recent fiscal year and shareholders' or partners' equity in excess of $1 million, as set forth in this Section II(p), applies whether such asset management affiliate of BS, qualifies as a QPAM, pursuant to Part V(a)(1), (a)(2), (a)(3) or (a)(4) of PTE 84–14.

(q) No more than 20 percent of the assets of a Pooled Fund, at the time of a covered transaction, are comprised of assets of In-House Plans for which BS, the asset management affiliate of BS, the Affiliated Broker-Dealer, or an affiliate exercises investment discretion.

(r) The asset management affiliate of BS, and the Affiliated Broker-Dealer, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the persons, described, below, in Section II(s), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a plan which engages in the covered transactions, other than BS, the asset management affiliate of BS, and the Affiliated Broker-Dealer, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by Section II(s); and

(2) A prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of the asset management affiliate of BS, or the Affiliated Broker-Dealer, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(s)(1) Except as provided, below, in Section II(s)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in Section II(r) are unconditionally available at their customary location for examination during normal business hours by —

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC; or

(ii) Any fiduciary of any plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a plan that engages in the covered transactions, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in Section II(s)(1)(ii)—(iv) shall be authorized to examine trade secrets of the asset management affiliate of BS, or the Affiliated Broker-Dealer, or commercial or financial information which is privileged or confidential; and

[3] SEC Rule 10f–3(a)(4), 17 CFR 270.10f–3(a)(4), states that the term ''Eligible Rule 144A Offering'' means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the Securities Act of 1933 [15 U.S.C. 77d(d)], rule 144A thereunder [§ 230.144A of this chapter], or rules 501–508 thereunder [§§ 230.501–230–508 of this chapter];

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter; and

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to § 230.144A of this chapter.

(3) Should the asset management affiliate of BS, or the Affiliated Broker-Dealer refuse to disclose information on the basis that such information is exempt from disclosure, pursuant to Section II(s)(2), above, the asset management affiliate of BS shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section III—Definitions

(a) The term, ''the Applicants,'' means BS, BSAM, and BSC.

(b) The term, ''Affiliated Broker-Dealer,'' means any broker-dealer affiliate, as ''affiliate'' is defined, below, in Section III(c), of the Applicants, as ''Applicants'' are defined, above, in Section III(a), that meets the requirements of this exemption. Such Affiliated Broker-Dealer may participate in an underwriting or selling syndicate as a manager or member. The term, ''manager,'' means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the Securities, as defined, below, in Section III(h), being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(c) The term ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee, or relative, as defined in section 3(15) of the Act, of such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(d) The term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term, ''Client Plan(s),'' means an employee benefit plan(s) that is subject to the Act and/or the Code, and for which plan(s) an asset management affiliate of BS exercises discretionary authority or discretionary control respecting management or disposition of some or all of the assets of such plan(s), but excludes In-House Plans, as defined, below, in Section III(l).

(f) The term, ''Pooled Fund(s),'' means a common or collective trust fund(s) or a pooled investment fund(s): (i) in which employee benefit plan(s) subject to the Act and/or Code invest, (ii) which is maintained by an asset management affiliate of BS, (as the term, ''affiliate'' is defined, above, in Section III(c)), and (iii) for which such asset management affiliate of BS exercises discretionary authority or discretionary control respecting the management or disposition of the assets of such fund(s).

(g)(1) The term, ''Independent Fiduciary,'' means a fiduciary of a plan who is unrelated to, and independent of BS, the asset management affiliate of BS, and the Affiliated Broker-Dealer. For purposes of this exemption, a fiduciary of a plan will be deemed to be unrelated to, and independent of BS, the asset management affiliate of BS, and the Affiliated Broker-Dealer, if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for the transactions described, above, in Section I of this exemption, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of BS, the asset management affiliate of BS, or the Affiliated Broker-Dealer, and represents that such fiduciary shall advise the asset management affiliate of BS within a reasonable period of time after any change in such facts occur.

(2) Notwithstanding anything to the contrary in this Section III(g), a fiduciary of a plan is not independent:

(i) If such fiduciary directly or indirectly controls, is controlled by, or is under common control with BS, the asset management affiliate of BS, or the Affiliated Broker-Dealer;

(ii) If such fiduciary directly or indirectly receives any compensation or other consideration from BS, the asset management affiliate of BS, or the Affiliated Broker-Dealer for his or her own personal account in connection with any transaction described in this exemption;

(iii) If any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the asset management affiliate of BS responsible for the transactions described, above, in Section I of this exemption, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the sponsor of the plan or of the fiduciary responsible for the decision to authorize or terminate authorization for the transactions described, above, in Section I. However, if such individual is a director of the sponsor of the plan or of the responsible fiduciary, and if he or she abstains from participation in: (A) The choice of the plan's investment manager/adviser; and (B) the decision to authorize or terminate authorization for transactions described, above, in Section I, then Section III(g)(2)(iii) shall not apply.

(3) The term, ''officer,'' means a president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), or any other officer who performs a policy-making function for BS or any affiliate thereof.

(h) The term, ''Securities,'' shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a–2(36)(1996)). For purposes of this exemption, mortgage-backed or other asset-backed securities rated by one of the Rating Organizations, as defined, below, in Section III(k), will be treated as debt securities.

(i) The term, ''Eligible Rule 144A Offering,'' shall have the same meaning as defined in SEC Rule 10f–3(a)(4) (17 CFR 270. 10f–3(a)(4)) under the 1940 Act.

(j) The term, ''qualified institutional buyer,'' or the term, ''QIB,'' shall have the same meaning as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

(k) The term, ''Rating Organizations,'' means Standard & Poor's Rating Services, Moody's Investors Service, Inc., FitchRatings, Inc., Dominion Bond Rating Service Limited, and Dominion Bond Rating Service, Inc.; or any successors thereto.

(l) The term, ''In-House Plan(s),'' means an employee benefit plan(s) that is subject to the Act and/or the Code, and that is sponsored by the Applicants, as defined, above, in Section III(a) for their own employees.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

Signed at Washington, DC, this 6th day of February, 2007.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E7–2242 Filed 2–9–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,756]

Eramet Marietta; Marietta, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 12, 2007 in response to a petition filed by the United Steel Workers, Local 1–00639–01, on behalf of workers at Eramet Marietta, Marietta, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 5th day of February 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–2286 Filed 2–9–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,776]

Kirchner Corporation; Golden Valley, MN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 17, 2007, in response to a worker petition filed by the Service Employees International Union, Local 26, on behalf of workers at Kirchner Corporation, Golden Valley, Minnesota.

The petitioning group of workers is covered by an active certification (TA–W–60,722) which expires on January 22, 2009. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 2nd day of February 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–2283 Filed 2–9–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,808]

Lexmark International, Inc.; Supply Chain Workforce Printing Solutions And Services Division; Lexington, KY; Notice of Revised Determination on Remand

On December 8, 2006, the U.S. Court of International Trade (USCIT) granted the U.S. Department of Labor's motion for a voluntary remand in *Former Employees of Lexmark International, Inc.* v. *United States*, Court No. 06–00327.

On February 7, 2006, three workers filed a petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) on behalf of workers and former workers of Lexmark International, Inc., Supply Chain Workforce, Printing Solutions and Services Division, Lexington, Kentucky (subject facility). The petitioners stated that the subject facility produced ''printers and supplies'' and attached an article which stated that Lexmark International, Inc. (Lexmark) planned to move jobs abroad to countries where Lexmark has existing ink cartridge production facilities, including Mexico, China, and the Philippines (''Lexmark benefits from its plans to trim jobs,'' Bloomberg News, January 25, 2006).

In the negative determination, the Department stated that the subject workers did not work directly in the manufacture of the products made by Lexmark. The determination also stated that the predominant cause of worker separations was not a shift of production abroad but was Lexmark's decision to position support tasks closer to where Lexmark's manufacturing partners and customers are located worldwide, including Mexico and the Philippines.

The Department's Notice of determination applicable to the subject facility was issued on February 24, 2006. The Department's Notice of determination was published in the **Federal Register** on March 22, 2006 (71 FR 14550).

On March 25, 2006, a worker requested administrative reconsideration of the Department's determination. In the request for reconsideration, the worker alleged that the subject workers supported the production of ink and printer cartridges produced by Lexmark and inferred that support activities were shifted overseas when production shifted abroad.

The Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration applicable to the subject facility on April 13, 2006. On April 24, 2006, the Department's Notice of determination was published in the **Federal Register** (71 FR 21042).

During the reconsideration investigation, the Department determined that the subject workers are an integral part of ink and printer cartridge production and are not separately identifiable by product line. However, because the Department was repeatedly informed by the subject firm that neither the subject facility nor Lexmark produced ink or cartridges domestically during the relevant period, the Department determined that the subject workers are not employed by a company covered by the statute and, therefore, are not eligible to apply for TAA because the subject workers were not employed by a firm (or an appropriate subdivision) which produced an article domestically during the relevant period.

The Department's Notice of Negative Determination on Reconsideration applicable to the subject facility was issued on July 19, 2006. The Department's Notice of determination was published in the **Federal Register** on July 31, 2006.

On September 19, 2006, the Plaintiff filed a complaint with the USCIT. In the complaint, the Plaintiff alleged that the Department's determination was based on the erroneous finding that ''Lexmark did not produce ink or cartridges domestically during the twelve-month period prior to the petition date.''

After careful review of the Plaintiff's complaint and the administrative record, prepared in response to the complaint, the Department filed a motion for voluntary remand.

On December 8, 2006, the USCIT granted the Department's motion for voluntary remand to conduct further investigation and to make a redetermination regarding the Plaintiffs' eligibility to apply for worker adjustment assistance (TAA and ATAA).

In order to make an affirmative determination and issue a certification of eligibility to apply for TAA, the group eligibility requirements in either paragraph (a)(2)(A) or (a)(2)(B) of Section 222 of the Trade Act must be met. It is determined in this case that the requirements of (a)(2)(B) of Section 222 have been met.

During the remand investigation, the Department reviewed the administrative record, contacted Plaintiff's counsel,

and requested additional information and clarification from Lexmark.

During the remand investigation, the Department obtained new information which revealed that, contrary to information previously-submitted by Lexmark, the subject facility produced ink and that the subject firm shifted ink production from the subject facility to existing foreign inkjet cartridge production facilities, including facilities in Mexico, during the relevant period, and that a significant proportion of the workforce at the subject facility was separated.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for 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 the case at hand 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 facts generated through the remand investigation, I determine that a shift of production to Mexico of articles like or directly competitive with ink produced at the subject facility contributed to the total or partial separation of a significant number or proportion of workers at the subject facility. In accordance with the provisions of the Act, I make the following certification:

All workers of Lexmark International, Inc., Supply Chain Workforce, Printing Solutions and Services Division, Lexington, Kentucky, who became totally or partially separated from employment on or after February 7, 2005, through two years from the issuance of this revised determination, are eligible to apply for Trade 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, as amended.

Signed at Washington, DC this 5th day of February 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–2284 Filed 2–9–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,140]

Tap Holdings, LLC; Los Angeles, CA; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked December 18, 2006, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on November 16, 2006 and published in the **Federal Register** on November 28, 2006 (71 FR 68841).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of TAP Holdings, LLC, Los Angeles, California engaged in production of re-manufactured carburetors and throttle body injection units was denied because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met, nor was there a shift in production from that firm to a foreign country in 2004, 2005 or January through August, 2006. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The survey revealed no imports of re-manufactured carburetors and throttle body injection units during the relevant period. The subject firm did not import re-manufactured carburetors and throttle body injection units nor did it shift production to a foreign country during the relevant period.

The petitioner states that the subject firm lost its business producing carburetors as a direct result of the increasing presence of electronic fuel injectors in the automobile industry. The petitioner also states that imports of electronic fuel injectors have increased and thus workers of the subject firm who manufacture re-manufactured carburetors and throttle body injection units should be eligible for TAA.

In order to establish import impact, the Department must consider imports that are like or directly competitive with those produced at the subject firm. The Department conducted a survey of the subject firm's major declining customers regarding their purchases of re-manufactured carburetors and throttle body injection units. The survey revealed that the declining customers did not increase their imports of re-manufactured carburetors and throttle body injection units during the relevant period.

The petitioner also requested that workers of TAP Holdings, LLC, Los Angeles, California be considered eligible for TAA as a secondary affected company. The petitioner provided a list of TAA certified companies to which the subject firm allegedly supplied components during the relevant time period.

For certification on the basis of the workers' firm being a secondary upstream supplier, the subject firm must produce a component part of the article that was the basis for the customers' certification.

A company official was contacted to verify whether the subject firm supplied re-manufactured carburetors and throttle body injection units to the companies provided by the petitioner. The company official stated that TAP Holdings, LLC, Los Angeles, California did not directly sell to these companies and that these companies were not customers of the subject firm during the relevant time period. The Department conducted a further investigation and determined that none of the customers of the subject firm were certified eligible for TAA during the relevant time period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 5th day of February, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–2285 Filed 2–9–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Native American Employment and Training Council

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended, and Section 166(h)(4) of the Workforce Investment Act (WIA) [29 U.S.C. 2911(h)(4)], notice is hereby given of the next meeting of the Native American Employment and Training Council (NAETC), as constituted under WIA.

Time And Date: The meeting will begin at 9 a.m. Eastern Standard Time (EST) on Wednesday, February 28, 2007, and continue until 5 p.m. that day. The period from 3 p.m. to 5 p.m. on February 28, 2007, will be reserved for participation and presentation by members of the public. The meeting will reconvene at 9 a.m. EST on Thursday, March 1, 2007, and adjourn at approximately 5 p.m. on that day.

Place: All sessions will be held at the Wyndham Washington DC-Monticello West Room, 1400 M Street, NW., Washington, DC 20005.

Status: The meeting will be open to the public. Persons who need special accommodations should contact the Designated Federal Official (DFO), Mr. Craig Lewis, at (202) 693–3384 by February 22, 2007.

Matters To Be Considered: The formal agenda will focus on the following topics: (1) Presentation on the Employment and Training Administration's Workforce Innovation in Regional Economic Development initiative and other relevant issues; (2) NAETC election of officers; (3) Review of Program Year 2005 performance results; and (4) Work Group Reports and Recommendations.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Lewis, DFO, Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room S–4206, 200 Constitution Avenue, NW., Washington, DC 20210.

Telephone: (202) 693–3384 (VOICE) (this is not a toll-free number).

Signed at Washington, DC this 6th day of February, 2007.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. E7–2282 Filed 2–9–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety And Health Administration

[Docket No. NACOSH 2007–1]

National Advisory Committee on Occupational Safety and Health (NACOSH); Request for Nominations to Serve on NACOSH

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Request for nominations to serve on NACOSH.

SUMMARY: The Assistant Secretary of Labor for Occupational Safety and Health (OSHA) requests nominations for membership on NACOSH.

DATES: Nominations for NACOSH must be submitted (postmarked, sent or received) by March 14, 2007.

ADDRESSES: You may submit nominations for NACOSH, identified by OSHA Docket No. NACOSH 2007–1, by any of the following methods:

Electronically: You may submit nominations, including attachments, electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions on-line for submitting nominations.

Facsimile: If your nomination, including attachments, is not longer than 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Mail, express delivery, hand delivery, messenger or courier service: Submit three copies of your nominations to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All nominations for NACOSH must include the Agency name and docket number for this **Federal Register** notice (Docket No. NACOSH 2007–1). All submissions in response to this **Federal Register** notice, including personal information provided, will be posted without change at *http://www.regulations.gov*. Because of security-related procedures, submitting nominations by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office, at the address above, for information about security procedures for submitting nominations by hand delivery, express delivery, and messenger or courier service. For additional information on submitting nominations, see the **SUPPLEMENTARY INFORMATION** section below.

Docket: To read or download submissions, go to *http://www.regulations.gov*. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information (e.g., copyrighted material) is not publicly available to read or download through *http://www.regulations.gov*. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office at the address above.

FOR FURTHER INFORMATION CONTACT: Deborah Crawford, OSHA, Directorate of Evaluation and Analysis, Room N–3641, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1932; fax (202) 693–1641; e-mail address *crawford.deborah@dol.gov*.

SUPPLEMENTARY INFORMATION: The Assistant Secretary of Labor for Occupational Safety and Health invites interested parties to submit nominations for membership on NACOSH. The Committee is authorized by section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory body and operates in compliance with provisions in the OSH Act and the Federal Advisory Committee Act (5 U.S.C. App. 2), and regulations issued pursuant to those laws (29 CFR 1912a, 41 CFR part 101–6 and 102–3).

NACOSH is comprised of 12 members, all of whom the Secretary of Labor appoints, and nominations will be accepted for seven vacancies (29 CFR 1912a.2). The composition of the committee and categories of new members to be appointed are as follows:

- Four public representatives. Two will be appointed;
- Two management representatives. One will be appointed;
- Two labor representatives. Two will be appointed;
- Two representatives representing occupational safety professions. One will be appointed; and,

• Two representing occupational health professions. One health representative will be appointed.

Pursuant to 29 CFR 1912a.2, the Secretary of Health and Human Services (HHS) will designate for appointment by the Secretary of Labor one of the public representatives and the representative from the occupational health professions. Therefore, OSHA will provide to HHS all nominations, including supporting materials, for those membership categories.

NACOSH members serve for staggered of two year terms, unless the member becomes unable to serve, resigns, ceases to be qualified to serve because he or she no longer meets the relevant representational requirements, or is removed by the Secretary of Labor. If a vacancy occurs before a term expires, the Secretary may appoint for the remainder of the unexpired term a new member who represents the same interest as the predecessor. The committee meets at least two times a year (§ 1912a.4).

Any interested person or organization may nominate one or more qualified persons for membership. Nominations must include the nominee's name, occupation or current position, and contact information. The nomination also must identify the category that the candidate is qualified to represent, and include a resume of the nominee's background, experience, and qualifications. In addition, the nomination must state that the nominee is aware of the nomination and is willing to serve on NACOSH for a two-year term.

NACOSH members will be selected upon the basis of their experience and competence in the field of occupational safety and health (§ 1912a.2). The information received through this nomination process, in addition to other relevant sources of information, will assist the Secretary of Labor in appointing members to serve on NACOSH. In selecting NACOSH members, the Secretary of Labor will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals. OSHA will publish the new NACOSH membership list in the **Federal Register**.

Public Participation—Submission of Nominations and Access to Docket

You may submit nominations (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments and other material must identify the Agency name and the OSHA docket number for this **Federal Register** notice (OSHA Docket No. NACOSH 2007–1). You may supplement electronic nominations by uploading document files electronically. If, instead, you wish to mail additional materials in reference to an electronic or fax submission, you must submit three copies to the OSHA Docket Office (see **ADDRESSES** section). The additional materials must clearly identify your electronic nomination by name, date, and docket number so OSHA can attach them to your nomination.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of nominations. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

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Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov.*

Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), 29 CFR 1912a, and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC this 5th day of February, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

[FR Doc. E7–2239 Filed 2–9–07; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission To OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is resubmitting the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until April 13, 2007.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below: Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–837–2861, *E-mail: _ociomail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0032.

Form Number: N/A.

Type of Review: Reinstatement, without change, of a previously approved collection.

Title: Records Preservation under 12 CFR Part 749.

Description: Part 749 of NCUA Regulations directs each credit union to store copies of their members' share and loan balances away from the credit union's premises and maintain a log about the stored information.

Respondents: All credit unions.

Estimated No. of Respondents/Recordkeepers: 9,128.

Estimated Burden Hours per Response: 2 hours.

Frequency of Response: Quarterly.

Estimated Total Annual Burden Hours: 18,256.

Estimated Total Annual Cost: $912,800.

By the National Credit Union Administration Board on January 22, 2007.

Mary Rupp,

Secretary of the Board.

[FR Doc. E7–2235 Filed 2–9–07; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until April 13, 2007.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below: Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–837–2861, E-mail: *OCIOmail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0141.

Form Number: N/A.

Type of Review: Reinstatement, without change, of a previously approved collection.

Title: 12 CFR 701.22 Organization and Operation of Federal Credit Unions—Loan Participations.

Description: NCUA has authorized federal credit unions to engage in loan participations, provided they establish written policies and enter into a written loan participation agreement. NCUA believes written policies are necessary to ensure a plan is fully considered before being adopted by the Board.

Respondents: All Federal Credit Unions.

Estimated No. of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours per Response: 4 hours.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 4,000.

Estimated Total Annual Cost: $100,000.

By the National Credit Union Administration Board on January 22, 2007.

Mary Rupp,

Secretary of the Board.

[FR Doc. E7–2237 Filed 2–9–07; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 95—Facility Security Clearance and Safeguarding of National Security Information and Restricted Data.

2. *Current OMB approval number:* OMB No. 3150–0047.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* NRC-regulated facilities and other organizations requiring access to NRC-classified information.

5. *The number of annual respondents:* 26 (16 plus 10 recordkeepers).

6. *The number of hours needed annually to complete the requirement or request:* 954 hours (805 hours reporting [3 hrs per response] and 149 hours recordkeeping [14 hrs per recordkeeper]).

7. *Abstract:* NRC-regulated facilities and other organizations are required to provide information and maintain records to ensure that an adequate level of protection is provided to NRC-classified information and material.

Submit, by April 13, 2007, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Margaret A. Janney (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7245, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 5th day of February 2007.

For the Nuclear Regulatory Commission.

Margaret A. Janney,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–2324 Filed 2–9–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–397]

Energy Northwest; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–21, issued to Energy Northwest (the licensee), for operation of the Columbia Generating Station located in Benton County, Washington.

The proposed amendment would revise Technical Specification (TS) 3.6.1.7, ''Suppression Chamber-to-Drywell Vacuum Breakers,'' to allow a one-time extension to the current closure verification surveillance requirement (SR) for one of two

redundant disks in one of nine vacuum breakers until reliable position indication can be restored in the main control room during the next refueling outage (R–18). Verification of closure of each vacuum breaker disk is currently required every 14 days by SR 3.6.1.7.1. The licensee requested that the proposed change be considered on an exigent basis.

The licensee stated that during the January 6, 2007, functional test of vacuum breaker CVB–V–1JK, one of the redundant disks in the vacuum breaker assembly did not meet the procedurally defined acceptance criteria for open or close due to an issue with position indication limit switches. This problem has resulted in unreliable position indication for closure of the rear disk of the vacuum breaker and requires an alternate method of closure verification be employed (*i.e.*, a differential pressure test). Consistent with SR 3.6.1.7.1, this test must be performed every 14 days. However, performance of the alternate test creates an unnecessary increase in plant risk relative to other compensatory options.

The proposed one-time change to TS 3.6.1.7 would revise SR 3.6.1.7.1 by adding a note to provide an extension to the SR for the rear disk of vacuum breaker CVB–V–1JK. This extension would remain in effect until the end of R–18, currently scheduled to begin on May 12, 2007.

On January 6, 2007, during a functional test of vacuum breaker CVB–V–1JK, the rear disk of the vacuum breaker did not meet the procedurally defined acceptance criteria for open or close due to an issue with the position indication limit switches. When CVB–V–1JK was cycled from the control room, the close position indication did not extinguish and prevented the open position indication from illuminating. The separate full open indication did illuminate, indicating that the rear disk opened as expected; however, the closure of the disk could not be confirmed using normal position indication.

With unreliable position indication in the main control room for the rear disk of vacuum breaker CVB–1JK, the alternate method of closure verification using the differential pressure test is required. This test, as described in the TS Bases, involves establishing a differential pressure between the drywell and suppression chamber equal to, or in excess of, 0.5 pounds per square inch differential (psid) to verify that the disk being tested can maintain that differential for 60 minutes. Current test procedures specify that a differential pressure of 0.7 to 0.75 psid be established between the drywell and suppression chamber. This value provides margin to accommodate minor internal drywell temperature changes during the testing. Maintaining a differential pressure between the drywell and suppression chamber is a positive indication that the vacuum breaker disk being tested is closed. This test was performed on the rear disk of vacuum breaker CVB–V–1JK on January 8, 2007, and again on January 22, 2007, and confirmed that the disk was seated. The degraded limit switches and associated circuitry are located in the inerted wetwell and cannot be accessed to restore normal position indication in the control room for the rear disk of vacuum breaker CVB–V–1JK while at power. Therefore, continued compliance with SR 3.6.1.7.1 would require that this pressure test be performed every 14 days.

The licensee stated that when performing the vacuum breaker closure differential pressure test, drywell pressure is increased from near atmospheric conditions to approximately 45 percent of the Drywell Pressure—High scram setpoint of 1.68 pounds per square inch gauge. Frequent differential pressure testing places the plant in a condition with degraded margin for a reactor scram. This increases the risk of an inadvertent reactor scram from a minor drywell pressure transient which may have been managed by the operator if it occurred at a normal drywell pressure and can unduly challenge plant safety systems and personnel. Furthermore, when performing the differential pressure test to verify continued closure of the rear disk of vacuum breaker CVB–V–1JK, the front disk is required to be open for at least 60 minutes while the test is being performed which degrades the capability of the vacuum breaker assembly to prevent bypass leakage when required. As previously discussed, TS 3.6.1.7 recognizes this increase in plant risk by drawing a distinction between an actual communication path and a potential communication path in the derivation of entry conditions and required actions.

The licensee concluded that a more appropriate method to maintain public health and safety is to ensure that both disks of vacuum breaker CVB–V–1JK continue to maintain their current closed position without a change of state. Operating in this configuration, both the front and rear disks of vacuum breaker CVB–V–1JK would conservatively not be credited to perform the open safety function and would be declared inoperable for opening. Both disks are currently closed and have been verified as such using the normal position indication in the control room for the front disk and by the differential pressure test for the rear disk. This configuration is currently allowed by TS 3.6.1.7, since only seven of nine vacuum breakers are required to be operable for opening while in Modes 1, 2, and 3. In addition, with vacuum breaker CVB–V–1JK declared inoperable for the open function, SR 3.6.1.7.2 would not be required to be performed and the breaker disks would not need to be cycled.

Continued operation in this manner until the end of R–18 would ensure that plant risk is minimized but also requires an extension from the current 14-day interval of SR 3.6.1.7.1. The proposed change is necessary because continued performance of SR 3.6.1.7.1 for the rear disk of CVB–V–1JK results in putting the plant in a condition that unduly increases the risk of an inadvertent reactor scram challenging both plant systems and personnel. Failure to perform the differential pressure test required by SR 3.6.1.7.1 would result in a failed verification of the current closed state of these vacuum breakers. TS 3.6.1.7 would then require placing the reactor in Mode 3 within the next 84 hours and Mode 4 in the following 24 hours and would also challenge plant system and personnel.

The licensee states that it will continue to verify that the front disk of CVB–V–1JK and both disks of the other 8 vacuum breakers are closed every 14 days as required by SR 3.6.1.7.1. If reasonable evidence is discovered to conclude that the rear disk of vacuum breaker CVB–V–1JK may no longer be in a closed position, the licensee states that it will take compensatory measures to verify that this disk is closed within 72 hours or declare the disk not closed and enter the appropriate action statement. In the proposed note, evidence that the rear disk may no longer be in a closed position is defined as evidence that the front disk has opened or that the rear disk has experienced a differential pressure in the direction that could cause the disk to open.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in

accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Proper functioning of the suppression chamber-to-drywell vacuum breakers is required for accident mitigation. Failure of the vacuum breakers is not assumed as an accident initiator for any accident previously evaluated. Therefore, any potential failure of a vacuum breaker to perform when necessary will not affect the probability of an accident previously evaluated.

During a LOCA [loss-of-coolant accident], the vacuum breakers are assumed to initially be closed to limit drywell-to-suppression chamber bypass leakage and must be capable of re-closing following a suppression pool swell event. The vacuum breakers open to prevent an excessive vacuum in the drywell. The proposed change will not affect the capability of the required vacuum breakers to perform their open and close safety functions since the change only affects position verification and high confidence is assured that the disk remains closed. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The suppression chamber-to-drywell vacuum breakers are used to mitigate the potential consequences of an accident. The proposed change does not affect the capability of required vacuum breakers to perform their open and closed safety functions. Thus, the initial conditions assumed in the accident analysis are not affected. The proposed amendment does not involve a change to plant design and does not involve any new modes of operation or testing methods. Accordingly, the required vacuum breakers will continue to perform their accident mitigation safety functions as previously evaluated. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The extension of the closure verification surveillance interval for one of the two disks in a vacuum breaker for approximately 4 months is not risk significant as all required safety functions will continue to be performed. The vacuum breakers are not modified by the proposed amendment. The accident analysis assumptions for the closed safety functions of the vacuum breakers are satisfied when at least one of the disks in each of the nine vacuum breaker lines are fully closed and capable of re-closing following a suppression pool swell. The additional disk in each line satisfies the single failure criterion. The open safety function of the vacuum breakers is satisfied when 6 of the 9 vacuum breaker assemblies open during a DBA [design basis accident]. The other vacuum breakers satisfy the single failure criterion and provide additional defense-in-depth. Since all of the vacuum breakers are considered to perform their close safety function and 8 of 9 would be available to perform their open safety function, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible

effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petitioner/requestor must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to William A. Horin, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated February 2, 2007, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 6th day of February 2007.

For the Nuclear Regulatory Commission.

Carl F. Lyon,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing Office of Nuclear Reactor Regulation.

[FR Doc. E7–2374 Filed 2–9–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–272]

Pilgrim Nuclear Power Station, Entergy Nuclear Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–35 issued to Entergy Nuclear Operations, Inc. (the licensee) for operation of the Pilgrim Nuclear Power Station (Pilgrim), located in Plymouth County, Massachusetts.

The amendment request dated January 15, 2007, supercedes the previously submitted license amendment request dated April 12, 2006, proposing new Pressure-Temperature (PT) curves and to extend the applicability of current PT limits expressed in Technical Specification Figures 3.6.1, 3.6.2, and 3.6.3 through the end of operating cycle 18.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or

consequences of an accident previously evaluated?

Response: No.

The proposed License Amendment (LA) does not involve a significant increase in the probability or consequences of an accident previously evaluated. There are no physical changes to the plant being introduced by the proposed changes to a restriction associated with the pressure-temperature curves. The proposed change does not modify the reactor coolant pressure boundary, (i.e., there are no changes in operating pressure, materials, or seismic loading). The proposed change does not adversely affect the integrity of the reactor coolant pressure boundary such that its function in the control of radiological consequences is affected.

The current pressure-temperature curves were generated in accordance with the fracture toughness requirements of 10 CFR Part 50, Appendix G, and American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (B&PV) Code, Section Xl, Appendix G and NRC Regulatory Guide 1.99, Revision 2, ''Radiation Embrittlement of Reactor Vessel Materials.'' The current pressure-temperature curves were established in compliance with the methodology used to calculate and predict effects of radiation on embrittlement of reactor vessel beltline materials. The use of the proposed pressure-temperature curves through operating cycle 18 is acceptable because sufficient margin exists between the actual Effective Full Power Years (EFPYs) and the Effective Full Power Years used to establish the 48 EFPY curve. This proposed license amendment provides compliance with the intent of 10 CFR Part 50, Appendix G, and provides margins of safety that assure reactor vessel integrity.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the [proposed] change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed license amendment does not create the possibility of new or different kind of accident from any accident previously evaluated. The pressure-temperature curves were generated in accordance with the fracture toughness requirements of 10 CFR Part 50, Appendix G, and ASME B&PV Code, Section Xl, Appendix G. Compliance with the proposed pressure-temperature curves will ensure the avoidance of conditions in which brittle fracture of primary coolant pressure boundary materials is possible because such compliance with the current pressure-temperature curves provides sufficient protection against a nonductile-type fracture of the reactor pressure vessel. No new modes of operation are introduced by the proposed change. The proposed change will not create any failure mode not bounded by previously evaluated accidents. Further, the proposed change does not affect any activities or equipment and is not assumed in any safety analysis to initiate any accident sequence. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The current curves are based on established NRC and ASME methodologies in force when LA 197 was approved. The proposed license amendment requests the use of the proposed curves for two additional operating cycles. This is acceptable because sufficient margin exists between actual EFPYs and the EFPYs used in the development of the existing curves to yield a conservatism factor slightly in excess of 1.8.

Operation within the current limits ensures that the reactor vessel materials will continue to behave in a non-brittle manner, thereby preserving the original safety design bases. No plant safety limits, set points, or design parameters are adversely affected by the proposed changes. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of

the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Travis C. McCullough, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated January 15, 2007, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 5th day of February 2007.

For the Nuclear Regulatory Commission.

James Kim,

Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–2321 Filed 2–9–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412]

FirstEnergy Nuclear Operating Company, Firstenergy Nuclear Generation Corp.; Ohio Edison Company; The Toledo Edison Company; Beaver Valley Power Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License Nos. DPR–66 and NPF–73, issued to the FirstEnergy Nuclear Operating Company (the licensee) for operation of the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), located in Beaver County, Pennsylvania. Pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Sections 51.21 and 51.32, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would be a conversion from the current Technical Specifications (CTSs) to the Improved Technical Specifications (ITSs) format based on NUREG–1431, ''Standard Technical Specifications—Westinghouse Plants,'' Revision 2. The proposed action is in accordance with the licensee's application dated February 25, 2005, as supplemented by letters dated November 11, 2005, April 19, September 9, October 24, and December 7, 2006.

The Need for the Proposed Action

The Commission's ''Proposed Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors'' (52 FR 3788), dated February 6, 1987, contained an Interim Policy Statement that set forth objective criteria for determining which regulatory requirements and operating restrictions should be included in the Technical Specifications (TSs) for nuclear power plants. When it issued the Interim Policy Statement, the Commission also

requested comments on it. Subsequently, to implement the Interim Policy Statement, each reactor vendor owners group and the NRC staff began developing standard TSs (STSs) for reactors supplied by each vendor. The Commission then published its ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors'' (58 FR 39132), dated July 22, 1993, in which it addressed comments received on the Interim Policy Statement, and incorporated experience in developing the STSs. The Final Policy Statement formed the basis for a revision to 10 CFR 50.36 (60 FR 36953), dated July 19, 1995, that codified the criteria for determining the content of TSs. The NRC Committee to Review Generic Requirements reviewed the STSs, made note of their safety merits, and indicated its support of conversion by operating plants to the STSs. For BVPS–1 and 2, NUREG–1431 documents the STSs and forms the basis for the BVPS–1 and 2 conversion to the ITSs.

The proposed changes to the CTSs are based on NUREG–1431 and the guidance provided in the Final Policy Statement. The objective of this action is to rewrite, reformat, and streamline the CTSs (i.e., to convert the CTSs to the ITSs). Emphasis was placed on human factors principles to improve clarity and understanding.

Some specifications in the CTSs would be relocated. Such relocated specifications would include those requirements which do not meet the 10 CFR 50.36 selection criteria. These requirements may be relocated to the TS Bases document, the BVPS–1 and 2 Updated Final Safety Analysis Report, the Core Operating Limits Report, the operational quality assurance plan, plant procedures, or other licensee-controlled documents. Relocating requirements to licensee-controlled documents does not eliminate them, but rather places them under more appropriate regulatory controls (i.e., 10 CFR 50.54(a)(3), and 10 CFR 50.59) to manage their implementation and future changes.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the proposed action and concludes that the conversion to ITSs would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents. The proposed action will not increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites because no previously undisturbed area will be affected by the proposed amendment. The proposed action does not affect non-radiological plant effluents and has no other effect on the environment. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action and, thus, the proposed action will not have any significant impact to the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. Thus, the environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for BVPS–1 and 2 dated July 1973 and September 1985, respectively.

Agencies and Persons Consulted

In accordance with its stated policy, on January 23, 2007, the NRC staff consulted with the Pennsylvania State official, Lawrence Ryan, of the Pennsylvania Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 29, 2005, as supplemented by letters dated February 25, 2005, as supplemented by letters dated November 11, 2005, April 19, September 9, October 24, and December 7, 2006, and the information provided to the NRC staff through the joint NRC/BVPS ITS Conversion web page. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 25th day of January 2007.

For The Nuclear Regulatory Commission.

Nadiyah S. Morgan,

Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–2373 Filed 2–9–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–259, 50–260, and 50–296]

Tennessee Valley Authority; Browns Ferry Nuclear Plant; Final Environmental Assessment and Finding of No Significant Impact Related to the Proposed License Amendment To Increase the Maximum Reactor Power Level

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

SUMMARY: The NRC has prepared a final Environmental Assessment (EA) of its evaluation of a request by the Tennessee Valley Authority (TVA) for license amendments to increase the maximum thermal power at Browns Ferry Nuclear Plant (BFN) from 3458 megawatts-thermal (MWt) to 3952 MWt for Units 2 and 3 and from 3293 MWt to 3952 MWt for Unit 1. These represent power increases of approximately 15 percent for BFN Units 2 and 3 and 20 percent for BFN Unit 1. As stated in the NRC staff's position paper dated February 8,

1996, on the Boiling-Water Reactor (BWR) Extended Power Uprate (EPU) Program, the NRC staff would prepare an environmental impact statement if it believes a power uprate would have a significant impact on the human environment. The NRC staff did not identify any significant impact from the information provided in the licensee's EPU applications for BFN Units 1, 2, and 3 or from the NRC staff's independent review; therefore, as required by Title 10 of the *Code of Federal Regulations* (10 CFR), the NRC staff is issuing this EA and Finding of No Significant Impact.

The NRC published a draft EA and finding of no significant impact on the proposed action for public comment in the **Federal Register** on November 6, 2006 (71 FR 65009). Two sets of comments were received as discussed below.

The licensee provided a comment in a letter dated December 5, 2006 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML063390663). The comment clarified that upon increasing discharge temperatures, TVA would take action to ensure that the discharge temperature would not exceed the National Pollutant Discharge Elimination System (NPDES) permit effluent limitations. The language in the EA has been modified in response to this comment.

The U.S. Department of the Interior, Fish and Wildlife Service provided comments in a letter dated December 13, 2006 (ADAMS Accession No. ML063610349). In the letter, a concern is expressed about any trend toward prolonged higher temperatures and poor water quality conditions in Wheeler Reservoir as a result of the proposed licensing action. The letter indicates that this concern is being addressed by the continuing monitoring programs and data collection implemented by TVA. The letter did not identify any impact on the EA conclusions based on this concern. Therefore, the EA was not modified due to this comment letter.

Environmental Assessment

Plant Site and Environs

BFN is located on approximately 340 ha (840 ac) of Federally owned land that is under the custody of the TVA in Limestone County, Alabama. The EPU would apply to facilities at the BFN site, which is located in northern Alabama on the northern shore of Wheeler Reservoir, an impoundment of the Tennessee River, at Tennessee River Mile (TRM) 294. The BFN site is approximately 16 km (10 mi) south of Athens, Alabama; 16 km (10 mi) northwest of Decatur, Alabama; and 48 km (30 mi) west of Huntsville, Alabama.

Land in the vicinity of BFN is used primarily for agriculture. Population densities are low, with no population centers of significance within 16 km (10 mi) of the plant. The site is surrounded to the north and east by rural countryside. It includes open pasture lands, scattered farmsteads, few residents, and little industry within several miles. The terrain is gently rolling with open views to higher elevations to the north. The southern and western sides of the plant site abut the Wheeler Reservoir, which is a wide expanse of open river used for a variety of recreational purposes. The reservoir in the vicinity of the plant site is moderately used by recreational boaters and fishermen. There are no homes within the foreground viewing distance to the north and east. However, adjacent to the plant site several developments have partial views of the site—a small residential development is sited to the northwest and another across the Wheeler Reservoir to the southwest, and the Mallard Creek public use area is directly across the reservoir. A berm, graded during the initial construction of the plant site and containing approximately 2.5 million m^3 (3.3 million yd^3) of earth excavated to make cooling water channels, lies adjacent to the cooling tower complex and blocks views of the northern and eastern plant areas. Two wildlife management areas—Swan Creek State Wildlife Management Area and Mallard-Fox Creek State Wildlife Management Area—are within 5 km (3 mi) of the BFN site. The Swan Creek Wildlife Management Area includes 1232 ha (3045 ac) of land and 2357 ha (5825 ac) of water surrounded by numerous industrial facilities. The Mallard-Fox Creek State Wildlife Management Area encompasses approximately 593 ha (1483 ac) and is used primarily for small game hunting. The Round Island Recreation Area, a site on the Central Loop of the North Alabama Birding Trail, is located approximately 5.6 km (3.5 mi) upstream of BFN on the northern side of the Tennessee River and provides birding opportunities and boat access.

BFN has two active nuclear reactor units (Units 2 and 3) and one inactive unit (Unit 1). Each unit includes a BWR and a steam-driven turbine generator manufactured by General Electric Company. Each unit originally was licensed for an output of 3293 MWt, with a design net electric rating of 1065 megawatts-electric (MWe). Major construction on BFN, TVA's first nuclear power plant, began in 1967. Commercial operation began in 1974 for Unit 1, in 1975 for Unit 2, and in 1977 for Unit 3. All three units were shut down in 1985 during a review of the TVA nuclear power program. Unit 2 returned to service in May 1991, and Unit 3 resumed operation in November 1995. Work began in 2002 to bring Unit 1 up to current standards, and the reactor is currently scheduled to restart in 2007.

Wheeler Reservoir on the Tennessee River is the source for cooling water and most of the auxiliary water systems for BFN. The intake forebay is separated from Wheeler Reservoir by a structure with three bays, each with a gate that can be raised or lowered depending on the operational requirements of the plant. Beyond the forebay are 18 intake pumping station bays (6 per reactor unit) each with traveling screens.

The BFN units are normally cooled by pumping water from Wheeler Reservoir into the turbine generator condensers and discharging it back to the reservoir via three large submerged diffuser pipes that are perforated to maximize uniform mixing into the flow stream.

This straight-through flow path is known as ''open cycle'' or ''open mode'' operation. As originally designed, the maximum thermal discharge from the once-through cooling water system is directed into the Wheeler Reservoir, with a temperature increase across the intake and discharge of 13.9 °C (25 °F). The flow exits the diffusers and mixes with the reservoir flow. At the edge of the discharge mixing zone, the water temperature is required to be less than 5.6 °C (10 °F) above ambient water temperature.

Through various gates, some of this cooling water can also be directed through cooling towers to reduce its temperature as necessary to comply with environmental regulations. This flow path is known as the ''helper mode'' operation.

The capability also exists to recycle cooling water from the cooling towers directly back to the intake structure without being discharged to the reservoir. This flow path, known as the ''closed mode'' of operation, has not been used since the restart of Units 2 and 3 because of difficulties in meeting temperature limits in summer months and problems with equipment reliability. TVA does not anticipate using this mode in the future, and no procedures for operating in this mode currently exist.

In recent years, only Units 2 and 3 have been operated, but because of a combination of system upgrades and improved flow calibrations, the measured total per-unit condenser

cooling water (CCW) flow rate in open mode (with three CCW pumps per unit) has increased. The condenser tubes were replaced with stainless steel tubing that has a larger internal diameter and lower flow resistance. This modification increased flow through the condenser by approximately 6 percent. TVA estimates total intake for three-unit operation in open mode to be 139 m^3/s (4907 cfs) or 12,000 m^3/d (3171 million gallons per day).

Because of various system limitations, BFN cannot pass all the CCW through the cooling towers when operating in the helper mode. The fraction of cooling water that cannot be passed through the cooling towers is routed directly to the river. Also, almost all of the cooling water that passes through the cooling towers is returned to the river, but a small amount is lost to the atmosphere during operation. If cooling tower capacity is increased due to the EPU, this consumptive use could increase proportionally. The cooling towers are only operated when necessary, typically a few weeks during the hottest part of the summer (usually July and August), to meet thermal discharge temperature limits.

The residual heat removal service water (RHRSW) system consists of four pairs of pumps located on the intake structure for pumping river water to the heat exchangers in the RHRSW system and four additional pumps for supplying water to the emergency equipment cooling water (EECW) system. The EECW system distributes cooling water supplied by the RHRSW system to essential equipment during normal and accident conditions.

Identification of the Proposed Action

By letters dated June 25 and June 28, 2004, TVA proposed amendments to the operating licenses for BFN Units 2 and 3 and for BFN Unit 1, respectively, to increase the maximum thermal power level by approximately 15 percent for Units 2 and 3, from 3458 MWt to 3952 MWt, and by approximately 20 percent for Unit 1, from 3293 MWt to 3952 MWt. The change is considered an EPU because it would raise the reactor core power levels more than 7-percent above the originally licensed maximum power levels. This amendment would allow the heat output of the reactors to increase, which would increase the flow of steam to the turbines. This would increase production of electricity and the amount of waste heat delivered to the condensers, and increase the temperature of the water being discharged into the Wheeler Reservoir. On September 8, 1998, the NRC approved license amendments for power uprates of 5 percent for BFN Units 2 and 3. BFN Units 2 and 3 are currently operating at 105 percent of their originally licensed thermal power (an increase from 3293 MWt to 3458 MWt). Therefore, the proposed EPUs analyzed in this EA are 15 percent for Units 2 and 3 and 20 percent for Unit 1, which is currently licensed to operate at 100 percent of its originally licensed thermal power (3293 MWt).

The Need for the Proposed Action

The proposed action would meet the increasing demand for bulk power resulting from the economic growth in the TVA service area. Such economic growth is forecasted to continue in the Tennessee Valley region resulting in an estimated average annual increase of 1.6 percent in the regional energy demand over the next 20 years. Such demand increases would exceed TVA's capacity to generate electricity for its customers. The proposed EPUs would add approximately 600 MWe to the historical generating capacity of BFN; such additional capacity should provide a cost-effective means of meeting the projected increased demand. The EPUs can be implemented without substantial capital investment and would not cause the environmental impacts that would occur if construction of a new power-generation facility was sought to meet the region's electricity needs.

Environmental Impacts of the Proposed Action

At the time of issuance of the operating licenses for BFN, the NRC staff noted that any activity authorized by the licenses would be encompassed by the overall action evaluated in the Final Environmental Statement (FES) for the operation of BFN that was issued in September 1972. This EA summarizes the non-radiological and radiological impacts in the environment that may result from the proposed action of the EPU.

Non-Radiological Impacts

Land Use Impacts

The potential impacts associated with land use for the proposed action include effects from construction and plant modifications. While some plant components would be modified, all plant changes related to the EPUs would occur within existing structures, buildings, and fenced equipment yards housing the major unit components. Also, the EPU would use existing parking lots, road access, lay-down areas, offices, workshops, warehouses, and restrooms. Therefore, no land use would change at BFN. Also, no land use would change along transmission lines (no new lines would be required for EPU), transmission corridors, switch yards, or substations. According to the SEIS for license renewal of BFN, the only significant cultural resources in the proximity of BFN are site 1Li535 and the Cox Cemetery, which was moved to accommodate original construction of the plant. TVA has procedures in place to ensure that the operation of BFN would protect undiscovered historic or archaeological resources, and the proposed action would not change such procedures.

The EPUs and continued operation of BFN Units 1, 2, and 3 would remain in the scope of the original FES, and therefore, the staff concludes potential impacts to land use and to historic and archaeological resources from the proposed action are bounded by the impacts previously evaluated in the FES.

Cooling Tower Impacts

In support of the EPUs, operation frequency of the cooling towers would likely increase to approximately 7.2 percent of the time to meet thermal discharge requirements of the NPDES permit. The potential impacts from increased use of the cooling towers would be negligible to minor. The impacts would be increased noise directly proportional to the increased usage frequency. The towers may produce more noise and longer periods of noise due to the increased cooling tower operation, but other background noise, such as traffic, insects, frogs, and air conditioners, dominated TVA's June 2001 background noise survey. There are two neighborhoods in close proximity to BFN. The estimated background noise in the two neighborhoods, Paradise Shores and Lakeview, with six cooling towers operating would be approximately 52 and 48 decibels, respectively. These values are below the U.S. Environmental Protection Agency's (EPA's) recommended level of 55 decibels for the annual equivalent sound level day/night. Therefore, noise increases are not expected to have a noticeable effect on nearby residents.

Conclusions reached in NUREG–1437, *Generic Environmental Impact Statement for License Renewal of Nuclear Plants* (GEIS), apply to the proposed action regarding cooling tower impacts on crops, ornamental vegetation, and native plants. The conclusions state that salt drift, icing, fogging, or increased humidity resulting from cooling tower operation would not be significant. These same conclusions apply for the period of operation prior

to entry into the renewed operating license period. Additionally, as stated in the SEIS, the BFN cooling towers would be operated as helper towers and, therefore, would be operated less frequently than at plants with continuous cooling tower operation. However, since the publication of the NRC's SEIS, TVA has proposed a design change for the future sixth cooling tower, which would result in slightly increased frequency of cooling tower operation than the originally planned 20-cell tower. Nonetheless, cooling tower operation at BFN with all three units operating at EPU levels would still be operated less frequently than at plants with continuous cooling tower operation.

Likewise, the conclusion reached in the GEIS regarding aesthetics of cooling tower operation applies to the BFN helper towers. In addition to increased noise, increased operation of cooling towers may have an aesthetic effect in that a visible plume would be detectable more days of the year. However, the conclusions in the GEIS state that continuously operated cooling towers would not have significant effects on visible and audible aesthetics; therefore, the proposed action, including the increased use of helper towers, would not significantly affect aesthetics. This conclusion also applies to operation both prior to the renewed operating license period and during the renewed operating license period.

The proposed EPU would increase the number of days of operation of the cooling towers, which may increase the number of days experiencing background noise, fogging, icing, increased humidity, and a visible plume. Although the frequency of cooling tower operation would increase, the helper towers would be used only intermittently. Therefore, the staff concludes impacts of operating cooling towers would not be significant for the proposed action.

Transmission Facility Impacts

The potential impacts associated with transmission facilities for the proposed action include changes in transmission line corridor right-of-way maintenance and electric shock hazards due to increased current. No change in right-of-way maintenance, including vegetative management, would occur as a result of the EPU. The proposed EPU would increase the current, which would affect the electromagnetic field, but would not increase the voltage. Because the voltage would not change, there would be no change in the potential for electric shock.

The National Electric Safety Code (NESC) provides design criteria that limit hazards from steady-state currents. The NESC limits the short-circuit current to the ground to less than 5 mA. There would be an increase in current passing through the transmission lines associated with the increased power level of the proposed EPU. The increased electrical current passing through the transmission lines would cause an increase in electromagnetic field strength. Transmission lines would continue to meet applicable shock prevention provisions of the NESC. Although the U.S. has no guidelines for exposure to power frequency electromagnetic fields, Florida and New York have guidelines based on maximum load-carrying conditions. Under conditions of increased EPU currents, TVA transmission lines would continue to meet such guidelines. No data exist to suggest that higher electromagnetic fields adversely affect human health or flora and fauna.

The impacts associated with transmission facilities for the proposed action would not change significantly relative to the impacts from current plant operation. There would be no physical modifications to the transmission lines, transmission line right-of-way maintenance practices would not change, there would be no changes to transmission line rights-of-way or vertical clearances, and electric current passing through the transmission lines would increase only slightly. Therefore, the staff concludes there would be no significant impacts associated with transmission lines for the proposed action.

Water Use Impacts

Potential water use impacts from the proposed action include hydrological alterations to the Wheeler Reservoir on the Tennessee River and changes to plant water supply. No changes to the plant intake system are expected due to the proposed action; therefore, the volume of intake water would not change. Therefore, the staff concludes that there would be no significant alteration of the hydrology of the Wheeler Reservoir or the plant's water supply.

In addition to the once-through cooling system, BFN has five mechanical draft cooling towers that operate during helper mode. In conjunction with the restart of Unit 1, TVA has committed to building a replacement for the sixth cooling tower; the replacement tower would have a heat removal capacity greater than or equal to that of existing cooling tower #3. BFN typically enters helper mode during the hot summer months, and the cooling towers are operated only when necessary to meet the NPDES permit's thermal discharge limits. With the restart of Unit 1, if more than six circulating water pumps are operating, some flow must bypass the cooling towers and enter the river directly due to system limitations. Only about 2 percent of the cooling tower flow is not returned to the river due to evaporation and drift. BFN's consumptive water use consists of a negligible, unquantifiable amount that would not change detectably as a result of the EPU. Therefore, the staff concludes there would be no significant impacts to water use in the Wheeler Reservoir or the Tennessee River for the proposed action.

Discharge Impacts

Potential impacts to the Wheeler Reservoir from the BFN discharge include increased turbidity, scouring, erosion, and sedimentation. These discharge-related impacts apply to open-cycle flow due to the large volume of water discharged to the reservoir. However, since the EPU at BFN would not alter the intake volume of water, no significant change in discharge volume is anticipated. Therefore, no significant impacts from increased turbidity, scouring, erosion, and sedimentation are expected.

Surface runoff and wastewater discharges at BFN are regulated by the State of Alabama via a NPDES permit (NPDES No. AL0022080). The permit is periodically reviewed and renewed by the ADEM. With the exception of discharge temperature, the EPU would not be expected to alter any other effluents, such as yard drainage, station sumps, and sewage treatment. Increase in discharge temperature in the Wheeler Reservoir would remain within the NPDES permit limits due to the implementation of cooling towers in helping mode or derating the units during hot summer months.

BFN's current NPDES permit limits thermal discharge, as detected at a depth of 5 feet at the end of a 2400-foot mixing zone downstream of the discharge diffusers, to a maximum 1-hour average of 93 °F, a maximum 24-hour average of 90 °F, and a maximum increase of 10 °F over ambient temperatures. Currently with Units 2 and 3 operating at 105 percent of the originally licensed maximum power level in open mode, the approximate temperature increase at the end of the mixing zone is 5.3 °F. Operation of all three units at 120-percent power is predicted to increase the mean water temperature at the end of the mixing

zone by about 0.5 °F compared to current operations and only 0.3 °F when compared to all three units operating at their original power level as assessed in the FES. Increase in discharge temperature approaching the NPDES limits would trigger operation of the cooling towers in helper mode. If operation of the cooling towers is insufficient to reduce discharge temperature enough to remain within the NPDES compliance, the units would be derated so that the discharge temperature does not exceed the permit's limits. It is estimated that three-unit operation with the EPU would increase cooling-tower-operation frequency to about 7.2 percent and would result in derating approximately 0.29 percent of the time. It is expected that such operational controls would maintain compliance with the NPDES permit. When the plant is operating within the permit limits, it is expected that thermal discharge would not have significant individual or cumulative effects on reservoir stratification, dissolved oxygen concentrations, and eutrophication.

The proposed EPU would not result in changes in any other effluents, which are currently within permit limits. Therefore, the staff concludes that the proposed action would not result in any significant impacts on the Wheeler Reservoir or the Tennessee River from BFN discharge.

Impacts on Aquatic Biota

The potential impacts to aquatic biota from the proposed action include impingement, entrainment, thermal discharge effects, and impacts due to transmission line right-of-way maintenance. The BFN has intake and discharge structures on the Wheeler Reservoir. The aquatic species evaluated in this EA are those in the vicinity of the intake and discharge structures.

Entrainment and impingement of aquatic species at BFN are limited by the NPDES permit. TVA conducted a pre-operational and operational study to collect data describing ichthyoplankton populations in the Wheeler Reservoir from 1971 through 1979. The results of the study indicated that, under open-cycle, three-unit operation, entrainment would not increase mortality significantly beyond the expected levels of natural mortality of fish eggs and larvae and that impingement would not adversely affect the fish community in the Wheeler Reservoir. TVA also conducted flow studies at BFN; the studies indicated that most entrained water originates on the eastern side of the main river channel. This area has lower densities of fish larvae than in overbank areas. Fish eggs (mostly from freshwater drum [*Aplodinotus grunniens*]) are found in the main channel at higher densities, but abundance of freshwater drum has not decreased noticeably. With the return of three-unit operation at 120-percent power for each unit, entrainment and impingement would increase slightly due to the increased flow rate of CCW. TVA's Vital Signs monitoring program currently being conducted would continue after the return of three-unit operation. In addition to assessing impacts from entrainment and impingement of fish populations in the Wheeler Reservoir, the monitoring program addresses effects on fish population dynamics and commercial and recreational fisheries as needed. The staff has determined that slight increases in entrainment and impingement as a result of the proposed action would not have significant impacts on species abundance or on the Wheeler Reservoir fish community.

On July 9, 2004, EPA published a final rule in the **Federal Register** (69 FR 41575) addressing cooling water intake structures at existing power plants whose flow levels exceed a minimum threshold value of 50 million gallons per day. The rule is Phase II in EPA's development of 316(b) regulations that establish national requirements applicable to the location, design, construction, and capacity of cooling water intake structures at existing facilities that exceed the threshold value for water withdrawals. The national requirements, which are imposed with NPDES permits, minimize the adverse environmental impacts associated with the continued use of the intake systems. Licensees are required to demonstrate compliance with the Phase II performance standards to renew their NPDES permits. TVA is currently conducting entrainment and impingement studies at BFN in compliance with the Phase II rule.

Fish have the ability to detect thermal changes and actively avoid areas with elevated water temperature near the BFN diffusers. Thermal modeling shows that the bank opposite the BFN diffusers would not be affected by the thermal plume and, therefore, would allow passage for migrating fish. Known fish hosts for the protected freshwater mussels (see section below describing impacts on threatened and endangered species) are common in the Wheeler Reservoir. Most fish host species in the reservoir have upper lethal temperature limits that are higher than the BFN thermal variance of 90 °F. Studies on the least thermally tolerant species, sauger (*Stizostedion vitreum*) and yellow perch (*Perca flavescens*), showed that BFN had no significant, adverse impacts on reproduction of either species or on the annual sauger migration past BFN for spawning (Baxter and Buchanan 1998). Most larvae and eggs drifting past BFN are demersal and would have very little exposure to the thermal plume due to rapid mixing with the ambient surface water and rising of the heated water. Therefore, the thermal plume associated with the proposed EPU is not expected to affect adversely any life history stages of freshwater mussels or their host species.

The NPDES permit limits the amount of heat discharged to the Wheeler Reservoir from the operation of BFN. The thermal limits specified in the NPDES permit (as discussed above in discharge impacts section) would not change with implementation of the EPU. Because TVA would continue to meet the thermal limits set in the NPDES permit, whether in open cycle, in helper mode, or via power derating, the proposed action is not expected to result in additional thermal discharge effects on aquatic species in the Wheeler Reservoir.

As discussed in the transmission facility impacts section of this EA, transmission line right-of-way maintenance practices would not change for the proposed action. Therefore, the staff concludes that there would be no significant impacts to aquatic species associated with transmission line right-of-way maintenance for the proposed action.

Impacts on Terrestrial Biota

The proposed action would not include any new land disturbance or changes in transmission line right-of-way maintenance. Most areas at BFN are not pristine and continue to provide habitat only for species with widespread distributions; the wildlife diversity at BFN is not great. No rare terrestrial species occur in the vicinity of BFN. Although wetlands do occur at the BFN site (25 acres according to the National Wetlands Inventory and 12 acres according to the Federal jurisdictional criteria), none of the wetlands would be affected by the proposed action. Therefore, the staff concludes that there would be no significant impacts to terrestrial species or their habitat associated with the proposed action, including transmission line right-of-way maintenance.

Impacts on Threatened and Endangered Species

Potential impacts to threatened and endangered species from the proposed

action include the impacts assessed in the aquatic and terrestrial biota sections of this environmental assessment. These impacts include impingement, entrainment, thermal discharge effects, and impacts due to transmission line right-of-way maintenance for aquatic and terrestrial species.

There are seven species listed as threatened or endangered under the Federal Endangered Species Act that occur within Limestone County, Alabama. The listed terrestrial species include the endangered gray bat (*Myotis grisescens*) and the endangered Indiana bat (*M. sodalis*). These two species are not known to occur within three miles of BFN. As no significant impacts are expected to terrestrial species or their habitat, the proposed action would not have significant impacts on the gray or Indiana bats or their habitats.

There are five Federally endangered aquatic species that occur within the vicinity of BFN. The rough pigtoe (*Pleurobema plenum*) and the pink mucket (*Lampsilis abrupta*) are freshwater mussels that have been reported to occur in areas upstream from BFN. It is unlikely that these species would occur in areas near the thermal plume or downstream of BFN; therefore, effects on the rough pigtoe, the pink mucket, their habitats, or their fish host species (see aquatic biota section above describing impacts on host species) are not expected to result from the proposed action. The three other Federally listed aquatic species are endangered snails: armored snail (*Pyrgulopsis pachyta*), slender campeloma (*Campeloma decampi*), and Anthony's river snail (*Athearnia anthonyi*). All three Federally endangered aquatic snails are found only in tributaries to the Wheeler Reservoir that are located upstream of BFN; therefore, no significant impacts on these snails are expected from the proposed aciton. No Federally listed fish species or critical habitat are known to occur within the vicinity of BFN. TVA's Vital Signs monitoring program and Regional Natural Heritage Program would continue acting as tools for identification of protected species and habitat at BFN. The staff concludes that there would be no significant effects on Federally threatened or endangered species as a result of the proposed action.

Socioeconomic Impacts

Potential social and economic impacts due to the proposed action include changes in the payments in lieu of taxes for Limestone County and changes in the size of the workforce at BFN. The NRC staff has reviewed the information provided by the licensee regarding socioeconomic impacts. Because BFN changes in conjunction with the proposed action would occur during a planned outage, the proposed action would not result in any additional changes in the workforce. For all planned outages, which typically last about 35 days, employment at BFN would increase by about 1000 people at most. Due to the short-term need for increased employment, it is not expected that workers would move into the local area for such temporary employment. The maximum employment during an outage would be about 3.1 percent of Limestone County's current labor force, which was about 32,690 in 2003. For the primary labor market area, which includes Huntsville, Decatur, and Florence, BFN outages would employ about 0.3 percent of the labor force, which was about 318,800 in 2003. Therefore, the proposed EPU would not affect significantly the size of the BFN labor force as the modifications would occur during planned outages and would not increase the size of permanent employment at BFN. Accordingly, the proposed action would not have measurable effects on annual earnings and income in Limestone County or on community services due to the very small and insignificant impact on the local population.

The Limestone County population is about 17.6 percent minority, which is well below both the state and national minority populations, 29.7 and 30.9 percent, respectively. The labor market minority population is about 22.1 percent. The poverty rates in Limestone County and the labor market area are 12.3 percent and 12.1 percent, respectively, which are lower than the state's average of 16.1 percent and about the same as the nation's average of 12.4 percent. Therefore, due to the low minority population, low poverty rate, and lack of significant environmental impacts resulting from the proposed action, the proposed EPU would not have disproportionate negative impacts to minority and low-income populations.

In compliance with Section 13 of the TVA Act, TVA makes payments in lieu of property taxes to states and counties in which its power operations occur and in which its acquired properties were subject to state and county taxation previous to their acquisition by TVA. For such payments, TVA pays 5 percent of its gross power revenues to appropriate states and counties, with most of the money paid to the states, which redistribute the payments to local governments. The proposed action would affect the in-lieu-of-tax payments because the total amount of money to be distributed increases as power generation increases and because the EPU would increase BFN's value, thus resulting in a larger allocation of the payment to Limestone County. Because the proposed EPU would increase the economic viability of BFN, the probability of early plant retirement would be reduced. Early plant retirement would be expected to have negative impacts on the local economy and the community by reducing in-lieu-of-tax payments and limiting local employment opportunities for the long term.

While the proposed action would not affect the labor force significantly, there would be no disproportionate impacts on minority or low-income populations. Additionally, the proposed EPU would increase the in-lieu-of-tax payments received by Limestone County, increase the book value of BFN, and increase the long-term viability of BFN. Therefore, the staff concludes that there would be no significant socioeconomic impacts associated with the proposed action.

Summary

The proposed EPU would not result in a significant change in non-radiological impacts in the areas of land use, cooling tower operation, transmission facility operation, water use, waste discharges, aquatic and terrestrial biota, or socioeconomic factors. No other non-radiological impacts were identified or would be expected. Table 1 summarizes the non-radiological environmental impacts of the proposed EPU at BFN.

TABLE 1.—SUMMARY OF NON-RADIOLOGICAL ENVIRONMENTAL IMPACTS

Land Use	No significant land-use modifications.
Cooling Tower	No significant aesthetic impacts; slightly larger visible plume and increased noise due to more frequent operation; no significant fogging or icing.

TABLE 1.—SUMMARY OF NON-RADIOLOGICAL ENVIRONMENTAL IMPACTS—Continued

Transmission Facilities	No physical modifications to transmission lines; lines meet shock safety requirements; no changes to right-of-ways; small increase in electrical current would cause small increase in electromagnetic field around transmission lines; no changes to voltage.
Water Use	No configuration change to intake structure; no increased volume of water withdrawal; increase in flow rate of condenser cooling water; slight increase in consumptive use due to evaporation; no water use conflicts.
Discharge	Increase in discharge water temperature; no increases in other effluents; discharge would remain within NPDES permit limits due to cooling tower operation and derating as necessary.
Aquatic Biota	Entrainment and impingement would increase slightly but are not expected to affect the fish community in Wheeler Reservoir.
Terrestrial Biota	No land disturbance or changes to transmission line right-of-way maintenance are expected; therefore, there would be no significant effects on terrestrial species or their habitat.
Threatened and Endangered Species	As for aquatic and terrestrial biota, no significant impacts are expected on protected species or their habitat.
Socioeconomics	No significant change in size of BFN labor force required for plant operation or for planned outages; proposed EPU would increase in-lieu-of-tax payments to Limestone County and book value of BFN; minority and low-income populations would not be disproportionately affected.

Radiological Impacts

Radioactive Waste Stream Impacts

BFN uses waste treatment systems designed to collect, process, and dispose of gaseous, liquid, and solid wastes that might contain radioactive material in a safe and controlled manner such that discharges are in accordance with the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 20, ''Standards for Protection Against Radiation,'' and 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' Appendix I. Although there may be a small increase in the volume of radioactive waste and spent fuel, the proposed EPU would not result in changes in the operation or design of equipment in the gaseous, liquid, or solid waste systems.

Gaseous Radioactive Waste and Offsite Doses

During normal operation, the gaseous effluent treatment systems process and control the release of gaseous radioactive effluents to the environment, including small quantities of noble gases, halogens, tritium, and particulate material. The gaseous waste management systems include the offgas system and various building ventilation systems. The proposed EPU is expected to result in a 15–20 percent increase in gaseous effluents, which is still well within regulatory limits of Appendix I to 10 CFR Part 50. Therefore, the increase in offsite dose due to gaseous effluent release following the EPU would not be significant.

Liquid Radioactive Waste and Offsite Doses

During normal operation, the liquid effluent treatment systems process and control the release of liquid radioactive effluents to the environment, such that the doses to individuals offsite are maintained within the limits of 10 CFR Part 20 and 10 CFR Part 50, Appendix I. The liquid radioactive waste systems are designed to process the waste and then recycle it within the plant as condensate, reprocess it through the radioactive waste system for further purification, or discharge it to the environment as liquid radioactive waste effluent in accordance with State and Federal regulations. Although no changes to the liquid radioactive waste processing and disposition at BFN are expected to occur with the EPU, TVA does expect a small increase in the volume to be processed. The projected liquid effluents would be well within the regulatory limits under the proposed action. Therefore, there would not be a significant environmental impact from the additional volume of liquid radioactive waste generated following the EPU.

Solid Radioactive Wastes

The solid radioactive waste system collects, processes, packages, and temporarily stores radioactive dry and wet solid wastes prior to shipment offsite and permanent disposal. The proposed EPU would generate 15–20 percent more radioactive resin, resulting from the increased condensate demineralizer flow. Such an increase would not exceed BFN's capacity for radioactive waste treatment and storage. Modifications associated with the proposed action would generate a small amount of dry radioactive waste, which would remain within the range of solid waste currently generated and would not impact waste generation goals.

The proposed action would increase the average batch size of fuel assemblies for refueling, but it would not affect BFN's schedule for spent fuel storage expansion. The number of dry storage casks required with the proposed EPU would increase by about 7 percent. Therefore, the increase in solid radioactive waste under the proposed action would not have a significant environmental impact.

In-Plant Radiation Doses

The proposed EPU would result in the production of more radioactive material and higher radiation dose rates in some areas at BFN. The annual average occupational radiation dose to an individual for BFN during the 1991-to-2000 period was 0.198 rem. The predicted occupational radiation dose for BFN with the proposed EPU could increase to almost 0.24 rem, which is about 5 percent of the 10 CFR part 20 limit for adult whole body occupational radiation dose. This estimate does not account for potential further reductions in dose due to As Low As Reasonably Achievable program initiatives and administrative dose level controls. Therefore, the proposed action is not expected to impact significantly the in-plant radiation doses.

Direct Radiation Doses Offsite

Direct radiation from radionuclides (mainly nitrogen-16) in the reactor water and the turbine building would increase linearly with the EPU. Such increase in radiation would be monitored at the on-site environmental thermoluminescent dosimeter (TLD) stations at BFN. In the past, data from BFN's TLD stations have not indicated that any measurabale nitrogen-16 radiation could be detected off site. Therefore, it is unlikely that the small increase in radiation associated with the EPU would result in any measurable dose to the public.

The annual whole body dose equivalent for liquid effluents to a member of the public beyond the site boundary is limited to 25 mrem (0.25

mSv) by 40 CFR 190. The projected maximum direct radiation dose offsite at BFN with the EPU is 0.065 mrem, which is only about 0.3 percent of the limit in 40 CFR 190. The liquid effluent dose limit for any organ is projected to be 0.94 mrem/year, which is only 0.4 percent of the 40 CFR 190 limit. Projected gaseous limits with the EPU would also remain well within limits, with each dose type reaching less than 0.2 percent of the limit. The licensee would continue to perform surveys as the EPU is implemented to ensure continued compliance with 40 CFR 190. Therefore, the direct radiation dose offsite at BFN with the EPU would not be significant and is not expected to affect human health.

Postulated Accident Doses

As a result of implementation of the proposed EPU, there is an increase in the source term used in the evaluation of some of the postulated accidents in the FES. The inventory of radionuclides in the reactor core is dependent upon power level; therefore, the core inventory of radionuclides could increase by as much as 20 percent. The concentration of radionuclides in the reactor coolant may also increase by as much as 20 percent; however, this concentration is limited by the BFN Technical Specifications. Therefore, the reactor coolant concentration of radionuclides would not be expected to increase significantly. This coolant concentration is part of the source term considered in some of the postulated accident analyses. Some of the radioactive waste streams and storage systems evaluated for postulated accidents may contain slightly higher quantities of radionuclides.

In 2002, TVA requested a license amendment to allow the use of Alternate Source Term (AST) methodology for design basis accident analyses for BFN Units 1, 2, and 3. TVA conducted full-scope AST analyses, which considered the core isotopic values for the current and future vendor products under EPU conditions. TVA concluded that the calculated post-accident offsite doses for the EPU using AST methodologies meet all the applicable acceptance criteria of 10 CFR 50.67 and Regulatory Guide 1.183. The NRC staff is reviewing the licensee's analyses and performing confirmatory calculations to verify the acceptability of the licensee's calculated doses under accident conditions. The results of the NRC staff's calculations will be presented in the safety evaluation to be issued with the license amendment, and the EPU would not be approved by NRC unless the NRC staff's independent review of dose calculations under postulated accident conditions determines that dose is within regulatory limits. Therefore, the NRC staff concludes that the EPU would not significantly increase the consequences of accidents and would not result in a significant increase in the radiological environmental impact of BFN from postulated accidents.

Fuel Cycle and Transportation Impacts

The environmental impacts of the fuel cycle and transportation of fuels and wastes are described in Tables S–3 and S–4 of 10 CFR 51.51 and 10 CFR 51.52, respectively. An additional NRC generic EA (53 FR 30355, dated August 11, 1988, as corrected by 53 FR 32322, dated August 24, 1988) evaluated the applicability of Tables S–3 and S–4 to higher burn-up cycle and concluded that there is no significant change in environmental impact from the parameters evaluated in Tables S–3 and S–4 for fuel cycles with uranium enrichments up to 5 weight percent uranium-235 and burn-ups less than 60,000 MWt days per metric ton of uranium-235 (MWd/MTU). Resulting from an interagency agreement in 2001 between TVA and the Department of Energy, 33 metric tons of highly enriched uranium will be obtained and blended down to allow use of the low enriched uranium as nuclear reactor fuel for BFN. With the use of blended low enriched uranium fuel, a higher percentage of uranium-236 exists. As a neutron poison, uranium-236 requires greater enrichment to compensate for reactivity loss. The number of fuel assemblies to be shipped would increase as would the associated handling doses. However, the burn-up limit and the uranium enrichment limit would stay within the 5 percent and the 60,000 Mwd/MTU limits. Therefore, the environmental impacts of the EPU would remain bounded by the impacts in Tables S–3 and S–4 and would not be significant.

Summary

The proposed EPU would not significantly increase the consequences of accidents, would not result in a significant increase in occupational or public radiation exposure, and would not result in significant additional fuel cycle environmental impacts. Accordingly, the Commission concludes that there would be no significant radiological environmental impacts associated with the proposed action. Table 2 summarizes the radiological environmental impacts of the proposed EPU at BFN.

TABLE 2.—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS

Gaseous Effluents and Doses	Slight increase (by about 15–20 percent) in dose due to gaseous effluents; doses to individuals offsite would remain within NRC limits.
Liquid Effluents and Doses	Volume of liquid effluent generated and amount of radioactivity in the effluent are expected to increase slightly; discharges of liquid effluents would remain within NRC limits; however, no routine discharge of liquid effluent is expected.
Solid Radioactive Waste	Volume of solid waste expected to increase slightly due to more frequent change of demineralizer resins; increase in amount of spent fuel assemblies.
In-plant Dose	Occupational dose could increase by 20 percent overall; occupational doses would remain well within NRC limits.
Direct Radiation Dose	Up to 20 percent increase in production of nitrogen-16; however, dose rate at site boundary due to skyshine is not expected to increase significantly and would remain within NRC and EPA limits.
Postulated Accidents	Licensee using AST; doses would remain within NRC limits.
Fuel Cycle and Transportation	Impacts in Tables S–3 and S–4 in 10 CFR 51, "ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTION" are bounding.

Alternatives to Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed EPU (i.e., the ''no-action'' alternative). Denial of the application would result in no change in the current environmental impacts. However, if the EPU were not approved, other agencies and electric power organizations may be required to pursue other means of providing electric generation capacity to offset future demand. Fossil fuel plants routinely emit atmospheric pollutants, causing impacts in air quality that are larger than if BFN were to provide the same amount of electric generation. Construction and operation of a fossil fuel plant also create impacts in land use and waste management. Other alternatives, such as purchased electrical power, wind power, and hydropower, were considered during the NRC's review for the BFN license renewal. The proposed EPU, like license renewal, would incur fewer environmental costs than the alternatives considered. While the EPU would produce additional spent fuel, the additional amount of spent fuel would be stored in a new dry cask storage facility, which would be constructed even if the EPU were not approved. Therefore, the proposed EPU would not have significant environmental impacts.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the SEIS.

Agencies and Persons Consulted

In accordance with its stated policy, on August 7, 2006, the NRC staff consulted with the Alabama State official, Mr. Kirk Whatley, of the Office of Radiation Control, regarding the environmental impacts of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the EA, the Commission concludes that the proposed action would not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an Environmental Impact Statement for the proposed action.

For further details with respect to the proposed action, see the licensee's applications dated June 25 and June 28, 2004, as supplemented by letters dated August 23, 2004, February 23, April 25, June 6, and December 19, 2005, February 1 and 28, March 7, 9, 23, and 31, April 13, May 5 and 11, June 12, 15, 23 and 27, July 21, 26, and 31, August 4, 16, 18, and 31, September 1, 15, and 22, and October 3, 5, and 13, 2006. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 6th day of February 2007.

For the Nuclear Regulatory Commission.

Timothy J. McGinty,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–2342 Filed 2–9–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Final Regulatory Guides: Impending Issuance, Availability, and Applicability to New Reactor Licensing

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Issuance, Availability, and Applicability of Final Regulatory Guides for New Reactor Licensing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is currently reviewing and revising numerous guides in the agency's Regulatory Guide (RG) Series. This series has been developed to describe, and make available to the public, methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Availability And Dates

The NRC will make each new or revised RG publicly available through the following electronic distribution channels:

- The NRC's Electronic Reading Room on the agency's public Web site, in the Regulatory Guides document collection, at *http://www.nrc.gov/reading-rm/doc-collections/reg-guides/.*
- The NRC's Agencywide Document Access and Management System (ADAMS), at *http://www.nrc.gov/reading-rm/adams.html* (using the ADAMS accession number specified in the footer on the first page of each regulatory guide).

Please note that the NRC does not intend to distribute printed copies of these revised RGs unless specifically requested on an individual basis with adequate justification. Requests for single copies should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by e-mail to *DISTRIBUTION@nrc.gov;* or by fax to (301) 415–2289. Telephone requests cannot be accommodated. In addition, the NRC does not intend to issue separate notices of issuance and availability. Consequently, interested parties should regularly peruse the previously specified electronic distribution channels to identify newly revised RGs.

RGs are not copyrighted, and Commission approval is not required to reproduce them. Copies of each RG and other related publicly available documents, including public comments received, can be viewed electronically on computers in the NRC's Public Document Room (PDR), which is located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, Room O–1 F21, and is open to the public on Federal workdays from 7:45 a.m. until 4:15 p.m. The PDR reproduction contractor will make copies of documents for a fee. Selected documents, including public comments on the DGs, can also be viewed and downloaded electronically via ADAMS at *http://www.nrc.gov/NRC/reading-rm/adams.html.* If you do not have access to ADAMS or if you encounter problems in accessing the documents stored in ADAMS, contact the PDR Reference Staff at (800) 397–4209 or (301) 415–4737, or by e-mail to *PDR@nrc.gov.*

SUPPLEMENTARY INFORMATION: The revised versions of the RGs will not be used as a backfit to any previously issued staff position for existing nuclear power reactors. The purpose of the ongoing revision of the NRC's RGs is to ensure that prospective applicants have complete, accurate, and current guidance for use in preparing early site permit (ESP), design certification (DC), and combined license (COL) applications for proposed new reactors. In particular, the NRC staff ensures that the agency's regulatory guidance is

consistent with the rulemaking, ''Licenses, Certifications, and Approvals for Nuclear Power Plants'' (Title 10, Part 52, of the *Code of Federal Regulations* (10 CFR part 52)). The proposed rule was published in the **Federal Register** on March 13, 2006 (71 FR 12781).

Over the past several months, the NRC has issued drafts of the revised RGs for a 45-day public comment period. The NRC staff is currently addressing the stakeholder comments received on these RGs.

Discussion

The NRC regulates the siting, construction, and operation of commercially owned nuclear power facilities in the United States through a combination of regulatory requirements, licensing, and oversight (including inspection). These activities enable the agency to fulfill its mission to license and regulate the Nation's civilian use of byproduct, source, and special nuclear materials to ensure adequate protection of public health and safety, promote the common defense and security, and protect the environment.

In late 2000, the NRC became aware that some electric companies were exploring the option of building new nuclear power plants in the United States. As a result, in February 2001, the Commission issued a staff requirements memorandum (SRM COMJSM–00–0003) directing the staff to (1) assess its technical, licensing, and inspection capabilities, as well as its readiness to review new license applications and inspect new nuclear power plants; (2) examine the regulatory infrastructure for 10 CFR Parts 50 and 52, as well as other applicable regulations; and (3) identify any enhancements needed to ensure that the agency is prepared to review ESP, DC, and COL applications for new nuclear power plants.

In response to the Commission's SRM, the staff issued SECY–01–0188, ''Future Licensing and Inspection Readiness Assessment'' (FLIRA), in October 2001. In addition, although the FLIRA stated that the staff considers the agency's current regulatory infrastructure adequate to support new reactor licensing, the staff has undertaken major infrastructure changes to make new licensing reviews more effective and efficient, and to reduce unnecessary regulatory burden on future applicants. The staff's ongoing review and revision of the NRC's RGs is one significant aspect of these infrastructure changes.

Through the years, the NRC has established 10 broad divisions of RGs, of which the following are the subject of the staff's particular efforts to support new reactor licensing.

- Division 1, Power Reactors
- Division 4, Environmental and Siting
- Division 8, Occupational Health

Of these Divisions, the NRC identified a select group of RGs that required revision and are currently being updated to (1) ensure consistency with the rulemaking to update 10 CFR Part 52; (2) ensure coherence with NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants'' (SRP), which is also undergoing staff review and revision; and (3) provide prospective applicants with complete, accurate, and current guidance for use in preparing ESP, DC, and COL applications for proposed new reactors. Following is a list of RGs along with the Draft Guide (DG) numbers used during the public comment period.

RG	DG title
1.7 DG–1117	Control of Combustible Gas Concentrations in Containment Following a Loss-of-Coolant Accident.
1.9 DG–1172	Application and Testing of Safety-Related Diesel Generators in Nuclear Power Plants.
1.13 DG–1162	Spent Fuel Storage Facility Design Basis.
1.20 DG–1163	Comprehensive Vibration Assessment Program for Reactor Internals During Preoperational and Initial Startup Testing.
1.23 DG–1164	Meteorological Monitoring Programs for Nuclear Power Plants.
1.26 DG–1152	Quality Group Classifications and Standards for Water-, Steam-, and Radioactive-Waste-Containing Components of Nuclear Power Plants.
1.29 DG–1156	Seismic Design Classification.
1.37 DG–1165	Quality Assurance Requirements for Cleaning of Fluid Systems and Associated Components of Water-Cooled Nuclear Power Plants.
1.57 DG–1158	Design Limits and Loading Combinations for Metal Primary Reactor Containment System Components.
1.61 DG–1157	Damping Values for Seismic Design of Nuclear Power Plants.
1.68 DG–1166	Initial Test Programs for Water-Cooled Nuclear Power Plants.
1.71 DG–1167	Welder Qualification for Areas of Limited Accessibility.
1.76 DG–1143	Design Basis Tornado and Tornado Missiles for Nuclear Power Plants.
1.92 DG–1127	Combining Modal Responses and Spatial Components in Seismic Response Analysis.
1.93 DG–1153	Availability of Electric Power Sources.
1.97 DG–1128	Criteria for Accident Monitoring Instrumentation for Nuclear Power Plants.
1.112 DG–1160	Calculation of Releases of Radioactive Materials in Gaseous and Liquid Effluents from Light-Water-Cooled Power Reactors.
1.124 DG–1168	Service Limits and Loading Combinations for Class 1 Linear-Type Component Supports.
1.128 DG–1154	Installation Design and Installation of Vented Lead-Acid Storage Batteries for Nuclear Power Plants.
1.129 DG–1155	Maintenance, Testing, and Replacement of Vented Lead-Acid Storage Batteries for Nuclear Power Plants.
1.130 DG–1169	Service Limits and Loading Combinations for Class 1 Plate-and-Shell-Type Component Supports.
1.136 DG–1159	Design Limits, Loading Combinations, Materials, Construction, and Testing of Concrete Containments.
1.189 DG–1170	Fire Protection for Nuclear Power Plants.
1.196 DG–1171	Control Room Habitability at Light-Water Nuclear Power Reactors.
1.200 DG–1161	An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities.
1.205 DG–1139	Risk-Informed, Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants.
4.15 DG–4010	Quality Assurance for Radiological Monitoring Programs (Inception through Normal Operations to License Termination)—Effluent Streams and the Environment.

RG	DG title
The staff is also currently developing the following new RGs to provide prospective applicants with complete, accurate, and current guidance for use in preparing ESP, DC, and COL applications for proposed new reactors:	
1.206 DG–1145	Combined License Applications for Nuclear Power Plants (LWR Edition).
1.207 DG–1144	Guidelines for Evaluating Fatigue Analyses Incorporating the Life Reduction of Metal Components Due to the Effects of the Light Reactor Water Environment for New Reactors.
1.208 DG–1146	A Performance-Based Approach to Define the Site-Specific Earthquake Ground Motion.
1.209 DG–1142	Guidelines for Environmental Qualification of Safety Related Computer-Based Instrumentation and Control Systems in Nuclear Power Plants.

The NRC finalized and published Revision 2 of RG 1.92 (July 2006), Revision 4 of RG 1.97 (July 2006), Revision 1 to RG 1.196 and Revision 1 of RG 1.200 (January 2007), and RG 1.205 (June 2006). The NRC plans to issue the remaining revised RGs as they are finalized between February and March of 2007. The staff has determined that the RGs listed previously may be uniformly applied (consistent with the staff guidance provided in the SRP) to the ESP, DC, and COL applications submitted for proposed new reactors.

Comment Procedures

The NRC staff encourages and welcomes comments and suggestions in connection with improvements to published RGs, as well as items for inclusion in RGs that are currently being developed. You may submit comments by any of the following methods:

- Mail comments to Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (MS T–6 D59).
- Hand-deliver comments to Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.
- Fax comments to Rulemaking, Directives and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, at (301) 415–5144.
- E-mail comments to *NRCREP@nrc.gov.*

Contact Information: Contact information for use in obtaining printed or electronic copies of the revised RGs is provided in the section on Availability And Dates. Contact information for use in submitting comments is provided in the section on Comment Procedures. Comments or questions about the NRC's revision of RGs to support new reactor licensing should be addressed to Jimi T. Yerokun at (301) 415–0585 or by e-mail to *JTY@nrc.gov.*

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 2nd day of February, 2007.

For the U.S. Nuclear Regulatory Commission,

Farouk Eltawila,

Director, Division of Risk Assessment and Special Projects, Office of Nuclear Regulatory Research.

[FR Doc. E7–2372 Filed 2–9–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Andean Trade Preference Act (ATPA), as Amended: Request for Public Comments Regarding Beneficiary Countries

AGENCY: Office of the United States Trade Representatives

ACTION: Notice; request for comments.

SUMMARY: In compliance with section 203(f) of the ATPA, as amended, 19 U.S.C. 3202(f)(2), the Office of the United States Trade Representative (USTR) is requesting the views of interested parties on whether the designated beneficiary countries are meeting the eligibility criteria under the ATPA., (See 19 U.S.C. 3203(b)(6)(B).) This information will be used in the preparation of a report to the Congress on the operation of the program.

DATES: Public comments are due at USTR no later than 5 p.m., March 5, 2007.

ADDRESSES: Submit comments by electronic mail (e-mail) to: *FR0518@USTR.EOP.GOV.* For assistance or if unable to submit comments by e-mail, fax your comments to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: Michelle Carrillo, Office of the Americas, Office of the United States Trade Representative, 600 17th Street, NW., Room 523, Washington, DC 20508. The telephone number is (202) 395–9479.

SUPPLEMENTARY INFORMATION: The ATPA, as amended by the Andean Trade Promotion and Drug Eradication Act of 2002 (ATPDEA) in the Trade Act of 2002, 19 U.S.C. 3201 *et seq.,* provides trade benefits for eligible Andean countries. In Proclamation 7616 of October 31, 2002, the President designated Bolivia, Colombia, Ecuador, and Peru as ATPDEA beneficiary countries. Section 203(f) of the ATPA (19 U.S.C. 3202(f)) requires the USTR, not later than April 30, 2007, to submit to Congress a report on the operation of the ATPA. Before submitting such report, USTR is required to request comments on whether beneficiary countries are meeting the criteria set forth in 19 U.S.C. 3203(b)(6)(B) (which incorporates by reference the criteria set forth in sections 3202(c) and (d)). USTR refers interested parties to the **Federal Register** notice published on August 15, 2002 (67 FR 53379)), for a full list of the eligibility criteria.

Required for Submissions. In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: ''ATPA Beneficiary Countries.'' Documents should be submitted as either WordPerfect, MSWord, Adobe PDF, or text (.TXT) files. Spreadsheets submitted as supporting documentation are acceptable as Quattro Pro or Excel. If any document submitted electronically contains business confidential information, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the

same file as the submission itself, and not as separate files.

Written comments, notice of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 07–614 Filed 2–9–07; 8:45 am]

BILLING CODE 3190–W7–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55220]

Order Cancelling Registrations of Certain Transfer Agents

February 1, 2007.

On October 26, 2006, notice was published in the **Federal Register** that the Securities and Exchange Commission (''Commission'') intended to issue an order, pursuant to Section 17A(c)(4)(B) of the Securities Act of 1934 (''Act''),[1] cancelling the registrations of the transfer agents whose names appeared in the attached Appendix.[2] For the reasons discussed below, the Commission is cancelling the registration of the transfer agents identified in the attached Appendix.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Catherine Moore, Special Counsel, at (202)551–5710, Division of Market Regulation, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

Background

Section 17A(c)(4)(B) of the Act provides that if the Commission finds that any transfer agent registered with the Commission is no longer in existence or has ceased to do business as a transfer agent, the Commission shall by order cancel that transfer agent's registration. On October 26, 2006, the Commission published notice of its intention to cancel the registration of certain transfer agents whom it believed were no longer in existence or had ceased to do business as transfer agents.

In the notice the Commission identified 45 such transfer agents and stated that at any time after November 27, 2006, which was 30 days after the notice was published in the **Federal Register**, the Commission intended to issue an order canceling the registrations of any or all of the identified transfer agents. One of the identified transfer agents contacted the Commission to object to the cancellation of its registration because it states that it has not ceased to do business as a transfer agent. The Commission has decided not to cancel the registration of this transfer agent at this time in order to conduct further inquiry. One other transfer agent contacted the Commission regarding the cancellation of its registration but did not object after it was informed that it had more than one registration number and that the Commission intended to cancel only its inactive registration number. None of the remaining 43 identified transfer agents contacted the Commission to object to the cancellation of their registrations.

Accordingly, the Commission is cancelling the registration of each of the 44 transfer agents identified in the Appendix attached to this Order.

Order

On the basis of the foregoing, the Commission finds that each of the transfer agents whose name appears in the attached Appendix either is no longer in existence or has ceased doing business as a transfer agent.

It is therefore ordered pursuant to Section 17A(c)(4)(B) of the Act that the registration as a transfer agent of each of the transfer agents whose name appears in the attached Appendix be and hereby is cancelled.

For the Commission by the Division of Market Regulation pursuant to delegated authority.[3]

Florence E. Harmon,

Deputy Secretary.

APPENDIX

Registration number	Name
84–0019	LG & E Energy Corp.
84–0548	American Bancservices Inc.
84–0711	Niagara Mohawk Power Corp.
84–0904	Pfizer Inc.
84–1257	BNY Clearing Services LLC.
84–1663	Merrill Lynch Investment Partners Inc.
84–1735	Alpha Tech Stock Transfer Trust.
84–1737	Declaration Service Company.
84–1828	Consumers Financial Corp.
84–1923	WOC Stock Transfer Company, Inc.
84–5494	Metropolitan Martage and Securities Co., Inc.
84–5550	Cinergy Service, Inc.
84–5606	Sunstates Corporation.
84–5647	Penn Street Advisors, Inc.
84–5694	Khan Funds.
84–5720	Bulto Transfer Agency, Limited Liability Company.
84–5727	Impact Administrative Service, Inc.
84–5754	Alpine Fiduciary Services, Inc.

[1] 15 U.S.C. 78q–1(c)(4)(B).

[2] Securities Exchange Act Release No. 54633 (October 20, 2006), 71 FR 62631.

[3] 17 CFR 200.30–3(a)(22).

APPENDIX—Continued

Registration number	Name
84–5755	River Oaks Partnership Services, Inc.
84–5756	IDM Corporation.
84–5773	RVM Industries, Inc.
84–5812	Stock Transfer of America, Inc.
84–5816	Wasatch Stock Transfer, Inc.
84–5826	Lewis, Corey L.
84–5847	Financial Strategies, LLC.
84–5872	D-Lanz Development Group, Inc.
84–5873	CBIZ Retirement Services, Inc.
84–5885	Sovereign Depository Corporation.
84–5897	Newport Stock Transfer Agency, Inc.
84–5899	U.S. Corporate Support Services, Inc.
84–5912	Femis Kerger & Company Transfer Agent & Registrar.
84–6019	Touch America.
84–6032	Merge Media, Inc.
84–6034	Chapman Capital Management, Inc.
84–6039	First Financial Escrow & Transfer, Inc.
84–6045	Pharmacy Buying Association, Inc.
84–6059	Street Transfer & Registrar Agency.
84–6077	Brown Brothers Harriman & Co.
84–6092	Brookhill Stock Transfer Business Trust.
84–6097	Certified Water Systems, Inc.
84–6101	Lauries Happy Thoughts, Inc.
84–6126	Fidelity Custodian Services, Inc.
84–6131	Carolyn Plant.
84–6157	Encompass Corporate Services.

[FR Doc. E7–2245 Filed 2–9–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of February 12, 2007:

A Closed Meeting will be held on Thursday, February 15, 2007 at 10 a.m.

Commissioners, Counsels to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (4), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (4), (5), (7), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, February 15, 2007 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Resolution of a litigation claim;

Adjudicatory matters;

Amicus consideration; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: February 7, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. 07–629 Filed 2–8–07; 10:47 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55240; File No. SR–Amex–2007–07]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Amending Existing Rules for Portfolio Depositary Receipts and Index Fund Shares

February 5, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 [2] thereunder, notice is hereby given that on January 11, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On January 25, 2007, the Amex submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its existing rules for portfolio depositary receipts (Rule 1000) and index fund shares (Rule 1000A) to eliminate the methodology standards for eligible indexes.

The text of the proposed rule change is available at the Amex, the Commission's Public Reference Room, and *http://www.amex.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has substantially 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 proposed rule change is to amend Amex's existing generic listing standards pursuant to Rule 19b–4(e) under the Act [3] for portfolio depositary receipts (''PDRs'') and index fund shares [4] to eliminate the requirement that an eligible index be calculated following a specified methodology.

The Exchange currently has generic listing standards (within the meaning of Rule 19b–4(e) under the Act [5]), which permit the listing and trading of various qualifying ETFs subject to the procedures contained in Rule 19b–4(e). The existence of generic listing standards allows qualifying ETFs to list or trade without the need to file a rule change for each security under Rule 19b–4 under the Act.[6] By amending its generic listing standards pursuant to Rule 19b–4(e), the Exchange intends to reduce the time frame for listing ETFs that rely on indexes that utilize methodologies not currently identified in the generic listing standards and thereby reduce the burdens on issuers and other market participants.

The generic listing standards for ETFs presently provide that eligible indexes be calculated based on the market capitalization, modified market capitalization, price, equal-dollar, or modified equal-dollar weighting methodology.[7] The proposed rule change will eliminate this standard and, as a result, the Exchange will no longer consider index methodology in its review of an ETF's eligibility for listing and trading pursuant to Rule 19b–4(e) under the Act.[8]

The Exchange states that as the market for ETFs has grown and the ETF product line matured, the Exchange has witnessed an increase in the number of methodologies used to calculate indexes. In order for an index that employs a novel methodology to satisfy the current generic listing standards, either a traditional methodology must be substituted for the intended methodology, or the Exchange must submit a proposed rule change to the Commission amending the generic listing standards to include the additional methodology. In this regard, the Exchange notes that, recently, both The NASDAQ Stock Market LLC and NYSE Arca, Inc. filed rule changes with the Commission in order to permit eligible indexes to be calculated based on a methodology weighting components based on their particular financial attributes.[9]

The Exchange believes that the proposed elimination of index methodology from its generic listing standards for ETFs would potentially reduce the time frame for bringing ETFs based on indexes with nontraditional weighting techniques to the market, thereby reducing the burdens on issuers and other market participants and promoting competition. The Exchange notes that indexes underlying ETFs would continue to be subject to the other requirements of the generic listing standards pursuant to Rule 19b–4(e) under the Act.[10] For example, the generic listing standards for domestic indexes require, without limitation, that the most heavily weighted component stock of an index not exceed 30% of the weight of the index, and the five most heavily weighted component stocks of an index not exceed 65% of the weight of the index,[11] and that an index include a minimum of 13 component stocks.[12] Similarly, the generic listing standards for international or global indexes require, without limitation, that the most heavily weighted component stock of an index not exceed 25% of the weight of the index, and the five most heavily weighted component stocks of an index not exceed 60% of the weight of the index,[13] and that an index include a minimum of 20 component stocks.[14] The Exchange believes that such requirements will ensure that underlying indexes are sufficiently diversified, and that their components are sufficiently liquid to serve as the basis for an ETF.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act [15] in general, and furthers the objectives of Section 6(b)(5),[16] of the Act in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of ETFs, thereby reducing the burdens on issuers and other market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange states that no written comments were solicited or received with respect to the proposed rule change.

[3] 17 CFR 240.19b–4(e).

[4] PDRs and index fund shares are registered investment companies under the Investment Company Act of 1940 and are referred to in this filing as exchange traded funds (''ETFs'').

[5] 17 CFR 240.19b–4(e).

[6] 17 CFR 240.19b–4.

[7] *See* Commentary .03(b)(i) to Amex Rule 1000 and Commentary .02(b)(i) to Amex Rule 1000A.

[8] 17 CFR 240.19b–4(e).

[9] *See* Securities Exchange Act Release Nos. 54459 (September 15, 2006), 71 FR 55533 (September 22, 2006) (SR–NASDAQ–2006–035); 54490 (September 22, 2006), 71 FR 58034 (October 2, 2006) (SR–NYSEArca-2006–61). Telephone conference among Courtney McBride, Assistant General Counsel, Amex, Brian Trackman, Special Counsel, and Michou Nguyen, Special Counsel, Division of Market Regulation, Commission on February 2, 2007.

[10] 17 CFR 240.19b–4(e).

[11] *See* Commentary .03(a)(A)(3) to Amex Rule 1000 and Commentary .02(a)(A)(3).

[12] *See* Commentary .03(a)(A)(4) to Amex Rule 1000 and Commentary .02(a)(A)(4).

[13] *See* Commentary .03(a)(B)(3) to Amex Rule 1000 and Commentary .02(a)(B)(3).

[14] *See* Commentary .03(a)(B)(4) to Amex Rule 1000 and Commentary .02(a)(B)(4).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Amex has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof. The Commission has determined that a 15-day comment period is appropriate in this case.

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 Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2007–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–07 and should be submitted on or before February 27, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2252 Filed 2–9–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55233; File No. SR–BSE–2006–56]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Add to the Boston Options Exchange a New Functionality Called an Automatic Auction Order

February 2, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 15, 2006, the Boston Stock Exchange, Inc. (''BSE'' 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 BSE. On February 1, 2007, BSE filed Amendment No. 1 to the proposed rule change.[3] 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 amend the Boston Options Exchange (''BOX'') Rules to add a new functionality referred to as an Automatic Auction Order (''AAO'') in order to make it easier for non-professional customers to participate in a price improvement auction (''Improvement Auction''). The text of the proposed rule change is available at BSE, the Commission's Public Reference Room, and *http://www.bostonstock.com/legal/pending_rule_filings.html*.

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 BSE 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 BSE 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

BSE seeks to amend the BOX Rules[4] to add a new order functionality called an AAO in order to make it easier for all Customers, including non-professional customers, to participate in Improvement Auctions (*e.g.*, the PIP). BOX believes that the AAOs will increase the number of Improvement Orders that are submitted to an Improvement Auction, thereby creating increased competition and overall liquidity while also improving execution prices for trades that are executed on BOX.

This AAO functionality automates a process that is currently available to the non-professional customer via the Customer PIP Order (''CPO''). Currently, however, it is difficult for non-professional customers to participate in Improvement Auctions because of the limited offering of the CPO by Order Flow Providers (''OFPs''). Only a few OFPs have made CPOs available to non-professional customers due, in large part, to the constraints that are generally

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, BSE granted the Commission an extension of the time period specified in Section 19(b)(2) of the Act for Commission action.

[4] Capitalized terms not otherwise defined herein shall have the meanings prescribed under the BOX Rules.

associated with the software development an OFP is required to undertake in order to handle the processing of the CPO. The AAO provides non-professional customers with the ability to trade on the BOX Book at standard trading increments and also trade in penny increments in an Improvement Auction, should one occur. The AAO, as opposed to a standard Limit Order, allows a Customer to participate in the Improvement Auction without any further instructions from the Customer.

The AAO allows for increased competition in the Improvement Auction and offers greater opportunity for price improvement to occur by providing for additional Improvement Orders capable of improving prices.

Description of AAO Processing

An AAO is a Limit Order that is submitted by the OFP on behalf of a Customer to the BOX Trading Host in one-cent increments only on a class whose minimum trading increment is greater than one cent. The penny incremented limit price that is entered by the Customer is referred to as the ''AAO Maximum Improvement Price.'' The AAO Maximum Improvement Price is the maximum (if the order is to buy) or minimum (if the order is to sell) price at which the Customer is willing to trade in any Improvement Auctions.

AAO Limit Order

The Trading Host will round AAOs to the nearest minimum trading increment [5] (up if the order is to sell and down if the order is to buy) and place it on the BOX Book (''AAO Limit Order''). The AAO Limit Order will be processed as a standard Limit Order as described in Chapter 5, Section 14(c)(i) of the BOX Rules and will be traded in accordance with Chapter 5, Section 16 of the BOX Rules.

AAO Improvement Order

An AAO will be eligible to participate (subject to Chapter V, Section 18 of the BOX Rules) in any Improvement Auctions that may occur when the AAO is on the opposite side of the market from the order seeking improvement and the AAO Limit Price is equal to the National Best Bid or Offer (''NBBO''). When this situation occurs, the BOX trading engine will automatically create a new order (the ''AAO Improvement Order'') at the end of the auction phase, but prior to any trade allocations, with the following terms:

(1) The quantity of the AAO Improvement Order shall be the lesser of the remaining quantity on the BOX Book at the AAO Limit Price or the quantity of the order seeking improvement in the auction; and

(2) The price of the AAO Improvement Order shall be equal to the price of the best Improvement Order, Primary Improvement Order or unrelated order (on the same side of the market as the AAO).

Trade Processing of AAO

During an Improvement Auction, if the number of contracts executed in the Improvement Auction against the AAO Improvement Order is less than the quantity of AAO Limit Order, then, prior to the processing of any other orders on the same series on the AAO Limit Order side of the market, the quantity of the AAO Limit Order will be decremented on the BOX Book by the size of the executed quantity of the AAO Improvement Order. Any residual quantity that remains after part of an AAO has traded (either on the BOX Book or in the Improvement Auction) will continue to be eligible to trade in any subsequent Improvement Auctions. In addition, the residual quantity will maintain its priority on the BOX Book in accordance with Chapter V, Section 16 of the BOX Rules.

Any AAO Improvement Order created by the BOX Trading Host will be assigned the time priority of the related AAO Limit Order. As such, the AAO Improvement Order is granted time priority at its relevant price level in an Improvement Auction.

Any modification to the AAO Maximum Improvement Price that causes the rounded AAO Limit Price to change or any increase in the quantity of the AAO will cause a new time priority to be assigned to the AAO Limit Order on the BOX Book. Any changes to the AAO Maximum Improvement Price that do not effect the AAO Limit Price will not cause a change to the time priority of the original order.

Additionally, a new AAO received in a particular series that is on the opposite side of the market from another AAO, which is already on the BOX Book, and is marketable at the AAO Maximum Improvement Price of the other booked AAO (*e.g.*, a buy AAO is on the BOX Book with a Limit Price bid of $2.00 with an AAO Maximum Improvement Price of $2.03 and a new sell AAO is received by the BOX Trading Host with an AAO Maximum Improvement Price of $2.02), will be matched at the mid-point of the two AAO Maximum Improvement Prices, rounded to the nearest penny increment in the favor of the AAO that is already on the BOX Book. The quantity of the resulting trade will be for the lesser quantity of the two AAOs.

Finally, AAOs may be entered for any account type except for the accounts of BOX Market Makers.

The following examples demonstrate how an AAO will work. For all examples, assume an AAO is entered into the Trading Host to buy 100 contracts of XYZ at a Maximum Improvement Price of $1.03 (referred to in the following examples as the ''Original AAO''). The Original AAO will be rounded to $1.00 (*i.e.*, the nearest minimum trading increment in accordance with Chapter V, Section 6 of BOX Rules) and the AAO Limit Order placed on the BOX Book at $1.00.

Example 1. For this example, assume the Original AAO is the only order resting on the BOX Book at $1.00. An order to sell 70 contracts at market has commenced an Improvement Auction at $1.01. At the end of the auction, the best Improvement Order is an order to buy 10 contracts of XYZ at $1.02. The Trading Host creates an AAO Improvement Order for 70 contracts at $1.02 with the Original AAO Limit Order's time priority which trades against the customer in the Improvement Auction. The remaining 30 contracts from the Original AAO will remain on the BOX Book at their original time priority.

Example 2. In this example, everything is the same as Example 1 except that the market order to sell XYZ is for 100 contracts. The full quantity of the Original AAO (*i.e.*, 100 contracts) will be executed at $1.02.

Example 3. For this example, assume there is another AAO buy order resting on the BOX Book at $1.00 that has time priority over the Original AAO (referred to in this example as the ''2nd AAO''). The 2nd AAO is for 50 contracts and its AAO Maximum Improvement Price is $1.04. At the end of an Improvement Auction for 90 contracts to be sold at market, the best Improvement Order is for 10 contracts at $1.02. Two AAO Improvement Orders are created by the BOX Trading Host: one for 100 contracts at $1.02 and one for 50 contracts at $1.02. All 50 contracts from the 2nd AAO will be consummated first at $1.02. The remaining 40 contracts will be executed at $1.02 with the Original AAO. The remaining 60 contracts from the Original AAO will remain on the BOX Book at their original time priority.

Example 4. For this example assume a second AAO buy order is resting on the BOX Book at $1.00 that does not have time priority over the Original AAO (referred to in this example as the ''2nd AAO''). The 2nd AAO is for 50 contracts with an AAO Maximum Improvement Price is $1.04. A market order to sell 75 contracts of XYZ is entered into the Trading Host and an Improvement Auction commences. During the Improvement Auction an Improvement Order to buy XYZ is entered at $1.01. Upon completion of the Improvement Auction, the 50 contracts of the 2nd AAO will be fully executed at $1.01 and

[5] As delineated in Chapter V, Section 6 of the BOX Rules.

the Original AAO will fill the remaining 25 contracts of the market order to sell at $1.01. Even though the Original AAO has time priority over the 2nd AAO, the 2nd AAO will be filled first because it has a higher AAO Maximum Improvement Price ($1.04 vs. $1.03) than the Original AAO.

Example 5. For this example, assume that while the Original AAO is resting on the BOX Book, but prior to an Improvement Auction commences, another AAO to sell 80 XYZ is entered into the Trading Host at $1.01 (referred to in this example and in Example 6 as the ''2nd AAO''). These two orders will immediately be matched and traded at $1.02, the mid-point of the two AAO Maximum Improvement Prices. The remaining 20 contracts from the Original AAO will remain on the BOX Book with its original time price priority.

Example 6. For this example, assume everything is the same as in Example 5 except the 2nd AAO to sell 80 XYZ is entered into the Trading Host at $1.02. The executions will remain the same as in Example 5 except the price will be rounded (the midpoint of $1.02 and $1.03 is $1.025) to the nearest penny increment towards the favor of the Original AAO. Since the Original AAO was already on the BOX Book, the trade will execute at $1.02. The remaining 20 contracts from the Original AAO will remain on the BOX Book with its original time price priority.

Conclusion

As shown by the above examples, the AAO causes no detriment to customers or the markets as a whole, will increase the number of Improvement Orders that will be available to participate in an Improvement Auction and thus creates a greater possibility for better execution prices on all orders placed on BOX.

2. Statutory Basis

The proposal is consistent with the requirements of Section 6(b) of the Act,[6] in general, and Section 6(b)(5) of the Act,[7] in particular, in that it makes it easier for non-professional customers to participate in Improvement Auctions, it is generally designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts 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.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which BSE consents, the Commission shall: (a) By order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–BSE–2006–56 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–BSE–2006–56. 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 BSE. 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–BSE–2006–56 and should be submitted on or before March 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2250 Filed 2–9–07; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55235; File No. SR–BSE–2007–05]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Remove All References to a Specific Regulation NMS Trading Phase Date

February 2, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2007, the Boston Stock Exchange (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the Exchange. The Exchange has designated the proposed rule change as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(1) 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 from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE is proposing to remove references in Chapters XXXVII and XXXVIII of the BSE Rules to February 5, 2007, which was the Regulation NMS Trading Phase Date as of the date of Commission approval of the proposed rule change relating to the second phase of the BeX trading system, and replace all such references with the phrase ''Regulation NMS Trading Phase Date.'' The Regulation NMS Trading Phase Date is the final date for full operation of Regulation NMS-compliant trading systems of all automated trading centers (both SRO trading facilities and ADF participants) that intend to qualify their quotations for trade-through protection under Rule 611 of Regulation NMS, as determined by the Commission. The text of the proposed rule change is available at www.bostonstock.com, at the BSE, 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 BSE 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. BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 13, 2006 the Exchange filed Amendment No. 3 to SR–BSE–2006–22 (the ''BeX Facility Filing''), a rule filing submitted in connection with the implementation of the first of two phases of BeX, a fully automated electronic book for the display and execution of orders in securities. On August 25, 2006 SR–BSE–2006–22 was approved by the Commission.[5] On August 3, 2006 the BSE filed, in connection with the implementation of the second phase of the BeX trading system and in connection with satisfying the requirements of Regulation NMS, SR–BSE–2006–30. On September 29, 2006 the Commission approved SR–BSE–2006–30.[6]

The purpose of this filing is to remove references in Chapters XXXVII and XXXVIII of the BSE Rules to February 5, 2007 as the Regulation NMS Trading Phase Date and to replace all references to that specific date with the phrase ''Regulation NMS Trading Phase Date.'' The Regulation NMS Trading Phase Date is the final date for full operation of Regulation NMS-compliant trading systems of all automated trading centers (both SRO trading facilities and ADF participants) that intend to qualify their quotations for trade-through protection under Rule 611 of Regulation NMS, as determined by the Commission. In other words, the BSE Rules will no longer reference a date certain for the Regulation NMS Trading Phase Date and any occurrence that could have taken place or that would have been triggered on February 5, 2007, such as the ability for certain order types to be submitted on the BeX, will be postponed to coincide with the revised Regulation NMS Trading Phase Date scheduled by the Commission. Further, this filing replaces all specific references to the February 5, 2007 date contained in BSE–2006–30 as modified by Amendment 2 to that filing with the phrase Regulation NMS Trading Phase Date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(1) thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange 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–BSE–2007–05 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–BSE–2007–05. 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

[5] *See* Securities Exchange Act Release No. 54365 (August 25, 2006), 71 FR 52192 (September 1, 2006).

[6] *See* Securities Exchange Act Release No. 54546 (September 29, 2006), 71 FR 59161 (October 6, 2006).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(1).

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 BSE.

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–BSE–2007–05 and should be submitted on or before March 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon

Deputy Secretary

[FR Doc. E7–2251 Filed 2–9–07; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55243; File No. SR–CBOE–2007–06]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend CBOE Rules Relating To CBOE's Determination To Trade Options on the iShares Russell 2000 Index Fund (IWM) on the Hybrid 2.0 Platform

February 5, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 12, 2007, 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 filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rules relating to CBOE's determination to trade options on the iShares Russell 2000 Index Fund (IWM) on the Hybrid 2.0 Platform. The text of the proposed rule change is available on CBOE's Web site (*http://www.cboe.com*), at the CBOE'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 rule change is to amend CBOE Rule 8.3 and Rule 8.4 in connection with CBOE's determination to trade options on the iShares Russell 2000 Index Fund (IWM) on the Hybrid 2.0 Platform.[5] IWM options currently have an appointment cost of .50. CBOE intends to maintain that appointment cost when IWM options trade on the Hybrid 2.0 Platform. As a result, IWM options will be classified as an ''AA'' Tier option class. CBOE intends to trade IWM options on the Hybrid 2.0 Platform beginning on January 16, 2007.

2. Statutory Basis

The Exchange 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) of the Act,[7] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

[5] CBOE Rule 1.1(aaa) defines Hybrid Trading System and Hybrid 2.0 Platform.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and subparagraph (f)(6) of Rule 19b–4[9] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. 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.

Under Rule 19b–4(f)(6) of the Act, the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[10] The Exchange has requested

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] Rule 19b–4(f)(6) also requires the self-regulatory organization to give the Commission notice of its intention to file the proposed rule

that the Commission waive the 30-day operative date, so that the proposal may take effect January 16, 2007. The Exchange believes that the proposed rule change does not raise any new regulatory issues. The Commission agrees and, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative date, which renders the proposal effective on January 16, 2007.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2007–06 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–2007–06. 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 filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–06 and should be submitted on or before March 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2302 Filed 2–9–07; 8:45 am]

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change, along with a brief description and text of the proposed rule change, at leave five business days prior to the date of filing the proposed rule change, or such shorter time designated by the Commission. CBOE has satisfied the five day prefiling requirement.

[11] For 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).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55234; File No. SR–ISE–2006–79]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to a Fee Refund

February 2, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 2006, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the ISE. On February 1, 2007, the ISE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, ISE converted the original proposed rule change from a proposal filed pursuant to Section 19(b)(3)(A)(ii) of the Act and Rule 19b–4(f)(2) thereunder to a ''non-controversial'' proposal filed pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder, and requested waiver of the 30–day pre-operative delay and pre-filing notice requirement for ''non-controversial'' proposals.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to refund surcharge fees collected for transactions in options on Standard & Poor's (''S&P'') Depository Receipts®, SPDRs® (ticker: SPY). The text of the proposed rule change is available at the ISE, the Commission's Public Reference Room, and *http://www.iseoptions.com.*[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–ISE–2005–06, the Exchange adopted a $0.10 per contract surcharge fee for transactions in options on SPDRs.[5] In that filing, the Exchange represented that a lawsuit between the Exchange and S&P involving the surcharge fee on SPY, if resolved by the courts in ISE's favor, could result in a refund of the license fee ISE paid to S&P for transactions in SPY and, upon any refund of the surcharge fee by S&P to ISE, the Exchange would submit a rule filing to the Commission to document the reimbursement of the surcharge fees paid by members to ISE.[6] In SR–ISE–2006–60, the Exchange repealed the $0.10 per contract surcharge fee for transactions in options on SPDRs.[7] The Exchange recently received a refund of the surcharge fees, plus interest, from S&P and proposes to refund the surcharge fees to its members. Accordingly, the Exchange is submitting this rule filing to reflect that it is returning to each member (both current and former) its pro-rata share of the refunded amount (including interest),

[4] The refund announcement is available on the Exchange's Web site at *http://www.iseoptions.com/legal/fee_notice.asp.*

[5] *See* Securities Exchange Act Release No. 51901 (June 22, 2005), 70 FR 37455 (June 29, 2005).

[6] *See* Amendment No. 1.

[7] *See* Securities Exchange Act Release No. 54589 (October 11, 2006), 71 FR 61518 (October 18, 2006).

which represents the actual amount of surcharge fees paid by the member, plus interest, less its pro-rata share of the Exchange's legal costs in connection with obtaining the refund.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which requires that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) Does not impose any significant burden on competition; and (3) By its terms does not become operative for 30 days after the date of this filing, 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[9] and Rule 19b–4(f)(6) thereunder.[10] The Commission has agreed to waive the requirement that the Exchange provide it with written notice of its intent to file the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change as required by Rule 19b–4(f)(6).

A proposed rule change filed under Rule 19b–4(f)(6) under the Act[11] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) under the Act[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30–day operative delay, which would make the rule change effective and operative upon filing. The Commission believes that waiver of the 30–day operative delay is consistent with the protection of investors and the public interest because the proposed rule change seeks to refund the surcharge fees that were previously collected by the Exchange from its members with respect to trades in options on SPY.[13] Further, the Exchange's intent to refund those surcharge fees upon a successful resolution of the Exchange's lawsuit against S&P was reflected in the proposed rule change that initially adopted the surcharge fee on SPY options.

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.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2006–79 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–ISE–2006–79. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2006–79 and should be submitted on or before March 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2244 Filed 2–9–07; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] The effective date of the original proposed rule is December 22, 2006. The effective date of Amendment No. 1 is February 1, 2007. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on February 1, 2007, the date on which the ISE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55236; File No. SR–ISE–2006–78]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to the Facilitation Mechanism

February 2, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2006, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by the Exchange. 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 ISE is proposing to amend its rules to allow both facilitated and solicited transactions to be executed using the Exchange's Facilitation Mechanism. The text of the proposed rule change is as follows, with deletions in [brackets] and additions italicized:

Rule 716. Block Trades

(a) through (c) no change.

(d) Facilitation Mechanism. The Facilitation Mechanism is a process by which an Electronic Access Member can *execute a transaction wherein the Electronic Access Member seeks to* facilitate *a* block-size order[s] *it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against a block-size order it represents as agent.* Electronic Access Members must be willing to [facilitate] *execute* the entire size of orders entered into the Facilitation Mechanism.

(1) through (3) no change.

(e) no change.

Supplementary Material to Rule 716

.01 through .08 no change.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

The ISE offers three different execution facilities for the execution of two-sided orders (*i.e.*, crosses): a Facilitation Mechanism, a Solicited Order Mechanism and a Price Improvement Mechanism. All three of these mechanisms have different execution features. For example, the Facilitation Mechanism guarantees members up to 40% of a customer order and is limited to orders of at least 50 contracts, the Solicited Order Mechanism offers an all-or-none execution of customer orders and is limited to orders of at least 500 contracts, and the Price Improvement Mechanism requires orders to be entered at a price that improves upon the national best bid or offer (''NBBO'') by at least one penny without a minimum required order size.

Currently, the Facilitation Mechanism is limited to transactions where the member is trading against an agency order as principal (*i.e.*, facilitating an order). In contrast, the Price Improvement Mechanism allows members to enter crossing-transactions where the member is trading against an order as principal (*i.e.*, facilitating the order) and/or where the member has solicited an order to take the other side of an order it represents as agent.[3] Thus, the Price Improvement Mechanism allows members the flexibility to represent a transaction where the member is facilitating only a portion of the customer order and has solicited interest from other parties for the other portion of the order. Members have expressed an interest in having the same flexibility to execute these types of transactions through the Facilitation Mechanism. Therefore, ISE proposes to modify the Facilitation Mechanism rule to allow both facilitated and solicited transactions.[4]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirement under Section 6(b)(5) of the Act[5] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposal will provide additional flexibility for members to execute transactions through the Facilitation Mechanism.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[3] ISE Rule 723(b) states that the counter-side of an agency order ''may represent interest for the Member's own account, or interest the Member has solicited from one or more other parties, or a combination of both.''

[4] For clarification, the ISE proposes to modify the Facilitation Mechanism to allow executions of block size orders against facilitated or solicited orders, or a combination of both. Telephone conversation between Katherine Simmons, Deputy General Counsel, ISE, and Ira Brandriss, Special Counsel, Division of Market Regulation, Commission, on January 3, 2007.

[5] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2006–78 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–ISE–2006–78. 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–ISE–2006–78 and should be submitted on or before March 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2253 Filed 2–9–07; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55225; File No. SR–NASD–2007–007]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Program That Increases Position and Exercise Limits for Certain Equity Options

February 1, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 25, 2007, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NASD. NASD has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to amend Rule 2860 to extend a pilot program increasing certain options position and exercise limits. The text of the proposed rule change is available at NASD, the Commission's Public Reference Room, and *http://www.nasd.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD proposes to amend Rule 2860 to extend a pilot program until September 1, 2007 (unless extended) increasing position and exercise limits for both standardized and conventional options (''Pilot Program'').[5] Unless extended, the Pilot Program will expire on March 1, 2007.[6] NASD believes that the Pilot Program should be extended so that it may continue without interruption for the same reasons that are discussed in the Pilot Program Notice.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] 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 so that the Pilot Program, which achieves these goals as discussed in the Pilot Program Notice, may continue without interruption.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has

[5] *See* Securities Exchange Act Release No. 51520 (April 11, 2005), 70 FR 19977 (April 15, 2005) (SR–NASD–2005–040) (''Pilot Program Notice'').

[6] *See* Securities Exchange Act Release No. 54334 (August 18, 2006), 71 FR 50961 (August 28, 2006) (SR–NASD–2006–025).

[7] 15 U.S.C. 78*o*–3(b)(6).

become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the 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–NASD–2007–007 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 File No. SR–NASD–2007–007. 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 Room. Copies of such filing will also 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 No. SR–NASD–2007–007 and should be submitted on or before March 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 07–608 Filed 2–9–07; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6) also requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NASD has satisfied the five-day pre-filing requirement.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55245; File No. SR–NASD–2007–009]

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Extension of NASD's Short Sale Rule Contained in Rule 5100 and Short Sale Standard Contained in IM–5100

February 5, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 26, 2007, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to extend retroactively to December 16, 2006, and prospectively through December 15, 2007, the pilot effectiveness of Rule 5100 (Short Sale Rule). NASD is also seeking to extend the pilot effectiveness of the penny ($0.01) legal short sale standard contained in Interpretive Material (IM) 5100. Without such extension, these pilots would have expired on December 15, 2006. NASD does not propose any substantive changes to the pilots; the only changes are making the pilots effective on a retroactive basis to December 16, 2006 and extending the pilots' expiration dates to December 15, 2007.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.[3]

* * * * *

5100. Short Sale Rule

(a) through (k) No Change.

(l) This section shall be in effect until December 15, 200[6]*7*.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Proposal to Extend Penny Short Sale Rule. Section 10(a) of the Act gives the Commission plenary authority to regulate short sales[4] of securities registered on a national securities exchange, as needed to protect investors. Rule 10a–1(a)(1) provides that, subject to certain exceptions, a listed security may be sold short (A) at a price above the price at which the immediately preceding sale was effected (plus tick), or (B) at the last sale price if it is higher than the last different price (zero-plus tick).[5]

On June 29 1994, the Commission granted temporary approval to NASD's short sale rule, Rule 5100 (formerly Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] There are no proposed changes to the text of IM–5100.

[4] A short sale is a sale of a security that the seller does not own or any sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller. *See* Rule 200(a) of Regulation SHO under the Act.

[5] *See* 17 CFR 240.10a–1(a)(1).

3350),[6] applicable to Nasdaq Global Market (''NGM'') securities[7] on a pilot basis.[8] Rule 5100 applies to short sales of OTC transactions reported to the Alternative Display Facility (''ADF'') or a Trade Reporting Facility (''TRF''). Rule 5100 provides that, with respect to trades reported to the ADF or the TRF, no member shall effect a short sale in a NGM security otherwise than on an exchange at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid (referred to as the ''bid test'').

Since approval, NASD proposed, and the Commission approved, numerous extensions of NASD's short sale rule and it continues to operate on a pilot basis.[9] NASD has determined to seek an extension of the pilot until December 15, 2007 and to make it effective on a retroactive basis to December 16, 2006. NASD believes that such an extension provides an appropriate continuation of NASD's short sale price test contained in Rule 5100 while the Commission considers whether changes to short sale price tests are necessary in light of current market practices and the purposes underlying short sale regulation.[10]

Proposal to Extend Penny Short Sale Standard. On March 2, 2001, the Commission approved, on a pilot basis,[11] the proposal to establish a $0.01 above the bid standard for legal short sales in NGM securities as part of the Decimals Implementation Plan for the Equities and Options Markets. This pilot program has been continuously extended since that date and expired on December 15, 2006.[12] NASD now proposes to extend retroactively to December 16, 2006, and prospectively through December 15, 2007, the penny short sale pilot program. Extension of the pilot will allow NASD and the Commission to maintain the status quo until the Commission takes further action on short sale price tests.

If approved, NASD will continue during the pilot period to require NASD members seeking to effect ''legal'' short sales when the current national best (inside) bid is lower than the preceding national best (inside) bid, to execute those short sales at a price that is at least $0.01 above the current national best (inside) bid in that security. NASD believes that such an extension provides for an appropriate continuation of the current penny short sale standards while the Commission continues to consider the effectiveness of short sale price tests. NASD is not proposing any other changes to the pilot at this time.

NASD is requesting that the Commission accelerate the effectiveness of the proposed rule change and is seeking to make the proposed rule change effective on a retroactive basis to December 16, 2006.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[13] which requires, among other things, that NASD 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. NASD believes it is in the best interest of investors and the public to extend the short sale regulation pilot program. NASD also believes that it is important to continue the pilot while the Commission continues to consider the effectiveness of short sale price tests.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act[15] for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder.[16] The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will allow the short sale pilot program to operate without interruption.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2007–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2007–009. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[6] NASD has renumbered Rule 3350 and IM–3350 as Rule 5100 and IM–5100, respectively. *See* Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (File No. SR–NASD–2005–087).

[7] Nasdaq Global Market securities were formerly known as Nasdaq National Market securities. *See* Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006).

[8] *See* Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) (''Short Sale Rule Approval Order'').

[9] *See* Securities Exchange Act Release No. 53093 (January 10, 2006), 71 FR 2966 (January 18, 2006) (Notice of Immediate Effectiveness of SR–NASD–2005–149 extending the Short Sale Rule and continued suspension of Primary Market Maker standards).

[10] *See* Securities Exchange Act Release No. 54891 (December 7, 2006), 71 FR 75067 (December 13, 2006) (proposed amendments to Regulation SHO and Rule 10a–1 under the Act).

[11] *See* Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001) (SR–NASD–2001–09).

[12] *See* supra note 9.

[13] 15 U.S.C. 78o–3(b)(6).

[14] *See* supra note 10.

[15] 15 U.S.C. 78s(b)(2).

[16] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2007–009 and should be submitted on or before March 5, 2007.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR–NASD–2007–009) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2303 Filed 2–9–07; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55211; File No. SR–Phlx–2006–79]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to an Amendment to the Generic Listing Standards for Trust Shares

January 31, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been substantially prepared by the Exchange. On January 29, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is granting accelerated approval to the proposed rule change as modified by Amendment No. 1.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange supplemented the rationale for its request for accelerated approval and made technical changes to the proposed rule text.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 803—Criteria for Listing—Tier 1, regarding generic listing standards for Trust Shares. The text of the proposed Phlx Rule is set forth below, with new text *italicized* and deleted text [bracketed].

Rule 803 Criteria for Listing—Tier I

* * * * *

(a)–(h) No Change.

(i) Trust Shares

(1)–(10) No Change.

(11) The Exchange may approve a series of Trust Shares for trading, whether by listing or pursuant to unlisted trading privileges, pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(a) Eligibility Criteria for Index Components. Upon the initial listing of a series of Trust Shares on the Exchange, the component stocks of an index or portfolio underlying such series of Trust Shares shall meet the following criteria as of the date of the initial deposit of cash and securities into the trust:

(i)–(ii) No Change.

(iii) The most heavily weighted component stock cannot exceed [25]*30%* of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;

(iv)–(v) No Change.

(b)–(h) No Change.

(j)–(m) 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, 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 III below. The Exchange has prepared summaries, substantially 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 conform Phlx's generic listing standards for Trust Shares, specifically Rule 803(i)(11)(a)(iii), to the standards of other exchanges. Phlx Rule 803 provides generic listing standards for Trust Shares to permit listing and trading of these securities pursuant to Rule 19b–4(e) under the Act.[4] Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4,[5] if the Commission has approved, pursuant to Section 19(b) of the Act,[6] the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivative securities product, and the self-regulatory organization has a surveillance program for the product class.[7]

These generic listing standards are intended to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of the weight of an index or portfolio. Phlx Rule 803 provides that, upon the initial listing of a series of Trust Shares under Rule 19b–4(e), component stocks that in the aggregate account for at least 90 percent of the weight of the index or portfolio must have a minimum market value of at least $75 million. In addition, the component stocks in the index must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90 percent of the weight of the index or portfolio. Currently, Rule 803(i)(11)(a)(iii) provides that the most heavily weighted component stock in an underlying index cannot exceed 25 percent of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65 percent of the weight of the index or portfolio. The

[4] 17 CFR 240.19b–4(e).

[5] 17 CFR 240.19b–4(c)(1).

[6] 15 U.S.C. 78s(b).

[7] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

Exchange proposes to increase from 25 percent to 30 percent the permissible weight of the most heavily weighted component stock in an underlying index. The Exchange is not amending the existing requirement that the five most heavily weighted stocks cannot exceed 65 percent of the weight of the index or portfolio. According to the Exchange, this change will provide additional flexibility to unit investment trusts to be listed pursuant to Rule 19b–4(e) in structuring their products and will help reduce possible concerns associated with a single stock exceeding the 25 percent threshold immediately prior to initial listing and trading due to a spike in the price of the most heavily weighted index stock. The Exchange notes that, notwithstanding this change, unit investment trusts (including Trust Shares) are subject to Internal Revenue Code Subchapter M requirements applicable to regulated investment companies. In order to maintain regulated investment company status, these entities would be required to rebalance their portfolios quarterly to avoid any one stock exceeding a 25 percent weighting in the trust's portfolio.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Section 6(b)(5) of the Act [9] 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange states that written comments were neither solicited nor received.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

III. 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–Phlx–2006–79 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2006–79. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than 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–Phlx–2006–79 and should be submitted on or before March 5, 2007.

IV. Commission Findings and Order Granting Accelerated Approval of a Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Exchange Act,[11] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Commission believes that the proposed rule change is reasonably designed to provide additional flexibility in the listing of Trust Shares under the Exchange's generic listing standards. Further, the Commission believes that the proposed rule change will serve to protect investors and the public interest by maintaining the size and liquidity requirements applicable to the securities underlying the relevant index or portfolio.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission has previously approved similar proposals by the American Stock Exchange LLC (''Amex''), Chicago Board Options Exchange, Incorporated (''CBOE'') and New York Stock Exchange LLC (''NYSE'').[12] Therefore, the proposed rule change does not raise any new issues.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [13] that the proposed rule change (SR–Phlx–2006–79), as modified by Amendment No. 1, is approved on an accelerated basis.

[10] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* Securities Exchange Act Release Nos. 44532 (July 10, 2001), 66 FR 37078 (July 16, 2001) (SR–Amex–2001–25) (approving an increase for indexes underlying Portfolio Depositary Receipts and Index Fund Shares listed on the Amex); 44908 (October 4, 2001), 66 FR 52161 (October 12, 2001) (SR–CBOE–2001–38) (approving an increase for indexes underlying Index Portfolio Receipts and Index Portfolio Shares listed on the CBOE); 53934 (June 1, 2006), 71 FR 33326 (June 8, 2006) (SR–NYSE–2006–39) (approving an increase for indexes underlying Investment Company Units).

[13] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2248 Filed 2–9–07; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10797 and # 10798]

Florida Disaster # FL–00019

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Florida (FEMA—1679—DR), dated 02/03/2007.

Incident: Severe Storms and Tornadoes.

Incident Period: 02/01/2007 through 02/02/2007.

DATES: *Effective Date:* 02/03/2007.

Physical Loan Application Deadline Date: 04/04/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 11/05/2007.

ADDRESSES: Submit completed loan applications to: 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 02/03/2007, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Lake; Seminole; Sumter; Volusia

Contiguous Counties (Economic Injury Loans Only): Florida: Brevard; Citrus; Flagler; Hernando; Marion; Orange; Osceola; Pasco; Polk; Putnam.

The Interest Rates are:

	Percent
For Physical Damage	
Homeowners With Credit Available Elsewhere	5.750
Homeowners Without Credit Available Elsewhere	2.875
Businesses With Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10797C and for economic injury is 107980.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–2296 Filed 2–9–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region 1—Maine District Advisory Council; Public Meeting

The U.S. Small Business Administration Maine District Advisory Council, located in the geographical area of Augusta, Maine will hold a public meeting on Wednesday, February 21, 2007, starting at 10 a.m. The meeting will be held at Mainely Trusses, Inc., 7 Truss Lane, Fairfield, ME.

The purpose of the meeting is to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mary McAleney, District Director, U.S. Small Business Administration, Maine District Office, 68 Sewall Street, Room 512, Augusta, Maine 04330, telephone (207) 622–8386; fax (207) 622–8277.

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–2226 Filed 2–9–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region IV Regulatory Fairness Board

The U.S. Small Business Administration (SBA) Region IV Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Thursday, February 22, 2007, at 10 a.m. The meeting will take place at the Auburn Avenue Research Library, 101 Auburn Avenue, NE., Atlanta, GA 30303. The purpose of the meeting is to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact James Hightower, in writing or by fax, in order to be placed on the agenda. James Hightower, Public Information Officer, SBA, Georgia District Office, 233 Peachtree Street, NE., Suite 1900, Atlanta, GA 30303, phone (404) 331-0100, Ext. 215 and fax (202) 481-2313, e-mail: *James.hightower@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–2228 Filed 2–9–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5666]

U.S. Advisory Panel to the U.S. Section of the North Pacific Anadromous Fish Commission; (Notice of Renewal)

The Department of State has renewed the Charter of the U.S. Advisory Panel to the U.S. Section of the North Pacific Anadromous Fish Commission (NPAFC) for another two years, effective February 1, 2007.

The NPAFC was established by the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, signed on February 12, 1992, by Canada, Japan, the Russian Federation, and the United States, and entered into force on February 16, 1993. The U.S. Advisory Panel will continue to work with the U.S. Section to promote the conservation of anadromous fish stocks, particularly salmon, throughout their migratory range in the North Pacific Ocean, as well as ecologically related species.

The U.S. Section of the Commission is composed of three Commissioners who are appointed by the President. Each Commissioner is appointed for a term not to exceed 4 years, but is eligible for reappointment. The Secretary of State, in consultation with the Secretary of Commerce, may designate alternate Commissioners. The Advisory Panel to the U.S. Section is composed of 14 members, 11 of whom are appointed by the Secretary, in consultation with the Secretary of Commerce. Advisory Panel members

[14] 17 CFR 200.30–3(a)(12).

serve for a term not to exceed 4 years, and may not serve more than two consecutive terms.

The Advisory Panel will continue to follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will continue to be open to the public unless a determination is made in accordance with Section 10 of the FACA, 5 U.S.C. 552b(c) (1) and (4), that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will continue to be provided for publication in the **Federal Register** as far in advance as possible prior to the meeting.

For further information on the renewal of the Advisory Panel, please contact Cynthia (Kate) Von Holle, Office of Marine Conservation in the Department of State, (202) 647–3464.

Dated: January 11, 2007.

Margaret F. Hayes,

Acting, Deputy Assistant Secretary, for Oceans and Fisheries, Department of State.

[FR Doc. E7–2346 Filed 2–9–07; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 5689]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Barcelona and Modernity: Gaudí to Dalí''

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the additional objects to be included in the exhibition ''Barcelona and Modernity: Gaudí to Dalí'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the additional exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about March 5, 2007, until on or about June 3, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

For Further Information Contact: For further information, including a list of the exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: February 5, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–2343 Filed 2–9–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5690]

Culturally Significant Object Imported for Exhibition; Determinations: ''Central European Galleries''

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition ''Central European Galleries,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The Metropolitan Museum of Art, New York, New York, from on or about February 28, 2007, until on or about February 28, 2009, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

For Further Information Contact: For further information, including a list of the exhibit object, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: February 5, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–2341 Filed 2–9–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5681]

Announcement of Meetings of the International Telecommunication Advisory Committee

Summary: This notice announces meetings of the International Telecommunication Advisory Committee (ITAC) to prepare advice on U.S. positions for the OAS CITEL Permanent Consultative Committee II (Radiocommunication), the International Telecommunication Union's Telecommunication Development Advisory Group (TDAG) and various Telecommunication Standardization Study Groups.

The ITAC will meet on March 13, 2007 2–4 p.m. to prepare advice for the meeting of PCC.II (Radiocommunication, including Broadcasting) of the Organization of American States Inter-American Telecommunications Commission (CITEL). Location of this meeting may be obtained by calling the Secretariat below.

The ITAC will meet on Thursday March 15, 2007 from 2–4 p.m. to prepare advice on U.S. positions to be taken at ITU-T Study Group 3 at the AT&T Innovation Center, 1133 21st Street, NW., Suite 210, Washington, DC. This meeting replaces one scheduled for March 8, 2007.

The ITAC will meet on March 15, 22, and 29, 2007 all 2–4 p.m. all in Room 2533A of the Harry S Truman Building to prepare advice for the meeting of the Telecommunication Development Advisory Group (TDAG).

The International Telecommunication Advisory Committee (ITAC) will meet by conference call to prepare for ITU–T Study Groups 11, 13, and 19 on March 30, 2007. People desiring to participate in this call should contact the Secretariat at *minardje@state.gov* or 202 647–3234 for directions.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare for ITU–T Study Group 15 on May 18, 2007 directly following the meetings of the Alliance for Telecommunications Industry Solutions (ATIS) committees OPTXS and NIPP in Minneapolis, MN. The location of this

meeting will be available from the Secretariat at *minardje@state.gov.*

The International Telecommunication Advisory Committee (ITAC) will meet to prepare for ITU–T Study Group 16 on June 7, 2007 9:30 a.m. to noon, at the offices of Communications Technologies Inc, 14151 Newbrook Drive, Suite 400, Chantilly, VA 20151.

These meetings are open to the public. Further information may be obtained from the Secretariat at *minardje@state.gov,* telephone 202 647–3234.

Dated: February 5, 2007.

Marian R. Gordon,

Director Telecommunication & Information Standardization, International Communications & Information Policy, Multilateral Affairs, Department of State.

[FR Doc. E7–2344 Filed 2–9–07; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary; Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending February 2, 2007

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2007–27184.

Date Filed: February 1, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 22, 2007.

Description: Application of Bellview Airlines Ltd., requesting a foreign air carrier permit to engage in scheduled foreign air transport of persons, property, and mail from a point or points in Nigeria via intermediate points, to a point or points in the United States and beyond, as well as other charter authority.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7–2337 Filed 2–9–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Public Meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held Tuesday, April 10, 2007 from 9 a.m. to 4:30 p.m.; Wednesday, April 11, 2007, from 9 a.m. to 4:30 p.m.; and Thursday, April 12, 2007, from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the CGH Technologies Inc. Office, Eighth Floor, Training Conference Room, 600 Maryland Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy B. Kalinowski, Executive Director, ATPAC, System Operations Airspace and Aeronautical Information Management, Room 400E, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9205.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held Tuesday, April 10, 2007 from 9 a.m. to 4:30 p.m.; Wednesday, April 11, 2007, from 9 a.m. to 4:30 p.m.; and Thursday, April 12, 2007, from 9 a.m. to 4:30 p.m.

The agenda for this meeting will cover a continuation of the ATPAC's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes;
2. Submission and Discussion of Areas of Concern;
3. Discussion of Potential Safety Items;
4. Report from Executive Director;
5. Items of Interest; and
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statement should notify Ms. Nancy B. Kalinowski no later than April 6, 2007. The next quarterly meeting of the FAA ATPAC is scheduled for July 24–26, 2007, in Washington, DC. Any member of the public may present a written statement to the ATPAC at any time at the address given above.

Issued in Washington, DC, on February 5, 2007.

Nancy B. Kalinowski,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. E7–2233 Filed 2–9–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION

Federal Presumed to Conform Actions Under General Conformity

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft notice; request for comment.

SUMMARY: The Clean Air Act (CAA) section 176(c), 42 U.S.C. 7506(c) and Amendments of 1990 [1] require that all Federal actions conform to an applicable State Implementation Plan (SIP). The U.S. Environmental Protection Agency (EPA) has established criteria and procedures for Federal agencies to use in demonstrating conformity with an applicable SIP that can be found at 40 CFR 93.150 *et.seq.* (''The Rule'').

The Rule allows Federal agencies to develop a list of actions that are presumed to conform to a SIP [2] for the criteria pollutants and their precursors that are identified in 40 CFR 93.153(b)(1) and (b)(2) and in the National Ambient Air Quality Standards (NAAQS) under 40 CFR 50.4–50.12.[3]

[1] Clean Air Act Title I Air Pollution Prevention and Control, Part D, Subpart 1, Section 176 Limitation on Certain Federal Assistance.

[2] 40 CFR Part 93, § 93.153(f).

[3] NAAQS established by the EPA represent maximum concentration standards for criteria

Continued

The criteria pollutants of concern for local airport air quality are ozone (O_3) and its two major precursors (volatile organic compounds (VOC) and nitrogen oxides (NO_X)), carbon monoxide (CO), nitrogen dioxide (NO_2), sulfur dioxide (SO_2),[4] and particulate matter consisting of small particulates with a diameter less than or equal to 2.5 micrometers ($PM_{2.5}$) and larger particulates with a diameter of up to 10 micrometers (PM_{10}).[5]

According to the Rule,[6] Federal agencies must meet the criteria for establishing activities that are presumed to conform by either:

(1) Clearly demonstrating that the total of direct and indirect emissions from the type of activities that would be presumed to conform would not:

(i) Cause or contribute to any new violation of any standard in any area;

(ii) Interfere with provisions in the applicable SIP for maintenance of any standard;

(iii) Increase the frequency or severity of any existing violation of any standard in any area; or

(iv) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including emission levels specified in the applicable SIP;[7] or

(2) Providing documentation that emissions from the types of actions that would be presumed to conform are below the applicable de minimis levels established in 40 CFR 93.153(b)(1) and (b)(2).[8] This documentation may be based on similar actions that the agency has taken over recent years.[9] Besides documenting the basis for presumed to conform activities, Federal agencies must fulfill procedural requirements under the Rule relating to publication in the **Federal Register**, notification to Federal/State/local agencies, opportunity for public comment, and availability of responses to public comments.[10]

In this Notice, the Federal Aviation Administration (FAA) is proposing categories of actions involving agency approval and financial assistance for airport projects that would be presumed to conform. The benefits of this process include the elimination of unnecessary agency costs associated with evaluating actions with few if any emissions. As a result, the agency will be able to streamline the environmental process by applying more of its resources to actions that have the potential to reach regulated emission levels or adversely impact air quality.

Addressing the need for efficiency and streamlining, the EPA states that the provisions allowing Federal agencies to establish categories of actions that are presumed to conform are ''intended to assure that these Rules are not overly burdensome and Federal agencies would not spend undue time assessing actions that have little or no impact on air quality.'' [11] Furthermore, the EPA states that ''Federal actions which are de minimis should not be required by this Rule to make an applicability analysis. A different interpretation could result in an extremely wasteful process which generates vast numbers of useless conformity statements.'' [12] Consequently, the Rule allows individual Federal agencies to present categories of actions that have been documented to be de minimis and, therefore should be ''presumed to conform'' to the Rule under 40 CFR 93.153(f).

This Notice contains a summary of documentation and analysis which demonstrates that actions described below will not exceed the applicable de minimis emission levels for nonattainment and maintenance areas, as specified under 40 CFR 93.153(b). In relation to the agency's demonstration of presumed to conform actions, the EPA has defined broad categories of actions in 40 CFR 93.153(c)(2) that are exempt from the Rule because the actions result in no emissions increase or an increase in emissions that is clearly de minimis. In this Notice, the FAA distinguishes various airport-related actions that are exempt under the Rule from those that the FAA proposes to be presumed to conform.

DATES: Written comments must be received on or before 45 days after the date of publication in the **Federal Register**.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Jake A. Plante, Planning and Environmental Division, Federal Aviation Administration, 800 Independence Avenue, APP–400, SW., Room 616, Office of Airports, Washington, DC 20591, *jake.plante@faa.gov*, phone (202) 493–4875, fax (202) 267–8821.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites comments on the following descriptions and justifications of agency actions that would be presumed to conform. We will accept comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person identified under **FOR FURTHER INFORMATION CONTACT**. Mark your comments, ''Federal Presumed to Conform Actions under General Conformity.''

Use the following format when preparing comments:

—Organize your comments issue-by-issue.

—For each issue, state what specific change you are requesting to the proposed policy.

—Include justification, reasons, or data for each change you are requesting.

The FAA will consider all communications received on or before the closing date for comments. We will respond by e-mail or other appropriate means to all comments received. Our responses to public comments will be documented and made available to the public upon request through the person identified under **FOR FURTHER INFORMATION CONTACT**.

Table of Contents: The major sections of this document are as follows:

I. Background
II. Existing Exemptions
III. Presumed to Conform Project Descriptions and Justifications
IV. How to Apply Presumed to Conform Actions

I. Background

Under the Rule (40 CFR 93.153(g)(h)), the FAA and other agencies are entitled to develop a list of proposed actions that are presumed to conform. The process of establishing presumed to conform classifications is predicated on the concept of conformity. Conformity assures that an activity that is presumed to conform does not cause or contribute to any new violation of the NAAQS or interfere with provisions contained in applicable SIPS.

The administration and enforcement of conformity regulations are delegated by the EPA to the individual States through provisions in each SIP. A SIP is the written plan submitted to the EPA detailing each State's strategy to control air emissions to meet and maintain the NAAQS in geographic areas that are designated as nonattainment areas. The

pollutants to protect human health (primary standards) and to protect property and aesthetics (secondary standards).

[4] FAA calculated SO_X is considered equal to SO_2.

[5] Smaller $PM_{2.5}$ particulate matter is a subset of PM_{10}. Levels for $PM_{2.5}$ are included in the NAAQS but not yet established for purposes of general conformity (no de minimis threshold or SIPs). Therefore, references in this Notice to PM_{10} also apply to $PM_{2.5}$ for purposes of presumed to conform actions.

[6] 40 CFR Part 93, § 93.153(g).

[7] 40 CFR Part 93, § 93.153(g)(1).

[8] Title 40 CFR Part 93, 93.153(g)(2).

[9] Ibid.

[10] Title 40 CFR Part 93, 93.153(h).

[11] 58 FR 63228 (Nov. 30, 1993).

[12] 12 58 FR 63229 (Nov. 30, 1993).

EPA requires each State to devise such a plan for each criteria pollutant causing violations or the EPA will impose a Federal implementation plan (''FIP'') for the State. When a nonattainment area achieves compliance with the NAAQS, it becomes a maintenance area for at least 10 years with ongoing State responsibility to ensure continued attainment.[13]

General conformity. General conformity refers to the process of demonstrating that a general Federal action conforms to the applicable SIP. A general Federal action is defined more by what it is not, rather than by what it is. A general Federal action is any Federal action that is not a Federal ''transportation'' action and consequently not subject to the conformity requirements established for Federal highway or transit actions, referred to as ''transportation conformity.'' A Federal transportation action is an action related to transportation plans, programs, and projects that are developed, funded, or approved under Title 23 United States Code (U.S.C.) or the Federal Transit Act (FTA).[14] Since FAA actions do not meet the definition of a transportation action, they are general actions by default and thus subject to the General Conformity Rule.

The FAA and other Federal agencies subject to general conformity must make a determination that the Federal action conforms to the SIP's purpose to meet and maintain the NAAQS before the action is taken. If the proposed actions are not specifically exempt or classified as presumed to conform, it is necessary to conduct an applicability analysis to determine if emissions are likely to equal or exceed the established screening criteria emission rates known as the de minimis thresholds. A general conformity determination is required for each pollutant identified as nonattainment or maintenance when the total of direct and indirect emissions caused by a Federal action equals or exceeds any of the applicable de minimis thresholds.[15]

FAA airport development actions subject to general conformity. The FAA is responsible for deciding whether its actions involving an airport located in a nonattainment or maintenance area require a general conformity evaluation.[16] FAA actions that require a conformity evaluation include unconditional approval of any or all parts of an airport layout plan (ALP), final Airport Improvement Program (AIP) grant approvals, and approvals for use of Passenger Facility Charges (PFCs). Other FAA actions that may require a conformity evaluation include proposed actions for which an environmental assessment (EA) or environmental impact statement (EIS) is prepared under the requirements of the National Environmental Policy Act.

Notification requirements for establishing a list of presumed to conform actions. Under procedures prescribed in the Rule, the FAA must notify the appropriate EPA regional offices, State and local air quality agencies, and Metropolitan Planning Organizations (MPO).[17] In addition, the FAA must publish the proposed list in the **Federal Register**, allowing a minimum of 30 days for public comment.[18] The FAA is required to document its response to all comments received and to make these comments and responses available to the public upon request.[19] Finally, the FAA must publish its final list of presumed to conform actions in the **Federal Register** to complete the process.[20]

II. Existing Exemptions

For the FAA to provide the proper context and baseline for identifying and proposing a list of presumed to conform Federal actions, it is important to consider the extent to which FAA airport-related actions and activities may qualify for exemption from general conformity requirements. The EPA has defined broad categories of exempt actions under 40 CFR 93.153(c)(2) that result in no emissions increase or increases in emissions that are clearly de minimis. These actions are not subject to further analysis for applicability, conformity, or regional significance under the Rule.

As part of this **Federal Register** Notice, the FAA has interpreted how the exemptions in the Rule apply to FAA actions associated with airport facilities and aviation planning. The following discussion addresses the most relevant examples of these exemptions regarding FAA actions for airport development.

(1) Rulemaking and Policy Development [40 CFR 93.153(c)(2)(iii)]

The FAA develops rules and policies to address issues of safety, aviation noise abatement, and systematic improvements to efficiency. This includes issuance of airport policy and planning documents for the National Plan of Integrated Airport Systems (NPIAS), the Airport Capital Improvement Program (ACIP), and Advisory Circulars on planning, design, and development programs. These documents provide administrative and technical guidance to the airport community and the public and are not intended for direct implementation. The actual process of rulemaking or policy development is typically administrative in nature and does not cause an increase in air emissions.

(2) Routine Maintenance and Repair Activities [40 CFR 93.153(c)(2)(iv)]

In conformance with FAA standards and regulations, the airport sponsor must maintain airport facilities and the airfield in a manner that ensures the safe operation of the airport. These activities constitute Federal actions when Federal funding from the FAA is involved. Airport maintenance, repair, removal, replacement, and installation work that matches the characteristics, size, and function of a facility as it existed before the replacement or repair activity typically qualifies as routine maintenance and repair for purposes of general conformity. Such activity does not increase the capacity of the airport or change the operational environment of the airport.

The FAA does not consider major runway reconstruction to qualify as exempt under the Rule if the reconstruction results in a runway that is hardened, lengthened, or widened to support a larger class of aircraft. Proposed funding for such a project would require analysis of emission levels to determine the applicability of general conformity requirements.

Routine maintenance for existing runways, taxiways, aprons, ramps, fillets, and airport roadways includes in-kind resurfacing,[21] re-marking of existing runways, taxiways, apron areas, etc., and runway grooving and rubber removal projects. Other areas of routine replacement, maintenance, and repair work that may be considered exempt from the Rule include:

- Existing signage.
- Existing lighting systems.
- Existing pavement markings.

[13] CAA, § 175A, 42 U.S.C. § 7505a.

[14] 49 U.S.C. 1601 *et seq.*

[15] 40 CFR Part 93, § 93.153(b).

[16] ''Conformity evaluation'' refers to the overall process of assessing whether an action/project is subject to general conformity requirements, which may include an applicability analysis needed to make a conformity determination. See Question #1, EPA and FAA General Conformity Guidance for Airports: Questions and Answers, September 25, 2002.

[17] 40 CFR Part 93, § 93.153(h)(2).

[18] 40 CFR Part 93, §§ 93.153(h)(1)–(2).

[19] 40 CFR Part 93, § 93.153(h)(3).

[20] 40 CFR Part 93, § 93.153(h)(4).

[21] Depending on numerous factors affecting surface conditions, airports will generally resurface asphalt runways every 7–10 years.

• Wind or landing direction indicators.

• Existing airport security access control.

• Existing buildings and structures.

• Existing heating, ventilation, and air conditioning (HVAC) systems.

• Existing infrastructure such as sanitary sewer or electrical systems.

• General landscaping, erosion control, and grading.

(3) The Routine, Recurring Transportation of Materiel and Personnel [40 CFR 93.153(c)(2)(vii)]

The transport of materiel and personnel both within airport environs and to facilities affiliated with the routine operation of airports may be considered exempt under the Rule.

(4) Routine Movement of Mobile Assets, Such As * * * Aircraft * * * for Repair or Overhaul [40 CFR 93.153(c)(2)(viii)]

The movement of aircraft to/from airports with maintenance and test facilities for repair and overhaul may be considered exempt from the Rule.

(5) Planning, Studies, and Provisions of Technical Assistance [40 CFR 93.153(c)(2)(xii)]

Planning and information-related actions do not represent implementation of operational changes at the airport and therefore do not result in emission increases. Consequently, actions such as those listed below may be considered exempt from the Rule:

• FAA funding and acceptance of Master Plans and Updates

• FAA funding of System Planning Studies

• FAA acceptance of noise exposure maps and approval of noise compatibility programs pursuant to 49 U.S.C. 47501 *et seq.*, as implemented by 14 CFR Part 150

• FAA approval of noise and access restrictions on operations by Stage 3 aircraft under 49 U.S.C. 47524, as implemented by 14 CFR Part 161

(6) Routine Operation of Facilities, Mobile Assets and Equipment [40 CFR 93.153(c)(2)(xiii)]

Normal day-to-day activities that occur at airports, such as vehicle movements, building operations, and aircraft movements that do not increase the capacity of the airport or change the operational environment of the airport may be considered exempt from the Rule.

(7) Transfers of Ownership, Interests, and Titles in Land, Facilities, and Real and Personal Properties, Regardless of the Form or Method of the Transfer [40 CFR 93.153(c)(2)(xiv)] and

(8) Actions (or Portions Thereof) Associated With Transfers of Land, Facilities, Title, and Real Properties Through an Enforceable Contract or Lease Agreement Where the Delivery of the Deed Is Required To Occur Promptly After a Specific, Reasonable Condition Is Met, Such as Promptly After the Land Is Certified as Meeting the Requirements of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and Where the Federal Agency Does Not Retain Continuing Authority To Control Emissions Associated With the Lands, Facilities, Title, or Real Properties [40 CFR 93.153(c)(2)(xix)]

Actions by the FAA to transfer or acquire land or equipment do not increase the capacity of the airport or change the operational environment affecting air emissions. Such actions include funding or approving transfers, acquisitions, or releases by airport sponsors, [22] or preparing and executing related contracts or written agreements. Related actions that may be considered exempt from the Rule are:

• Facilities and equipment purchases.

• Land acquisition and relocation assistance.

• Land releases for which there is no reasonable expectation of a change in land use.

• Avigation easement acquisition.

• Acquisition of an existing privately owned airport involving only change of ownership.

(9) Alterations and Additions of Existing Structures as Specifically Required By New or Existing Applicable Environmental Legislation or Environmental Regulations (e.g., Hush Houses for Aircraft Engines* * *) [40 CFR 93.153(d)(4)]

Actions that are initiated in response to specific environmental laws and regulations (e.g., energy efficiency, noise abatement structures and equipment) may be considered exempt from the Rule. These actions include:

• Equipment purchases.

• Protective noise barriers.

• Required noise mitigation actions including the installation and operation of hush houses for aircraft and engine maintenance.

(10) Federal Actions Which Are Part of a Continuing Response to an Emergency or Disaster [40 CFR 93.153(d)(2) and (e)]

Actions in response to emergencies, natural disasters, etc., that involve overriding concerns for public health and welfare, national security interests, or foreign policy commitments may be exempt from general conformity requirements for six months and possibly longer if justified in writing by the agency.[23]

III. Presumed to Conform Project Descriptions and Justifications

The FAA began the process of developing and documenting presumed to conform actions with a detailed environmental survey of airport projects. The survey was conducted by all FAA regional offices, which identified approved airport projects over a recent two-year period that received a categorical exclusion (CATEX) or Finding of No Significant Impact (FONSI).[24] This information was requested only for airports included in areas designated as nonattainment or maintenance by the EPA. Information compiled from these surveys described about 600 completed projects at over 100 airports.

The survey information was processed by assigning each airport planning and development project into one of two categories: (1) Projects that are exempt from the requirements of the Rule as defined by 40 CFR 93.153(e); or (2) projects that require an applicability analysis before being defined as *de minimis* (i.e., presumed to conform), according to 40 CFR 93.153(c)(1). Specific information on the application of these two project categories is presented in Section II and Section III of this document, respectively.

In the analysis of the survey results, any airport project that exceeded *de minimis* levels even once was considered ineligible for the presumed to conform list. Follow-up communications with airports and FAA regional representatives helped to clarify terminology and confirm the reliability of the presumptions. In addition, the FAA performed detailed worst-case analyses where practicable in areas where project size and implementation could conceivably result in the exceedance of *de minimis* levels.

[22] Airport ''sponsors'' are planning agencies, public agencies, or private airport owners/operators that have the legal and financial ability to carry out the program requirements for FAA financial assistance.

[23] Airports located in nonattainment or maintenance areas with small regional emission budgets may need to check whether a proposed exempt action might be regionally significant under 40 CFR Part 93, § 93.153(i).

[24] FAA Order 1050.1E, Chapter 3 (CATEX) and Chapter 4, section 406 (FONSI), pursuant to the National Environmental Policy Act.

The airport project survey data and other agency experience in implementing similar actions taken over recent years provide the fundamental basis for all of the presumed to conform classifications. The FAA conducted additional quantitative analyses for specific project areas, as practicable. These analyses are summarized in Section III, and include the following: Pavement markings; terminal upgrades; commercial vehicle staging areas; non-runway paving; heating, ventilation, and air conditioning (HVAC) systems; and low-emission technology and alternative fuel vehicles.

Based on the survey of airport projects, the additional evaluations, and quantitative analyses, only those project categories that were proven to be reliably and consistently *de minimis* were classified as presumed to conform. In general, FAA presumed to conform actions involve maintenance, navigation, construction, safety, security activities, and new technology and vehicle systems that do not modify or increase airport capacity or change the operational environment of the airport in such a way as to increase air emissions above *de minimis* thresholds.

Presented below are the airport project descriptions and justifications for FAA actions that are presumed to conform. There are fifteen project categories, which are discussed in the following order:

1. Pavement Markings.
2. Pavement Monitoring Systems.
3. Non-Runway Pavement Work.
4. Aircraft Gate Areas on Airside.
5. Lighting Systems.
6. Terminal and Concourse Upgrades.
7. New HVAC Systems, Upgrades, and Expansions.
8. Airport Security.
9. Airport Safety.
10. Airport Maintenance Facilities.
11. Airport Signage.
12. Commercial Vehicle Staging Areas.
13. Low-Emission Technology and Alternative Fuel Vehicles.
14. Air Traffic Control Activities and Adopting Approach, Departure and Enroute Procedures for Air Operations.
15. Routine Installation and Operation of Aviation Navigation Aids.

1. Pavement Markings

Airport sponsors apply paint on paved surfaces, such as runways, taxiways, apron areas, cargo areas, and parking lots to ensure the safe operation of aircraft during approach and landing and to provide safe direction for surface vehicles. Most pavement marking projects are considered routine maintenance activities, qualifying as exempt from the Rule (see Section II, number 2 of this Notice). These actions are designed to restore and improve painted surfaces that have deteriorated due to time, use, and weather.

Federal actions that alter airport use through new pavement markings are not routine maintenance but are presumed to conform if such actions do not increase airport capacity or introduce a larger class of aircraft at the airport. For example, new runway markings for improved flight procedures from visual flight rules (VFR) to instrument flight rules (IFR) are presumed to conform if normal traffic flow is maintained.

Pollutant emissions due to the paint application process are primarily composed of VOC from the paint, and NO_X emitted from the trucks and application compressors required to prepare the surface and apply the paint. Emissions of both VOC and NO_X are considered precursors to the development of ozone in the atmosphere. Therefore, emissions from the application of painted pavement markings pertain most importantly to ozone nonattainment and maintenance areas.

A worst-case calculation of emissions was performed based on equipment and types of paint required to mark a Category III 13,000-foot runway with an instrument lighting system (ILS) to FAA specifications. The calculation of emissions included the removal of existing markings using water pressure through a compressor mounted on a diesel truck, a pavement sweeper truck to remove debris, the application of the paint using an air compressor mounted on a diesel truck, and a small hand sprayer for detailed markings, such as squared corners. A total of 2,492 gallons of paint (a combination of white, yellow, and black) were applied to the representative runway at a rate of 115 square feet per gallon of paint. The trucks transporting the paint and compressors were assumed to be similar to a single axle, Class 7 diesel pickup truck.[25] The sweeper was assumed to be a regenerative diesel air power model, using a chassis engine and an auxiliary engine to power the brushes. Manufacturers' Material Safety Data Sheets were referenced for the VOC emissions factors for the three colors of latex paint. Emissions factors for the criteria and precursor pollutants were obtained from the EPA Nonroad Engine and Vehicle Emission Study-Report.[26] Load factors and horsepower ratings were obtained from the EPA Nonroad Engine and Vehicle Emission Study-Report and Median Life, Annual Activity, and Load Factor Values for Nonroad Engine Emissions Modeling.[27]

The maximum volume of paint that could be applied without equaling or exceeding the *de minimis* thresholds for any nonattainment and maintenance classification was calculated.[28] For instance, an airport located within an extreme nonattainment area for ozone is limited to net project emissions of 10 tons of VOC per year. This translates into an annual application of 21,890 gallons of paint, which also causes 0.21 tons[29] of NO_X emissions. For example, this volume of paint would mark eight Category III 13,000-foot ILS runways. A volume of paint on the order of one million gallons is required to cause emissions of NO_X to equal 10 tons per year. Likewise, a volume of paint on the order of five million to 176 million gallons is required in order to be sufficient to exceed the *de minimis* thresholds for CO, SO_2, or PM_{10}. Therefore, VOCs are the limiting pollutant[30] for the application of paint at airports and emissions of NO_X, CO, SO_2, and PM_{10} are considerably less. Table III–1 provides the gallon application limits, which include the use of construction equipment for pavement markings in nonattainment and maintenance areas.

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[25] The Gross Vehicle Weight Rating (GVWR) system defines a Class 7 diesel truck as one that can carry 26,001 to 33,000 pounds of weight on two axles.

[26] EPA Report 460/3–91–02, November 1991, Nonroad Engine and Vehicle Emission Study—Report.

[27] EPA Report NR–005A, December 9, 1997, revised June 15, 1998, Median Life, Annual Activity, and Load Factor Values for Nonroad Engine Emissions Modeling.

[28] Calculations of maximum paint volume include consideration of construction equipment.

[29] Short tons, where one ton equals 2,000 lbs.

[30] The limiting pollutant is defined as the criteria pollutant that first exceeds *de minimis* levels for a given project.

Table III-1

PRESUMED TO CONFORM LIMITS FOR SELECTED PROJECTS

NONATTAINMENT AND MAINTENANCE AREA CLASSIFICATIONS						PRESUMED TO CONFORM AIRPORT PROJECTS			
Classification Characteristics and Pollutant					TPY	Pavement Markings (gallons) 1/	Terminal Upgrades (ft^2)	Commercial Vehicle Staging Areas (ft^2)	New Airfield Work (non-runway) (ft^2)
NONATTAINMENT	OZONE	Serious		NO_x	50	5,235,194	92,945	1,123,179	1,096,929
				VOC	50	109,455	770,658	11,939,754	11,916,560
		Severe		NO_x	25	2,617,596	46,473	561,584	548,453
				VOC	25	54,727	385,329	5,969,817	5,958,160
		Extreme		NO_x	10	1,047,033	18,589	224,626	219,368
				VOC	10	21,890	154,132	2,387,855	2,383,112
		Marginal & Moderate	Inside OTR	NO_x	100	10,470,384	185,891	2,246,370	2,193,881
				VOC	50	109,455	770,658	11,939,754	11,916,560
			Outside OTR	NO_x	100	10,470,384	185,891	2,246,370	2,193,881
				VOC	100	218,911	1,541,316	23,879,629	23,833,359
	CO				100	5,612,654	350,565	6,112,122	6,669,263
	SO_2				100	176,376,634	1,805,687	24,233,530	23,682,564
	NO_2				100	13,960,500	185,891	2,995,159	2,925,175
	PM_{10}		Moderate		100	134,668,450	1,698,110	26,042,637	26,050,568
			Serious		70	94,267,915	1,188,677	18,229,806	18,235,280
	$PM_{2.5}$				100	134,668,450	1,698,110	26,042,637	26,050,568
MAINTENANCE	OZONE	NO_x			100	10,470,384	185,891	2,246,370	2,193,881
		VOC	Inside OTR		50	109,455	770,658	11,939,754	11,916,560
			Outside OTR		100	218,911	1,541,316	23,879,629	23,833,359
	CO				100	5,612,654	350,565	6,112,122	6,669,263
	SO_2				100	176,376,634	1,805,687	24,233,530	23,682,564
	NO_2				100	7,852,788	185,891	2,995,159	2,925,175
	PM_{10}				100	134,668,450	1,698,110	26,042,637	26,050,568
	$PM_{2.5}$				100	134,668,450	1,698,110	26,042,637	26,050,568

Notes: TPY is tons per year; ft^2 is square feet.
OTR is Ozone Transport Region
1/ Maximum annual volume of paint necessary to reach de minimis thresholds accounts for construction emissions.

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2. Pavement Monitoring Systems

Airports have the option of installing a pavement monitoring system to indicate when the durability and strength of the pavement needs to be reinforced. These systems are implemented for safety reasons to ensure that an airport's runway, taxiway, and apron network are sufficiently able to support the weight of aircraft. Minor construction work is required for the installation of the monitoring system. Assuming the installation requires the use of a pickup truck, a utility truck, an excavator, an asphalt paver, a compactor, and a small generator, construction would have to proceed continuously (eight hours per day, 20 days per month) for more than

a year (1.1 years) in order to produce emissions near the level of 10 tons of NO_X. For the remaining criteria pollutants and precursors, construction on the order of several years would be required to approach the *de minimis* thresholds. Pavement monitoring systems are installed in less than a week; therefore, project construction emissions are well below *de minimis* and presumed to conform.

3. Non-Runway Pavement Work

Airfield pavement must be constructed to withstand the weight of aircraft and to produce a firm, stable, smooth, year-round, all-weather surface. The pavement must be of such quality and thickness that it will not fail under the weight of aircraft and it must possess sufficient inherent stability to withstand, without damage, the abrasive action of aircraft traffic and adverse weather conditions.[31] These pavement specifications apply to non-runway areas of the airfield where aircraft operate, including taxiways, apron areas, and gate areas. The specific pavement requirements are satisfied by applying rigid pavement consisting of layers of crushed stone bound and pressed into a smooth surface.

Airfield construction projects considered to be presumed to conform are limited to areas of the airfield intended to accommodate aircraft for purposes of loading or unloading passengers or cargo, refueling, or aircraft parking, and are generally referred to as apron areas. These types of airfield projects do not include projects intended to increase airport capacity or those that are otherwise defined as routine maintenance for existing apron areas.

Pollutant emissions due to airfield construction are solely from the use of construction equipment and are primarily comprised of NO_X, a precursor to ozone development, and CO resulting from the trucks operated to haul the large amounts of stone and gravel that must be used to form the support layers for the paving material.

The evaluation of emissions from airfield paving was based on a representative project in the FAA Eastern Region. The project required equipment and materials to construct approximately 600,000 square feet of airfield and concrete shoulder area with an assumed surface design life of 20 years.[32] The conservative calculation of emissions included the preparation of the site allowing for a four-inch geotextile layer of subgrade soil, a four-inch frost protection layer of crushed stone, a four-inch sub base layer of finely crushed stone, an eight-inch base layer of gravel mixed with a stabilizer such as cement,[33] and the application of a six-inch layer of Portland cement concrete.[34] This type of construction design allows for a total pavement thickness of 26 inches; the minimum total pavement thickness for the accommodation of jet aircraft weighing 100,000 pounds or more is 20 inches.[35] Also included in the construction emissions inventory is the installation of a drainage system.

Emissions factors for construction equipment were obtained from the EPA's 1991 Nonroad Engine and Vehicle Emission Study—Report.[36] Load factors and horsepower ratings for the construction equipment were obtained from the EPA's 1991 Nonroad Engine and Vehicle Emission Study—Report and the EPA's 1997 Median Life, Annual Activity, and Load Factor Values for Nonroad Engine Emissions Modeling.[37]

The maximum allowable square footage of airfield construction was calculated for each nonattainment and maintenance category. The analysis showed that NO_X was the limiting pollutant for airfield paving projects and that emissions of VOC, CO, SO_2, and PM_{10} are considerably less in comparison with NO_X.

Table III–1 provides the area limits for non-runway airfield construction in nonattainment and maintenance areas. For instance, an airport located within an area designed as extreme nonattainment for ozone, which limits net project emissions to the rate of 10 tons per year of NO_X, is limited to constructing 219,368 square feet (5.04 acres) of apron area, which also causes 0.93 tons of VOC emissions. As a reference, four acres is generally sufficient to provide remote or ''hardstand'' (non-gate) parking for three narrow-body aircraft. Construction of an airfield/apron area on the order of 2.38 million square feet (54.7 acres) causes emissions of VOC up to 10 tons per project, creating emissions of NO_X of approximately 109 tons. New airfield construction on the order of 150 to 600 acres would be required to exceed the *de minimis* thresholds for CO, SO_2 and PM_{10}. Generally speaking, emissions of NO_X are on the order of three times the emissions of CO for these types of projects and are more than 10 times the emissions of the remaining criteria pollutants.

4. Aircraft Gate Areas on Airside

Aircraft gate areas refer to the area outside of the terminals and concourses where jetways are used to link parked aircraft to the terminal building. Federal actions to improve aircraft gate areas can be part of airport modernization efforts involving new airline tenants or the introduction of newer and more efficient technology. Aircraft gate areas involve a wide range of activities from aircraft loading and unloading of passengers and cargo to the servicing of aircraft by lavatory, food supply, and maintenance vehicles.

Upgrades to the aircraft gate area are often needed to accommodate changing flight schedules and daily activity. The addition or modification of jetways to existing terminal buildings is typically done to adjust to changes in air travel demand and airline requirements. Such projects are intended to improve passenger terminal service by reducing passenger queuing and waiting times. Actions to approve or fund the upgrading of aircraft gate areas are presumed to conform provided such actions do not increase aircraft operations or introduce a larger class of aircraft at the airport.

5. Lighting Systems

Airport sponsors may need to install new lighting systems to maintain proper illumination of roadways, taxiways, runways, and parking areas. The data from the FAA surveys indicated that airport upgrading and installing of new lighting systems is done on an as-needed basis.

Minor mechanical work is required for the installation effort, followed by electrical work that does not require large off-road construction equipment. Assuming the installation requires the use of a pickup truck, a utility truck, an excavator, and a small generator, the construction will have to proceed continuously (eight hours a day, 20 days a month) for more than 17 months (1.4 years) in order to produce emissions near the level of 10 tons of NO_X. For the remaining criteria pollutants and precursors, construction on the order of

[31] FAA AC 150/5320–6D, September 7, 1995, Airport Pavement Design and Evaluation.

[32] As recommended under FAA AC 150/5320–16, October 22, 1995, Airport Pavement Design for the Boeing 777 Airplane.

[33] Stabilized base layers as necessary for new pavements designed to accommodate jet aircraft weighting 100,000 pounds or more. FAA AC 150/5320–6D, September 7, 1995, Airport Pavement Design and Evaluation.

[34] Portland cement is a hydraulic cement made by heating a mixture of limestone and clay in a kiln and pulverizing the resulting material.

[35] FAA AC 150/5320–6D, September 7, 1995, Airport Pavement Design and Evaluation.

[36] EPA Report 460/3–91–02, November 1991, Nonroad Engine and Vehicle Emission Study—Report. Table 2–07 Emission Factors.

[37] EPA Report NR–005A, December 9, 1997, revised June 15, 1998, Median Life, Annual Activity, and Load Factor Values for Nonroad Engine Emissions Modeling.

several years would be required to approach the de minimis thresholds. Runway and other lighting systems can be installed in less than two weeks; therefore, project construction emissions are well below de minimis and presumed to conform.

6. Terminal and Concourse Upgrades

The opportunity to expand or upgrade terminals and/or concourses for the purpose of improving passenger convenience typically involves increasing the interior terminal space in areas such as hold rooms, concessions, restrooms, and gate areas. Qualifying projects in this category do not have the effect of attracting more passengers. Nor do they have the effect of increasing the airport's ability to accommodate additional numbers or types of aircraft or to increase passenger loading on scheduled flights. Major terminal and/or concourse expansion projects that are designed to increase passenger usage or to support increased airfield capacity through new aircraft gates, runways, taxiways, etc. require an inventory of direct and indirect emissions to determine the applicability of general conformity.

Construction vehicles and equipment are the only source of emissions when expanding or upgrading terminals. A conservative approach to quantifying construction emissions was used to determine the appropriate limits for this type of activity. The emission limits are presented in Table III–1 under ''Terminal Upgrades'' according to the de minimis thresholds.

A proposed terminal expansion project located in the FAA's Southern Region was used as the representative project. The terminal was proposed to have an additional footprint of 381,000 square feet. This proposed project was purposely selected to provide a conservative estimate of construction emissions normally released from this type airport improvement activity, even though this presumed to conform activity is limited to non-capacity enhancing projects. Emissions were quantified in this case from construction activities, including soil cement preparation, subgrade preparation, light and heavy demolition, cement base treatment, installation of the grade aggregate base, construction of the terminal, light and heavy utility work, and light and heavy earthwork. In addition, the proposed terminal expansion was assumed to occur within the same calendar year instead of the proposed schedule of seven years.

Construction emissions were calculated using prescribed EPA methodology incorporating the projected construction activity level, the number of construction vehicles and equipment, and industry-wide utilization rates. Emission factors for construction vehicles and equipment were taken from EPA databases for nonroad vehicles and engines,[38] and their updates.[39]

A proposed terminal/concourse expansion project is presumed to conform up to the square foot additions (footprint) of the project as determined by the most limiting pollutant (see Table III–1). The prescribed build-out limits per calendar year apply to all components of the terminal/concourse upgrade project according to the air quality status of the area in which the project is located.

7. New HVAC Systems, Upgrades, and Expansions

Upgrading and expanding heating, ventilation, and air conditioning (HVAC) systems are presumed to conform because any emission increases associated with improvements to airport heating and cooling systems are generally minor and well below de minimis thresholds.

Heating for airport terminal buildings is typically provided through a boiler system.[40] Boilers may be fueled by natural gas, coal (bituminous, sub-bituminous, or anthracite), No. 5 and No. 6 fuel oil (residual), No. 2 fuel oil (diesel), culm fuel, and liquefied petroleum gas (propane or butane). Pollutant emissions due to the operation of boilers vary with the fuel used. The emission factors for the various fuels are presented in Table III–2 below.

A new, upgraded, or expanded boiler system involves the installation of new equipment to replace or expand the capacity of existing boiler systems. Boilers can be very large and are sometimes delivered on flatbed semi-tractor trailer trucks and set in place by a crane. Table III–3 presents the construction emissions, primarily NO_X and CO, associated with the installation of a large boiler as described.

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[38] EPA Report 460/3–91–02, November 1991, Nonroad Engine and Vehicle Emission Study—Report.

[39] EPA Report NR–005A, December 9, 1997, revised June 15, 1998, Median Life, Annual Activity, and Load Factor Values for Nonroad Engine Emissions Modeling.

[40] A boiler is an encased vessel that provides a means for combustion heat to be transferred into water until it becomes steam. The steam is then used to heat the building through a network of pipes. When water is boiled into steam its volume increases about 1,600 times, which is an efficient means for transferring heat for a process. HVACWebTech, Inc.

Table III-2
EMISSION FACTORS FOR BOILER FUELS

FUEL TYPE AND UNITS OF MEASURE	EMISSIONS INDICES (kg/fuel unit of measure)[1/]						TOTAL EMISSIONS PER UNIT OF FUEL (fuel unit of measure)[1/]	
	CO	NO_X	PM_{10}	$PM_{2.5}$	SO_2	HC	kg	lbs
Coal								
Bituminous Coal, metric tons	9.0	16.5	73.39	55.800	42.770	0.650	198.1	436.7
Subbituminous Coal, metric tons	3.0	12.0	67.19	51.100	37.800	0.055	171.1	377.2
Anthracite Coal, metric tons	0.3	9.0	34.79	15.700	17.360	0.035	77.1	170.0
Culm Fuel, metric tons	0.3	0.9	2.40	1.080	1.450	0.035	6.2	13.7
Fuel Oil								
Fuel Oil No. 6, kiloliters	0.6	6.6	3.21	2.340	58.500	0.192	71.4	157.4
Fuel Oil No. 5, kiloliters	0.6	6.6	1.00	0.729	58.500	0.192	67.6	149.0
Fuel Oil No. 2, kiloliters	0.6	2.9	0.15	0.056	5.850	0.067	9.6	21.2
Natural Gas, 1,000's m^3	1.6	4.5	0.12	0.120	0.010	0.180	6.5	14.3
Liquefied Petroleum Gas (LPG)								
LPG: Butane, kiloliters	0.4	2.5	0.07	0.070	0.005	0.070	3.2	7.1
LPG: Propane, kiloliters	0.4	2.3	0.07	0.070	0.006	0.060	2.9	6.4

Notes: Depending on the fuel, the value for "HC" could be total hydrocarbons (THC), total organic compounds (TOC), or total non-methane organic compounds (TNMOC).

1/ kg is kilograms, where emissions indices are given in kg per unit of fuel measurement. The units used for each fuel are given in column "Fuel Type and Units of Measure." Each fuel category is measured uniquely by volume in metric tons, in kiloliters, or in thousands of cubic meters (m^3).

Source: FAA, Emissions and Dispersion Modeling System (EDMS) Version 4.2, 2004.

Table III-3
CONSTRUCTION EMISSIONS FOR BOILER INSTALLATION
(Tons per installation)

SO_2	NO_x	PM_{10}	$PM_{2.5}$	CO	HC
0.00123	0.01347	0.00155	0.00155	0.00481	0.00144

Note: HC is hydrocarbons.
Source: Airtron Heating and Air Conditioning, Columbus, Ohio, 2002.
EPA Report 460/3-91-02, November 1991, *Nonroad Engine and Vehicle Emission Study – Report.*
Landrum & Brown, 2003.

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Airport terminals consume energy for heat at a higher rate than most public buildings. The reasons for this include the open areas surrounding many airports, heat loss from the movement of people and baggage in and out of buildings, and the usual 24-hour operation of facilities. The consumption of energy to generate heat is also dependent upon the design of the terminal building. For instance, many airport terminals are designed with exterior glass walls or incorporate design, art, and architectural treatments that reflect local customs and community history.[41] The many variations of airport terminal design, including geographical location, make it impractical to identify the "typical terminal building" for purposes of determining total emissions. Therefore, the presumption of conformity could not be based on the characteristics of the building, but rather on the volume of fuel consumed.

[41] FAA AC 150/5360–13, April 22, 1988, Planning and Design Guidelines for Airport Terminal Facilities.

As discussed, emissions resulting from the operation of boilers depend on the type of fuel powering the boiler system. Emissions from the use of propane, butane, and natural gas are of concern in ozone nonattainment and maintenance areas since the primary pollutant from combustion of these fuels is NO_X, a precursor to ozone formation. Hydrocarbons (HCs) are another precursor to ozone but they are relatively low for these fuel types in comparison to NO_X emissions. The primary pollutant from the combustion of fuel oil (No. 2 diesel, and No. 5 and

No. 6 residual) is SO_2, while particulate matter is the primary pollutant from the combustion of coal, including culm fuel). Therefore, NO_X, SO_2, and PM_{10} are the most likely limiting pollutants for the operation of boiler systems at airports.

Table III–4 below presents maximum annual fuel throughput for heating systems and boilers by fuel type at levels that do not equal or exceed the de minimis thresholds. The FAA Emissions and Dispersion Modeling System (EDMS) was used to perform the calculations. EDMS emission factors are conservatively based on EPA's AP–42 emissions quantification methodology.[42]

[42] FAA, 2005, Emissions and Dispersion Modeling System EDMS Version 4.2.

The analysis shows, for example, that an airport located in a severe nonattainment area for ozone, with a de minimis NO_X threshold of 25 tons per year, could operate new or improved boilers using up to 5.05 million cubic meters of natural gas annually, which is sufficient to heat a building of approximately 210,000 square feet.[43] NO_X emissions in a severe ozone nonattainment area would be limited to 3,434 kiloliters (kl) of No. 6 fuel oil (residual), 7,816 kl of No. 2 fuel oil (diesel), 9,855 kl of propane, 1,374 metric tons of bituminous coal, or 2,519 metric tons of anthracite coal on an annual basis.

[43] Assuming a 100,000 sq. ft. one-floor building would require approximately 2.4 million cubic meters of natural gas to heat the building, annually; based on the industry standard heat value, 1,000 BTU per cubic foot of natural gas, annually [Airtron Heating and Air Conditioning, Columbus, Ohio].

The installation, upgrade, or expansion of an airport HVAC system that requires a permit under new source review (NSR) or prevention of significant deterioration programs is exempt from a general conformity determination.[44] The inclusion of airport boiler installations/modifications as a presumed to conform activity does not affect existing or future requirements of Federal, State or local air quality operating permit programs. Proper compliance with all applicable environmental regulations must be maintained.

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[44] 40 CFR Part 93, 93.153(d)(1).

Table III-4
PRESUMED TO CONFORM LIMITS FOR SELECTED BOILER PROJECTS (PAGE 1 OF 2)

NONATTAINMENT AND MAINTENANCE AREA CLASSIFICATIONS						PRESUMED TO CONFORM AIRPORT PROJECTS				
						Heating System/Boiler – Maximum Annual Fuel Throughput for *De Minimis* Emissions [1/]				
Classification Characteristics and Pollutants					TPY[2/]	Anthracite Coal (mt/y)	Bituminous Coal (mt/y)	Sub-bituminous Coal (mt/y)	Culm Fuel (mt/y)	Fuel Oil No. 2 (diesel) (kl/y)
NONATTAINMENT	OZONE	Serious		NO_x	50	5,038	2,748	3,779	50,384	15,636
				VOC	50	1,295,916	69,780	824,673	1,295,916	681,036
		Severe		NO_x	25	2,519	1,374	1,889	25,185	7,816
				VOC	25	647,939	34,889	412,325	647,933	340,508
		Extreme		NO_x	10	1,007	549	755	10,066	3,124
				VOC	10	259,145	13,954	164,911	259,145	136,187
		Marginal & Moderate	Inside OTR	NO_x	100	10,078	5,497	7,559	100,784	31,278
				VOC	50	1,295,916	69,780	824,673	1,295,916	681,036
			Outside OTR	NO_x	100	10,078	5,497	7,559	100,784	31,278
				VOC	100	2,591,907	139,564	1,649,395	2,591,903	1,362,113
	CO				100	302,378	10,079	30,238	302,378	151,189
	SO_2				100	5,227	2,121	2,400	62,563	15,507
	NO_2				100	13,438	7,330	10,078	134,384	41,705
	PM_{10}		Moderate		100	2,608	1,236	1,350	37,798	604,776
			Serious		70	1,825	865	945	26,458	423,336
	$PM_{2.5}$				100	2,608	1,236	1,350	37,798	604,776
MAINTENANCE	OZONE	NO_x			100	10,078	5,497	7,559	100,784	31,278
		VOC	Inside OTR		50	1,295,916	69,780	824,673	1,295,916	681,036
			Outside OTR		100	2,591,907	139,564	1,649,395	2,591,903	1,362,113
	CO				100	302,378	10,079	30,238	302,378	151,189
	SO_2				100	5,227	2,121	2,400	62,563	15,507
	NO_2				100	13,438	7,330	10,078	134,384	41,705
	PM_{10}				100	2,608	1,236	1,350	37,798	604,776
	$PM_{2.5}$				100	2,608	1,236	1,350	37,798	604,776

Notes: Units of fuel measurement, mt/y is metric tons per year, kl/y is kiloliters per year, 1000's m^3/y is thousands of cubic meters (m^3) per year.
OTR is the Ozone Transport Region, which under CAA Amendments, Section 184(a), includes the States of CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, and the the Consolidated Metropolitan Statistical Area that includes the District of Columbia.

1/ Maximum annual volume of fuel necessary for *de minimis* emissions accounts for the construction emissions given in Table III-3.

2/ TPY is tons per year representing the *de minimis* thresholds.

Table III-4
PRESUMED TO CONFORM LIMITS FOR SELECTED BOILER PROJECTS (PAGE 2 OF 2)

NONATTAINMENT AND MAINTENANCE AREA CLASSIFICATIONS						PRESUMED TO CONFORM AIRPORT PROJECTS				
						Heater System/Boiler – Maximum Annual Fuel Throughput for *De Minimis* Emissions [1/]				
Classification Characteristics and Pollutants					TPY[2/]	Fuel Oil No. 5 (kl/y)	Fuel Oil No. 6 (kl/y)	LPG: Butane (kl/y)	LPG: Propane (kl/y)	Natural Gas (1,000's m^3/y)
NONATTAINMENT	OZONE	Serious		NO_x	50	6,871	6,871	18,138	19,716	10,009
				VOC	50	235,866	235,866	647,957	755,950	251,984
		Severe		NO_x	25	3,434	3,434	9,067	9,855	5,048
				VOC	25	117,930	117,930	323,969	377,964	125,988
		Extreme		NO_x	10	1,373	1,373	3,624	3,939	2,018
				VOC	10	47,166	47,166	129,573	151,168	50,389
		Marginal & Moderate	Inside OTR	NO_x	100	13,743	13,743	36,282	39,437	20,202
				VOC	50	235,866	235,866	647,957	755,950	251,984
			Outside OTR	NO_x	100	13,743	13,743	36,282	39,437	20,202
				VOC	100	471,746	471,746	1,295,953	1,511,946	503,982
	CO				100	151,189	151,189	210,961	238,720	56,695
	SO_2				100	1,551	1,551	16,799,347	13,999,438	9,071,688
	NO_2				100	18,325	18,325	48,378	52,585	26,937
	PM_{10}		Moderate		100	90,717	28,296	1,295,949	1,295,950	755,968
			Serious		70	63,501	19,807	907,150	907,155	529,168
	$PM_{2.5}$				100	90,717	28,296	1,295,949	1,295,950	755,968
MAINTENANCE	OZONE	NO_x			100	13,743	13,743	36,282	39,437	20,202
		VOC	Inside OTR		50	235,866	235,866	647,957	755,950	251,984
			Outside OTR		100	471,746	471,746	1,295,953	1,511,946	503,982
	CO				100	151,189	151,189	210,961	238,720	56,695
	SO_2				100	1,551	1,551	16,799,347	13,999,438	9,071,688
	NO_2				100	18,325	18,325	48,378	52,585	26,937
	PM_{10}				100	90,717	28,296	1,295,949	1,295,950	755,968
	$PM_{2.5}$				100	90,717	28,296	1,295,949	1,295,950	755,968

Notes: Units of fuel measurement, mt/y is metric tons per year, kl/y is kiloliters per year, 1000's m^3/y is thousands of cubic meters (m^3) per year.
OTR is the Ozone Transport Region, which under CAA Amendments, Section 184(a), includes the States of CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, and the the Consolidated Metropolitan Statistical Area that includes the District of Columbia.

1/ Maximum annual volume of fuel necessary for *de minimis* emissions accounts for the construction emissions given in Table III-3.

2/ TPY is tons per year representing the *de minimis* thresholds.

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8. Airport Security

Based on collected project information and additional agency experience with airport security actions following the events of September 11, 2001, the FAA has determined that dedicated security-related airport projects qualify as presumed to conform actions, including modification of existing terminals with luggage and passenger scanning devices, addition of camera surveillance, bolstering of airport security fencing, and reinforcement of airport access control. In most cases, the installation of security equipment and upgraded operations in existing facilities will not result in the generation of air emissions. If the construction and installation of

some dedicated security projects do cause emissions, these emissions will be minor and well below the *de minimis* thresholds.

Security requirements also may dictate that parking spaces close to terminal buildings be eliminated.[45] As a result, FAA actions associated with the expansion of parking facilities to compensate for lost close-in parking are presumed to conform provided these actions are limited to a one-for-one replacement of parking capacity. Generally, the relocation of parking spaces away from the terminal building will reduce vehicle miles traveled (VMT) on airport property, resulting in an emissions decrease.

It is important to note that this category of presumed to conform actions is separate from exempt Federal actions under the Rule that are part of a continuing response to an emergency or disaster.[46] Agency use of the emergency exemption is limited in time and must involve overriding concerns for public health and welfare, national security interests, and foreign policy commitments.[47]

9. Airport Safety

Airport projects relating to airport safety include actions specific to the Runway Safety Area (RSA). FAA regulations specify the requirements for a RSA, which is defined as the surface area that surrounds and extends beyond the runway ends that is required for reducing the risk of damage to airplanes in the event of an undershoot, overshoot, or excursion from the runway.[48] RSA improvements are presumed to conform unless a new road or the relocation of a road is required.

In addition to a safe airfield, airport projects to build, expand, replace, upgrade, or equip a required Aircraft Rescue and Firefighting Facility (ARFF) are presumed to conform. These facilities are relatively small airport projects and must be provided by the airport to ensure airport and passenger safety. Airports must meet ARFF requirements as specified under 14 CFR 139.317, and are responsible for upgrading an ARFF if there is an increase in the average daily departures or the length of an air carrier aircraft.[49]

10. Airport Maintenance Facilities

Airport maintenance facilities house the equipment necessary to run, service, and maintain the airport environs. These facilities can include vehicle service centers, fueling stations, and storage areas for snow removal and maintenance equipment. FAA actions associated with upgrading airport-owned maintenance facilities are presumed to conform based on the fact that these facilities typically require only minor construction. However, the installation or upgrading of aircraft maintenance facilities (typically owned by an airline or charter company) that are used to paint or maintain aircraft at an airport are not considered presumed to conform because aircraft maintenance facilities may cause an increase in flights to meet maintenance schedules.

11. Airport Signage

Airport sponsors place signs throughout the airport property to direct passengers, employees, and vendors to terminals, parking lots, rental car areas, maintenance areas, etc. In addition, airports provide a network of signs to direct aircraft and vehicles on the airfield. Airport signage is often electrified for illumination at night and for other times of limited visibility. In general, airport signage installation can be completed in a matter of days or weeks. It would require more than a year of continuous installation to exceed the 25-ton threshold for NO_X. Therefore, airport signage installation projects are presumed to conformed.

12. Commercial Vehicle Staging Areas

Commercial vehicle staging areas at airports serve as temporary holding areas for taxicabs, limousines, and other commercial vehicles. Such areas reduce the need to idle at the terminal curb front and help to decongest the terminal roadways. Airports that employ commercial vehicle staging areas may enforce specific idling restrictions or engine-off mandates to further reduce air quality impacts. Generally, the use of commercial vehicle staging areas is an emissions reduction strategy because the alternative inherently creates more emissions from increased traffic and congestion at the terminal.

A Federal action to develop a commercial vehicle staging area for purposes of relieving airport traffic congestion is presumed to conform based on the criteria provided in Table III–1 for a ''Commercial Vehicle Staging Area.'' Providing a commercial vehicle staging area does not cause an increase in the volume of vehicles on regional roadways and impacts air quality only through the use of construction equipment to pave the staging area. Construction emissions are primarily comprised of NO_X and CO.

The quantity of emissions associated with the construction of an asphalt taxicab staging area was based on a construction design for a regional asphalt roadway. The calculation of emissions included activities such as excavation, preparation of the subgrade, adding a base layer of stone, fine grading, and paving. The paving process included the application of a tack coat, wearing course, and the final seal coat. The type and use of construction equipment was determined based on information obtained from the R.S. Means' Means Building Construction Cost Data, and the State of Ohio Department of Transportation's Manual of Procedures for Flexible Pavement Construction and Pavement Design and Rehabilitation Manual. Rated horsepower and load factors for each construction unit was obtained from the EPA's Nonroad Engine and Vehicle Emission Study-Report and Median Life, Annual Activity, and Load Factor Values for Nonroad Engine Emissions Modeling, and the Caterpillar Performance Handbook. Emission factors were obtained from the EPA's Nonroad Engine and Vehicle Emission Study-Report.

The acreage that could be paved without equaling or exceeding the de minimis thresholds for each applicable nonattainment or maintenance category was calculated and summarized in Table III–1. For instance, an airport located within an area designated as severe nonattainment for ozone, which limits net project emissions to an annual rate of 25 tons of NO_X, is limited to a commercial vehicle staging area of about 13 acres, or 561,584 square feet, which results in 2.35 tons of VOC emissions. Paving of approximately 137 acres is required to cause emissions of VOC of nearly 25 tons, as established for a severe nonattainment area for ozone. In order to approach the 100 ton de minimis thresholds for other criteria pollutants, paving areas of approximately 140 acres would be required for CO, 556 acres for SO_2, and more than 595 acres for PM_{10}. Therefore, NO_X is the limiting pollutant for paving projects at airports and emissions of VOC, CO, SO_2, and PM_{10} are considerably less in comparison to NO_X.

13. Low-Emission Technology and Alternative Fuel Vehicles

A growing number of airports are interested in new technology and vehicle systems to reduce stationary and mobile emissions. Based on agency and airport low-emission programs over the past several years, which provide extensive data and documentation to verify the emission reduction benefits of

[45] FAA Aviation Security Directive issued February 2002.

[46] 40 CFR Part 93, 93.153(e).

[47] Ibid.

[48] FAA AC 150/5300–13, September 29, 1989, Airport Design.

[49] Per index under 14 CFR Part 139, 139.319(a).

new low-emission technology, these activities are presumed to conform.

Activities that are presumed to conform include the replacement, substitution, or conversion of conventional fuel vehicles (gasoline, diesel) to vehicles using alternative or clean conventional fuel technology. Qualified activities also encompass airport low-emission infrastructure improvements and the use of refueling or recharging stations needed to service airport low-emission vehicles.

All low-emission activities funded through the FAA Voluntary Airport Low Emission Program (VALE) or that are required as part of environmental mitigation are presumed to conform.[50] The VALE program requires that vehicles purchased under the program meet specific low-emission standards and that these vehicles and other program equipment remain at the airport for their useful life.

14. Air Traffic Control Activities and Adopting Approach, Departure and Enroute Procedures for Air Operations

The preamble to the General Conformity Rule [51] states that:

''In order to illustrate and clarify that the de minimis levels exempt certain types of Federal actions, several de minimis exemptions are listed in § 51.853(c)(2). There are too many Federal actions that are de minimis to completely list in either the rule or this preamble.''

As an illustration of exempt actions, EPA states in the preamble that ''Air traffic control activities and adopting approach, departure and enroute procedures for air operations'' are among other actions that are de minimis (preamble, p. 63229, I(2)) and should be exempt from the Rule. The FAA concurs with the EPA determination that air traffic control activities are de minimis. However, because these activities are cited in the preamble but not in the Rule itself, the FAA believes that it is prudent to document these activities as presumed to conform.

Air traffic control activities are defined as actions that promote the safe, orderly, and expeditious flow of aircraft traffic, including airport, approach, departure, and enroute air traffic control.[52] Airspace and air traffic actions (e.g., changes in routes, flight patterns, and arrival and departure procedures) are implemented to enhance safety and increase the efficient use of airspace by reducing congestion, balancing controller workload, and improving coordination between controllers handling existing air traffic, among other things. Although increased efficiency and delay reduction would allow traffic volume to increase, in FAA's experience such actions do not lead to increased annual aircraft operations or changes to the operational level of airports in the vicinity of the air traffic changes. In today's deregulated environment, market forces determine where airlines fly and how often.

Emissions released into the atmosphere above the inversion base for pollutant containment, commonly referred to as the ''mixing height,'' (generally 3,000 ft. above ground level) do not have an effect on pollution concentrations at ground level.[53] [54] Therefore, air traffic control actions above the mixing height are presumed to conform.

In addition, the results of FAA research on mixing heights indicated that changes in air traffic procedures above 1,500 ft. AGL and below the mixing height would have little if any effect on emissions and ground concentrations.[55] Such actions in the vicinity of the airport are tightly constrained by runway alignment, safety, aircraft performance, weather conditions, terrain, and vertical obstructions.[56] Accordingly, air traffic actions below the mixing height are also presumed to conform when modifications to routes and procedures are designed to increase safety, enhance fuel efficiency, or reduce community noise impacts by means of engine thrust reductions. Other air traffic procedures and system enhancements that are presumed to conform include actions that have no effect on air emissions or result in air quality improvements, such as gate hold procedures which reduce queuing, idling, and flight delays.

15. Routine Installation and Operation of Airport Navigation Aids

Aviation navigation aids represent the facilities and equipment used for communications, navigation, and surveillance (CNS) systems.[57] The use and maintenance of CNS systems is essential to safe air commerce and national security.[58] Airports are required to establish adequate maintenance systems for navigational aid facilities to the level of performance achieved at original commission.[59]

Similar to the previous presumed to conform action for air traffic control activities, EPA states in the preamble that ''routine installation and operation of aviation (and maritime) navigation aids'' are below de minimis and should be considered exempt actions.[60] The FAA concurs with EPA in this determination. However, because the stated activities are cited in the preamble but not in the Rule itself, the FAA believes that it is prudent to document these activities as presumed to conform.

The routine installation, in-kind replacement, and maintenance of navigational aids (e.g., Air Traffic Control Towers (ATCT), Instrument Landing Systems (ILS), Approach Light Systems (ALS)) are presumed to conform because these activities will not generate emissions that exceed de minimis levels. Moreover, emissions generated by construction equipment and maintenance vehicles used to transport workers and equipment to CNS system sites are negligible considering the temporary nature of construction and maintenance activities and the limited number of vehicles involved.

If the installation of new or upgraded navigational aids for improved safety and efficiency also increases the capacity of the airport or changes the operational environment of the airport, these CNS activities are not presumed to conform.[61]

Also presumed to conform are CNS emergency or standby generators powered by natural gas or LPG. These generators provide electric power in case of primary power failure and are operated intermittently, with an estimated total time of operation of less than 100 hours per year. Because of the infrequent use and small size (135 kilowatts or less) of the engine generators and the use of clean-burning fuels, the engine generators produce negligible air emissions.

IV. How To Apply Presumed To Conform Actions

The qualifying project categories discussed in the preceding section may be referred to as the FAA ''presumed to

[50] FAA Order 5100.38C, Airport Improvement Program Handbook, June 2005, §§ 580, 585.

[51] 58 FR 63229 (Nov. 30, 1993).

[52] 14 CFR Part 170, § 170.3.

[53] EPA Report, Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources [420–R–92–009], section 5.2.2., 1992.

[54] Realistic Mixing Depths for Above Ground Aircraft Emissions, Journal of the Air Pollution Control Association, Vol. 25, No. 10, Howard M. Segal, Boeing, 1975.

[55] Report on ''Consideration of Air Quality Impacts by Airplane Operations At or Above 3,000 feet AGL,'' FAA–AEE–00–01, September 2000, p. 5.

[56] FAA Advisory Circulars No. 25–13 and No. 91–53A describe requirements that must be met when using reduced power for takeoff.

[57] 14 CFR 171.1–171.51.

[58] 14 CFR 169.1(a)

[59] 14 CFR Part 171.

[60] 58 FR 63229, I(6) (Nov. 30, 1993).

[61] Consistent with FAA Order 1050.1E, Section 401 ''Actions Normally Requiring an Environmental Assessment''

conform list.'' As authorized under the CAA, the list provides an additional way for the FAA to improve its environmental program management while still ensuring that agency air quality goals and requirements are met. Use of the list will reduce review times, eliminate unnecessary paperwork, clarify analytical requirements for all project actions, and insure that the proper level of documentation is applied in each case. Moreover, in some instances, the presumed to conform list can provide another method that the FAA and airport sponsors can use to demonstrate conformity with an applicable SIP.

When applying the presumed to conform list, the FAA must determine whether a proposed presumed to conform action has independent utility under the National Environmental Policy Act (NEPA)[62] or whether such action is part of a combined or larger action that might result in cumulative air quality impacts.[63]

The proposed project has independent utility. If a presumed to conform project has independent utility, no general conformity evaluation or applicability analysis is required and agency officials may simply document that the project action is considered presumed to conform on the basis of this Notice and the applicable project category.

This allowance meets a major intent of presumed to conform—namely to reduce the analysis burden for actions that have little or no direct or indirect emissions. In its separate analysis of each project category in the presumed to conform list, the FAA has shown that the resulting emissions from any presumed to conform action would always be below the applicable de minimis thresholds.[64]

The proposed project is a combined action. If a presumed to conform action is part of a combined action (e.g., an EIS or large EA generally), agency officials may exclude the emissions of one presumed to conform action from the calculation of total direct and indirect emissions in the applicability analysis and, if required, a general conformity determination. In combined actions, however, emissions from the presumed to conform action must be analyzed, quantified, and clearly documented in the applicability analysis or general conformity determination if required. Further discussion of this allowance is provided below.

Combined actions are considered connected actions under NEPA, which the Council on Environmental Quality (CEQ) defines as actions that are closely related and that:

—Automatically trigger other actions which may require environmental impact statements
—Cannot or will not proceed unless other actions are taken previously or simultaneously
—Are interdependent parts of a larger action and depend on the larger action for their justification[65]

Effective implementation of the presumed to conform list requires a balance between NEPA considerations on connected actions and the permitted exclusion of presumed to conform emissions under the Rule. As stated in § 93.152 under Definitions: ''The portion of emissions which are exempt or presumed to conform under Section 93.153(c), (d), (e), or (f) are not included in the ''total of direct and indirect emissions.'' Similarly, the preamble (58 FR 63233) states: ''The final rule requires the inclusion of the total direct and indirect emissions in the applicability and conformity determinations, except the portion of emissions which are exempt or presumed to conform * * *''

The approach adopted herein for the presumed to conform list is consistent with the Rule and places a conservative limit on the permitted exclusion of presumed to conform emissions. Moreover, based on interagency communications with the EPA, the agency's approach conforms to the EPA's belief that a Federal agency may exclude the emissions of one presumed to conform action from the applicability analysis of total direct and indirect emissions that are not otherwise exempt and from a conformity determination if required. As a result, even if a combined action includes multiple presumed to conform actions, the FAA and airport sponsors may only exclude the emissions from one presumed to conform action vis-à-vis the project's total direct and indirect emissions. Agency officials maintain the right to select the specific presumed to conform action to exclude if more than one is present in the combined action.

By being able to exclude emissions from a presumed to conform action, the agency may show that the project's total direct and indirect emissions that are not otherwise exempt do not equal or exceed any of the de minimis thresholds in the Rule. The presumed to conform action could therefore make a difference as to whether or not a general conformity determination is required. Specifically, the applicability analysis of total direct and indirect emissions, plus emissions calculated separately for the presumed to conform action, could show that the combined action would equal or exceed the de minimis thresholds if not for the allowable subtraction of emissions from the presumed to conform action.

In a combined action, the presumed to conform action must be evaluated similarly and at the same level as other elements in the overall project. This assessment typically involves the quantification of direct and indirect emissions on a calendar year basis. The estimated annual emissions from the presumed to conform action must be identified as a separate line item in the applicability analysis and clearly explained and presented in the study documentation.

Regional Significance

Under 40 CFR 93.153(j) of the Rule, a Federal action that is presumed to conform action may still be subject to a general conformity determination if the action is shown to be regionally significant.[66] The purpose of the regionally significant requirement is to capture those Federal actions that fall below de minimis threshold levels but still have the potential to impact the air quality of a region.

By definition, if the total of direct and indirect emissions of any pollutant from a Federal action represent 10 percent or more of a maintenance or nonattainment area's total emissions of that pollutant, the action is considered to be a regionally significant activity and the General Conformity Rule applies. If an action in a nonattainment area is below the thresholds or is otherwise presumed to conform and is not regionally significant, then the General Conformity Rules does not apply and no official reporting is required under Section 176(c) of the CAA.

The FAA Air Quality Handbook states that an airport project that is presumed to conform is unlikely to have emission levels that are regionally significant.[67] This is because, based on the highest de minimis threshold level (100 tons per year), in order for an action's net

[62] 40 CFR 1506.1(c)(1), Council on Environmental Quality, Regulations for Implementing the Procedural Provisions of NEPA.

[63] 40 CFR 1508.25(1)

[64] The FAA did no evaluate combined emissions from two or more presumed to conform categories.

[65] 40 CFR 1508.25(1).

[66] A regionally significant Federal Acton is an action that has total emissions (the sum of direct and indirect emissions) that represent 10 percent or more of a nonattainment or maintenance area's total emissions of that pollutant [40 CFR Part 93, § 93.153(i) and (j)].

[67] FAA and USAF, April 1997, Air Quality Procedures for Civilian Airports & Air Force Bases.

emissions to represent 10 percent or more of a maintenance or nonattainment area's total emissions of a particular pollutant, the area's total emissions inventory for any pollutant must be less than 1,000 tons, which is unlikely. Based on this rationale, the presumed to conform activities in this Notice are not considered to be regionally significant.

Issued in Washington, DC on February 5, 2007.

Charles R. Everett, Jr.,

Manager, Planning and Environmental Division, Office of the Associate Administrator for Airports.

[FR Doc. E7–2241 Filed 2–9–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2007–27203]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under Supplementary Information. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by April 13, 2007.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA–2007–27203 by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, 20590–0001.
- *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.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room 401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mike Neathery, 202–366–1257 or Martin Weiss, 202–366–5010, Office of Interstate and Border Planning, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Rural Transportation Research.

Background: Section 5513(f) of The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005 (SAFETEA–LU) provides a grant to the New England Transportation Institute (hence ''the Institute'') in White River Junction, Vermont, to conduct rural transportation research. The Institute will undertake research and analysis in support of two research issues: (1) Rural Transportation Issues Definition and Refinement; and (2) Rural Transportation Safety and Health. The research includes a 2-part survey to develop information that will help support a ''portrait'' of present rural transportation patterns. Applying the concepts of both ''mobility'' and ''accessibility'' to the rural Northeast, the Institute's surveys will explore the issues of ''rural isolation'' and driver travel behavior. The survey will address these questions:

- How serious a problem is rural isolation and perceptions of access (or lack thereof)?
- How are the economic forces acting on the rural areas affecting the manner, and length of trips in the rural Northeast?
- How are demographics going to change and/or influence the demands made on the transportation system? and
- What would be the transportation implications of different settlement patterns?

Respondents: Approximately 800 respondents for survey 1 and 600 respondents for survey 2.

Frequency: one time.

Estimated Average Burden per Response: 30 minutes per survey.

Estimated Total Annual Burden Hours: Approximately 700 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: February 6, 2007.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E7–2224 Filed 2–9–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than April 13, 2007.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Gina Christodoulou, Office of Support Systems Staff, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number ___.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or via e-mail to Mr. Brogan at *robert.brogan@dot.gov,* or to Ms. Christodoulou at *gina.christodoulou@dot.gov.* Please refer

to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Gina Christodoulou, Office of Support Systems Staff, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of the two currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Foreign Railroads' Foreign-Based (FRFB) Employees Who Perform Train or Dispatching Service in the United States.

OMB Control Number: 2130–0555.

Abstract: The collection of information is used by FRA to determine compliance of FRFB train and dispatching service employees and their employers with the prohibition against the abuse of alcohol and controlled substances. Because of the increase in cross-border train operations and the increased risk posed to the safety of train operations in the United States, FRA seeks to apply all of the requirements of 49 CFR part 219 to FRFB train and dispatching service employees. The basic information—evidence of unauthorized use of drugs and alcohol—is used by FRA to help prevent accidents/incidents by screening FRFB who perform safety-sensitive functions for unauthorized drug or alcohol use. FRFB train and dispatching service employees testing positive for unauthorized use of alcohol and drugs are removed from service, thereby enhancing safety and serving as a deterrent to other FRFB train and dispatching service employees who might be tempted to engage in the unauthorized use of drugs or alcohol.

Form Number(s): None.

Respondent Universe: 2 Railroads.

Frequency of Submission: On occasion.

Affected Public: Foreign-based railroads and their employees.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
219.4—Recognition of Foreign Railroads' Workplace Testing Programs: Petitions to Agency—Comments on Petition.	2 railroads	1 petition	10 hours	10	$370
	2 railroads/public	2 comments + 2 comment copies.	2 hours	4	148
219.401/403/405—Voluntary referral and Co-worker Report Policies.	2 railroads	2 policies	30 hours	60	2,364
219.403/405—Evaluation by Substance Abuse Professional.	2 railroads	3 reports/referrals	2 hours	6	900
219.405(c)(1)—Report by a Co-worker	2 railroads	1 report	5 minutes	.08	3
219. 601(a)—Railroad Random Drug Testing Programs—Amendments to Programs.	2 railroads	2 programs	16 hours	32	1,184
	2 railroads	1 amendment	1 hour	1	37
219.601(b)(1)—Random Selection Procedures—Drugs.	2 railroads	24 documents	4 hours	96	1,440
219.601(b)(4), 219.601(d)—Notice to Employees of Random Drug Testing Program—Notice to Employees of Selection for Testing.	2 railroads	2 notices	10 hours	20	740
	2 railroads	20 notices	1 minute	.333	12
219.603(a)—Notice by Employee Asking to be Excused from Urine Testing.	200 employees	2 excuses	15 minutes	.5	22
219.607(a)—Railroad Random Alcohol Testing Programs: Amendments.	2 railroads	1 amendment	1 hour	1	37
219.609—Notice by Employee Asking to be Excused from Random Alcohol Testing.	200 employees	2 excuses	15 minutes	.5	22
219.903—Retention of Urine Drug Testing Records.	2 railroads	80 records	5 minutes	7	105

Total Responses: 145.

Total Estimated Total Annual Burden: 238 hours.

Type of Request: Extension of a currently approved collection.

Title: Special Notice For Repairs.

OMB Control Number: 2130–0504.

Abstract: The Special Notice For Repairs is issued to notify the carrier in writing of an unsafe condition involving a locomotive, car, or track. The carrier must return the form after repairs have been made. The collection of information is used by State and Federal inspectors to remove freight cars or locomotives until they can be restored to a serviceable condition. It is also used by State and Federal inspectors to reduce the maximum authorized speed on a section of track until repairs can be made.

Form Number(s): FRA F 6180.8; FRA F 6180.8a.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Total Responses: 57.

Total Estimated Annual Burden: 6 hours.

Type of Request: Extension of a currently approved collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on February 6, 2007.

D.J. Stadtler,

Director, Office of Budget, Federal Railroad Administration.

[FR Doc. E7–2225 Filed 2–9–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and Request For Comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on December 5, 2006 (71 FR 70581).

DATES: Comments must be submitted on or before March 14, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, D.C. 20590 (telephone: (202) 493–6292) or Ms. Gina Christodoulou, Office of Support Systems Staff, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, D.C. 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On December 5, 2006, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. See 71 FR 70581. FRA received no comments after issuing this notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); see also 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Control of Alcohol and Drug Use in Railroad Operations.

OMB Control Number: 2130–0526.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): FRA F 6180.73; 6180.74.

Abstract: The information collection requirements contained in pre-employment and ''for cause'' testing regulations are intended to ensure a sense of fairness and accuracy for railroads and their employees. The principal information—evidence of unauthorized alcohol or drug use—is used to prevent accidents by screening personnel who perform safety-sensitive service. FRA uses the information to measure the level of compliance with regulations governing the use of alcohol or controlled substances. Elimination of this problem is necessary to prevent accidents, injuries, and fatalities of the nature already experienced and further reduce the risk of a truly catastrophic accident.

Annual Estimated Burden Hours: 31,797 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503; Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on February 6, 2007.

D.J. Stadtler,

Director, Office of Budget, Federal Railroad Administration.

[FR Doc. E7–2293 Filed 2–9–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of an Environmental Impact Statement for the Berkeley/Albany Ferry Terminal Project in the Cities of Berkeley and Albany, California

AGENCY: U.S. Department of Transportation (DOT), Federal Transit Administration (FTA).

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration and the San Francisco Bay Water Transit Authority (WTA) are planning to prepare an Environmental Impact Statement (EIS) for the proposed construction of a ferry terminal along the Berkeley/Albany waterfront that would link the San Francisco Ferry Terminal with communities in the East Bay. The project would serve commuters, visitors, and recreational users who desire an alternative way to cross San Francisco Bay to access nearby employment, entertainment, and recreational destinations. The EIS will be prepared in accordance with section 102(2)C of the National Environmental Policy Act of 1969 (NEPA) and pursuant to the Council on the Environmental Quality's regulations (40 CFR parts 1500–08) as well as provisions of the recently enacted Safe, Accountable, Flexible Efficient Transportation Equity Act: A Legacy for Users. (SAFETEA-LU). The purpose of this Notice of Intent (NOI) is to alert interested parties regarding the plan to prepare an EIS, to provide information on the proposed transit project, to invite participation in the EIS process, including comments on the scope of the EIS proposed in this notice, and to announce public scoping meetings will be conducted.

DATES: Written comments on the scope of the EIS should be sent to John Sindzinski, WTA Project Manager, by March 30, 2007. Public scoping meetings will be held on March 8, 2007, and March 15, 2007, from 6:30 pm to 8:30 pm at locations indicated under the heading **ADDRESSES** below. An interagency scoping meeting for agencies with interest in the project will be held on March 7 from 1:30 pm to 3:30 pm at the South Berkeley Senior Center, 2939 Ellis Street, Berkeley, California.

ADDRESSES: Written comments on the scope of the EIS should be sent to John Sindzinski, Project Manager, San Francisco Bay Water Transit Authority, Pier 9, Suite 111, The Embarcadero, San Francisco, CA 94111. Comments may also be offered at the public scoping meetings. The addresses for the public scoping meetings are as follows:

Albany Location (March 15)

Albany City Hall, 1000 San Pablo Avenue, Albany, California.

Berkeley Location (March 8)

North Berkeley Senior Center, 1901 Hearst Avenue, Berkeley, California.

The meeting will be accessible to persons with disabilities. If special translation or signing services or other special accommodations are needed, please contact Delphine Henri at (415) 274–1821 at least 48 hours before the meeting. A scoping information packet is available on the Water Transit Authority Web site at *http://www.watertransit.org* or by calling Delphine Henri (415) 274–1821. Copies will also be available at the scoping meetings.

FOR FURTHER INFORMATION CONTACT: Alex Smith, Community Planner, Federal Transit Administration, San Francisco Regional Office at (415) 744–2599.

SUPPLEMENTARY INFORMATION: *The Proposed Project:* The project would initiate ferry service between the East Bay communities of Berkeley/Albany and the San Francisco Ferry Terminal administered by the WTA. Service would operate during the day and evenings, including Saturdays and Sundays, at headways that would reflect the travel demand for commute and non-commute periods. Depending on the Berkeley/Albany terminal site selected, one-way travel times would range from approximately 30 and 45 minutes. The project would involve constructing a new ferry docking facility; passenger ticketing and sheltered waiting area on the pier; car and bike parking; bus boarding; and provision for pedestrian, bicycle and traffic circulation at a location along the Berkeley/Albany waterfront. Dredging would be conducted to allow ferry vessels access to the terminal site. In San Francisco, existing San Francisco Ferry Terminal facilities would be utilized for this new service and would not require modification.

Purpose and Need for the Proposed Project: In July 2003, the WTA finalized the Implementation and Operations Plan (IOP) to expand ferry service throughout San Francisco Bay. The IOP included ferry service between San Francisco and Berkeley/Albany as an element of a regional ferry network. Regional Measure 2, approved by local voters in March 2, 2004, earmarked funds for developing a comprehensive strategy to address congestion on Transbay corridors. The San Francisco to Berkeley/Albany ferry service was designated as a priority transportation project in carrying out this strategy. The project would:

- Provide an alternative mode of transportation that would encourage automobile users to forego traveling by car across the Bay Bridge, thus reducing congestion on the Bay Bridge
- Provide additional Transbay capacity to existing BART and AC Transit services
- Provide an alternative way of crossing the Bay during regional emergencies
- Provide direct access for San Francisco residents to the Eastshore State Park and other activity centers in the Berkeley/Albany area
- Provide direct access for East Bay residents to employment and activity centers along and near the San Francisco waterfront

Alternatives: A study of potential ferry terminal sites in the Berkeley/Albany area was completed by the WTA in July 2006. The Berkeley/Albany Ferry Terminal Study is available on the Water Transit Authority Web site at *http://www.watertransit.org.* On July 27, 2006, four sites were approved by the WTA Board to be carried forward as alternatives for further review and environmental analysis in the EIS. In addition to the No Build alternative, four Build alternatives are being considered in the EIS as described below.

1. *No Build Alternative:* This alternative would continue the existing transit services connecting the East Bay communities of Berkeley/Albany with San Francisco without implementing ferry service. Programmed bus and rail transit improvements between the East Bay and San Francisco identified in the Regional Transportation Plan would be implemented as part of the No Build alternative. This alternative serves as the baseline against which the environmental effects of the other alternatives are measured.

2. *Alternative A—Berkeley Marina Site.* This alternative would include a new terminal and docking facilities at the Doubletree Hotel along the eastern end of the Berkeley Marina for a WTA ferry terminal site. Hornblower

operation, currently using the existing dock, also would be accommodated in the design. Access to the site would be provided via the western extension of University Avenue and Marina Boulevard. Parking, passenger drop-off and bus boarding would be accommodated in the existing parking areas surrounding the Doubletree Hotel.

3. *Alternative B—Berkeley Fishing Pier Site.* This alternative would include a new ferry terminal located south of the existing fishing pier near Hs Lordships restaurant. Access to the site would be provided via the western extension of University Avenue. The existing parking areas in the vicinity of Hs Lordships and Skates would be designed to accommodate ferry parking, passenger drop-off, and bus boarding.

4. *Alternative C—Gilman Street Site.* This alternative would locate a new ferry terminal in the general vicinity of the western end of Gilman Street adjacent to the existing Golden Gate horse facilities, which would need to be relocated to accommodate ferry parking, passenger drop-off and bus boarding. Access to the site would be provided via Gilman Street and would avoid conflicting with the City of Berkeley's Gilman Street Recreation facilities, currently under construction immediately west of I–80.

5. *Alternative D—Buchanan Street site.* This alternative would locate a new ferry terminal south of the Albany Bulb and at the northern end of Golden Gate Field near the old pier. Access to the site would be provided via Buchanan Street. A portion of the existing Golden Gate Field parking area would be used for ferry parking, passenger drop-off and bus boarding.

The EIS Process and the Role of Participating Agencies and the Public: The purpose of the EIS process is to explore in a public setting potentially significant effects of implementing the proposed action and alternatives on the physical, human, and natural environment. Areas of investigation include, but are not limited to, land use, environmental justice, historic resources, visual and aesthetic qualities, air quality, noise and vibration, energy use, traffic, safety and security, wetlands, threatened and endangered species, and hazardous materials. Measures to avoid, minimize, or mitigate any significant adverse impacts will be identified. Regulations implementing NEPA, as well as provisions of the recently enacted Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), call for public involvement in the EIS process. Section 6002 of SAFETEA–LU requires that FTA and PCJPB do the following: (1) Extend an invitation to other Federal and non-Federal agencies and Indian tribes that may have an interest in the proposed project to become ''participating agencies'', (2) Provide an opportunity for involvement by participating agencies and the public in helping to define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the impact statement, and (3) Establish a plan for coordinating public and agency participation in and comment on the environmental review process. An invitation to become a participating agency, with the scoping information packet appended, will be extended to other Federal and non-Federal agencies and Indian tribes that may have an interest in the proposed project. It is possible that we may not be able to identify all Federal and non-Federal agencies and Indian tribes that may have such an interest. Any Federal or non-Federal agency or Indian tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify, at the earliest opportunity, the Environmental Manager identified above under **ADDRESSES**. A comprehensive public involvement program has been developed. The program includes a public scoping process, public hearings on release of the Draft Environmental Impact Statement (DEIS), development of project newsletters and their distribution and posting on the project Web site (*http://www.watertransit.org*). We invite the public and participating agencies to consider the preliminary statement of purposes of and need for the proposed project, as well as the alternatives proposed for consideration, and the public is welcome to use the public scoping process to further define the issues of concern among all parties interested in the project. Comments on potential significant environmental impacts that may be associated with the proposed project are also welcomed. All comments and suggestions will be given serious consideration. The purposes of and need for the proposed project have been preliminarily identified in this notice. We invite the public and participating agencies to consider the preliminary statement of purposes of and need for the proposed project, as well as the alternatives proposed for consideration. Suggestions for modifications to the statement of purposes of and need for the proposed project and any other alternatives that meet the purposes of and need for the proposed project are welcomed and will be given serious consideration. Comments on potentially significant environmental impacts that may be associated with the proposed project and alternatives are also welcomed. There will be additional opportunities to participate in the scoping process at the public meetings announced in this notice.

In accordance with 23 CFR 771.105(a) and 771.133, FTA will comply with all Federal environmental laws, regulations and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, the regulations of the Council on Environmental Quality implementing NEPA (40 CFR parts 1500–1508 and 23 CFR part 771), the project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93), section 404(b)(1) guidelines of EPA (40 CFR part 230), Executive Orders 11988, 11990 and 12898 regarding floodplains, wetlands, and environmental justice, respectively, Section 106 of the National Historic Preservation Act (36 CFR Part 800), Section 7 of the Endangered Species Act (50 CFR part 402), and section 4(f) of the Department of Transportation Act (23 CFR 771.135).

Issued On: February 5, 2007.

Leslie T. Rogers,

Regional Administrator, FTA, Region 9.

[FR Doc. E7–2246 Filed 2–9–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Intent To Prepare an Environmental Impact Statement for the Proposed Exposition Corridor Light Rail Transit Project Phase 2

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) and the Exposition Metro Line Construction Authority (Authority), in cooperation with the Los Angeles County Metropolitan Transportation Authority (LACMTA), intend to prepare an Environmental Impact Statement (EIS) on the proposed Phase 2 of the Exposition Corridor Light Rail Transit Project. Phase 2 would extend from the current planned terminus of the Exposition Corridor Light Rail Transit

Project Phase 1 in Culver City, California, approximately 6 to 8 miles to an end-of-line station near 5th Street and Colorado Boulevard in Santa Monica, California. The EIS will be prepared in accordance with the requirements of the National Environmental Policy Act (NEPA) and its implementing regulations. The purpose of this notice is to alert interested parties regarding the intent to prepare the EIS, to provide information on the nature of the proposed project and possible alternatives, to invite public participation in the EIS process, including comments on the scope of the EIS proposed in this notice, to announce that public scoping meetings will be conducted, and to identify participating agency contacts.

DATES: Written comments on the scope of the EIS, including the alternatives to be considered and the impacts to be assessed, should be sent to the Authority on or before April 2, 2007. See **ADDRESSES** below for the address to which written comments may be sent. Public scoping meetings to accept comments on the scope of the EIS will be held on the following dates:

- Tuesday, February 27, 2007, from 6:30 p.m. to 8:30 p.m. Culver City Senior Center, Room B45, 4095 Overland Avenue, Culver City, CA 90232.
- Wednesday, February 28, 2007, from 6:30 p.m. to 8:30 p.m. Hamilton High School Cafeteria, 2955 South Robertson Blvd., Los Angeles, CA 90034.
- Tuesday, March 6, 2007, from 6:30 p.m. to 8:30 p.m. Santa Monica Civic Auditorium, East Wing Meeting Room, 1855 Main Street, Santa Monica, CA 90401.

The project's purpose and need and the initial set of alternatives proposed for study will be presented at these meetings. The buildings used for the scoping meetings are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in a scoping meeting should contact Ms. Genetha Eddins, Exposition Metro Line Construction Authority at (213) 243–5506 or *geddins@exporail.net*.

Scoping materials will be available at the meetings and are available by clicking on the Phase 2 tab on the project's Web site at *http://www.buildexpo.org*. Hard copies of the scoping materials are available from Mr. Joel Sandberg whose contact information is given in **ADDRESSES** below. An interagency scoping meeting or conference call will be scheduled after agencies with an interest in the proposed project have been identified.

ADDRESSES: Written comments should be sent to Mr. Joel Sandberg, P.E., Project Manager, Exposition Metro Line Construction Authority, 707 Wilshire Blvd., Suite 3400, Los Angeles, California 90017, phone (213) 922–3976, fax (213) 243–5553, e-mail *jsandberg@exporail.net*. The locations of the public scoping meetings are given above under **DATES**.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Tellis, Federal Transit Administration, 888 South Figueroa Street, Suite 1850, Los Angeles, CA 90017, phone (312) 202–3950, e-mail *ray.tellis@dot.gov*.

SUPPLEMENTARY INFORMATION:

Scoping

The FTA and the Authority invite all interested individuals and organizations, public agencies, and Native American Tribes to comment on the scope of the EIS, including the project's purpose and need, the alternative to be studies, and the impacts to be evaluated. Comments should focus on the purpose and need for the proposed project; alternatives that may be less costly or have less environmental or community impacts while achieving similar transportation objectives; and the identification of any significant social, economic, or environmental issues relating to the alternatives.

Purpose and Need for the Project

The project purpose is to improve public transit service in the Exposition Corridor between Culver City and Santa Monica. The overall goal of the proposed project is to improve mobility in the Exposition Corridor between downtown Los Angeles and Santa Monica by extending the mobility benefits of the Phase 1 project beyond the currently planned terminus in Culver City. Mobility issues in this corridor have been well documented in the many studies that have analyzed transportation on the Westside and in the 2004 Regional Transportation Plan. Additional considerations supporting the project's need include:

- The major concentration of activity centers and destinations in the Exposition corridor.
- The ''Centers Concept'' Land Use Policy in the Los Angeles Basin supporting the development of high capacity transit corridors connecting the Centers including Santa Monica, Culver City and downtown Los Angeles.
- The existing concentration of transit-supportive land use in the Exposition corridor.
- The high population and employment densities in the Exposition corridor.
- Local redevelopment plans that are highly supportive of, and dependent on, high capacity transit in the Exposition corridor.
- History of strong patronage of the currently available transit service in the Exposition corridor.
- Significant transit-dependent population in the Exposition corridor.
- Significant planned future population and employment growth in the Exposition corridor.
- Existing and future travel demand patterns demonstrating a strong and growing demand for high-capacity transit in the Exposition corridor.
- Local policy direction oriented toward travel demand management and transit solutions rather than the expansion of the roadway network.

The public and participating agencies are invited to consider and comment on this preliminary statement of the purpose and need for the proposed project. Comments will be given serious consideration.

Alternatives

The Exposition Light Rail Corridor Project Phase 2 proposes to extend transit from the terminus of the Exposition Light Rail Corridor Project Phase 1 at the Venice/Robertson station to a terminus in Santa Monica. The project generally follows an abandoned railroad right-of-way (ROW) that was purchased by LACMTA in 1990.

There Are Two Primary Alignment Alternatives Being Considered

The Exposition ROW Alignment alternative follows the ROW for the full distance from the current terminus of the Exposition Light Rail Transit Project Phase 1 at Venice/Robertson Station in the City of Culver City to 5th and Colorado in the City of Santa Monica, except for a one-mile segment at the western end where the right-of-way ends and the alignment would follow existing city streets and the edge of the I–10 Santa Monica Freeway to reach the proposed terminus station in Santa Monica. The alignment is approximately 6.9 miles in length.

The Exposition ROW/Venice/Sepulveda Alignment alternative diverts from the rail right-of-way at the Venice/Robertson station (the terminus of Phase 1) and follows Venice Boulevard to Sepulveda Boulevard where it turns north to rejoin the Rail ROW at approximately the I–405 San Diego

Freeway. This alternative alignment also diverts from the ROW for one-mile segment at the western end where the right-of-way ends and the alignment would follow existing city streets and the edge of the I–10 Santa Monica Freeway to reach the proposed terminus station in Santa Monica. This alignment is approximately 7.8 miles in length.

Transit Alternatives To Be Considered Include

Light Rail Transit in the Exposition ROW Alignment—This alternative proposes light rail transit in the Exposition ROW as described above. Possible station sites have been identified at Motor, Overland, Sepulveda, Pico/Sawtelle, Bundy, 26th/Cloverfield and 5th/Colorado.

Light Rail Transit in the Exposition ROW/Venice/Sepulveda Alignment—This alternative proposes light trail transit in the Exposition ROW/Venice/Sepulveda alignment as described above. Possible station sites have been identified at, Venice/Overland, Venice/Sepulveda, Sepulveda/National, Pico/Sawtelle, Bundy, 26th Cloverfield and 5th/Colorado.

Bus Rapid Transit in the Exposition ROW Alignment—This alternative would utilize bus rapid transit in the Exposition ROW alignment as described above. The busway would be located within an abandoned rail right-of-way. At the end of the exclusive right-of-way at Olympic Boulevard in Santa Monica the bus service would operate along Olympic Boulevard, 17th Street, and Colorado Boulevard until reaching its terminus at 5th and Colorado in the City of Santa Monica. Possible station sites have been identified at Motor, Overland, Sepulveda, Pico/Sawtelle, Bundy, 26th/Cloverfield and 5th/Colorado.

No-Build Alternative—This alternative includes only ''committed'' improvements—typically those in the annual element of the Transportation Improvement Program or local capital programs—together with minor transit service expansions and/or adjustments that reflects a continuation of existing service policies. This alternative will include committed transportation improvements such as the completion of the Metro Rapid Bus Program by 2008 and possible additional feeder bus networks to serve major activity centers on the Westside.

Transportation System Management Alternative (TSM)—The TSM alternative enhances the No-Build Alternative and emphasizes transportation system upgrade such as intersection improvements, minor road widening, traffic engineering actions, bus route restructuring, shortened bus headways, expanded use of articulated buses, reserved bus lanes, contra-flow lanes for buses and High Occupancy Vehicles (HOVs) on freeways, special bus ramps on freeways, expanded park/ride facilities, express and limited-stop service, signalization improvements, and timed-transfer operations.

In addition to the above described alternatives, others identified through the scoping process will be evaluated for potential inclusion in the Draft Environmental Impact Statement. Because of the sensitive adjacent land uses located in many parts of this corridor, all alternatives will need to consider a full range of design and mitigation solutions to enlist the support of local communities for the completion of this line.

Probable Effects

The purpose of the EIS process is to explore in a public setting the effects of the proposed project and its alternatives on the physical, human, and natural environment. The FTA and the Authority will evaluate all significant environmental, social, and economic impacts of the construction and operation of the proposed project. Impact areas to be addressed include: The transportation impacts; land use, zoning, and economic development; secondary development; land acquisition, displacements, and relocations; cultural resource impacts, including impacts on historical and archaeological resources and parklands/recreation areas; neighborhood compatibility and environmental justice; natural resource impacts including air quality, wetlands, water resources, noise, vibration; energy use; safety and security; wildlife and ecosystems, including endangered species. Measures to avoid, minimize, and mitigate all adverse impacts will be identified and evaluated.

FTA Procedures

The regulations implementing NEPA, as well as provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), call for public involvement in the EIS process. Section 6002 of SAFETEAU–LU requires that FTA and the Authority do the following: (1) Extend an invitation to other Federal and non-Federal agencies and Indian tribes that may have an interest in the proposed project to become ''participating agencies,'' (2) provide an opportunity for involvement by participating agencies and the public in helping to define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the EIS, and (3) establish a plan for coordinating public and agency participation in, and comment on, the environmental review process. An invitation to become a participating agency, with the scoping materials appended, will be extended to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project. It is possible that FTA and the Authority will not be able to identify all Federal and non-Federal agencies and tribes that may have such an interest. Any Federal or non-Federal agency or tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify at the earliest opportunity the Project Manager identified above under **ADDRESSES.**

A comprehensive public involvement program will be developed and a Coordination Plan for public and interagency involvement will be created and posted under the Phase 2 tab on the project Web site at *http://www.buildexpro.org.* The public involvement program includes a full range of involvement activities including a project Web site; outreach to local officials, community and civic groups, and the public; and development and distribution of project newsletters. Specific mechanisms for involvement will be detailed in the public involvement program.

The Authority may seek New Starts funding for the proposed under 49 U.S.C. 5309 and will therefore be subject to New Starts regulations (49 CFR Part 611). The New Starts regulation requires a planning Alternatives Analysis that leads to the selection of a locally preferred alternative and the inclusion of the locally preferred alternative as part of the long-range transportation plan adopted by the Southern California Association of Governments. The Authority plans to use the Draft EIS as the planning Alternatives Analysis. The New Starts regulation also requires the submission of certain project-justification information in support of a request to initiate preliminary engineering, and this information is normally developed in conjunction with the NEPA process. Pertinent New Starts evaluation criteria will be included in the Final EIS.

The EIS will be prepared in accordance with NEPA and its implementing regulations issued by the Council on Environmental Quality (40 CFR parts 1500–1508) and with the FTA/Federal Highway Administration regulations ''Environmental Impact and Related Procedures'' (23 CFR part 771). In accordance with 23 CFR 771.105(a)

and 771.133, FTA will comply with all Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, the environmental and public hearing provisions of Federal transit laws (49 U.S.C. 5301(e), 5323(b), and 5324), the project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93), the Section 404(b)(1) guidelines of EPA (40 CFR part 230), the regulation implementing Section 106 of the National Historic Preservation Act (36 CFR Part 800), the regulation implementing section 7 of the Endangered Species Act (50 CFR part 402), Section 4(f) of the Department of Transportation Act (23 CFR 771.135), and Executive Orders 12898 on environmental justice, 11988 on floodplain management, and 11990 on wetlands.

Issued on February 5, 2007.

Leslie T. Rogers,

Regional Administrator, Region IX, Federal Transit Administration.

[FR Doc. 07–609 Filed 2–9–07; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket Number: FTA–2007–27172]

Notice of Availability of Proposed Guidance on New and Small Starts Policies and Procedures

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces the availability of the Federal Transit Administration's (FTA) Proposed Guidance on New and Small Starts Policies and Procedures and requests your comments on it. The guidance explains proposed changes to the New and Small Starts programs that will become effective upon the issuance of Final Guidance, which will be announced in a subsequent **Federal Register** notice. FTA requests comments on the Proposed Guidance, which is available in DOT's electronic docket and on FTA's Web site.

DATES: Comments must be received by March 14, 2007. Late filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments [identified by the DOT DMS Docket Number FTA–2007–27172] by any of the following methods:

Web site: http://dms.dot.gov. Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: 202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, 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.

Instructions: You must include the agency name (Federal Transit Administration) and the docket number (FTA–2007–27172). You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to the Department Docket Management System (DMS) Web site located at *http://dms.dot.gov.* This means that if your comment includes any personal identifying information, such information will be made available to users of DMS.

FOR FURTHER INFORMATION CONTACT: Ron Fisher, Office of Planning and Environment, telephone (202) 366–4033, Federal Transit Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 or *Ronald.Fisher@dot.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

On August 10, 2005, President Bush signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). Section 3011 of SAFETEA–LU made a number of changes to 49 U.S.C. 5309, which authorizes the Federal Transit Administration's (FTA) fixed guideway capital investment program known as ''New Starts'', and created a new program category known as ''Small Starts''. This notice announces the availability of FTA's Proposed Guidance on New and Small Starts Policies and Procedures and requests your comment as described below. The document is available in the docket, which can be accessed by going to *http://dms.dot.gov* at any time, or you can view the document on FTA's Web site at *http://www.fta.dot.gov/15052_ENG-HTML.html.*

A. Proposed Changes for the New and Small Starts Program

The purpose of this policy guidance is to solicit comments on the policies and procedures for the New and Small Starts programs. The changes, once announced as final, will apply to all New and Small Starts submittals received after the effective date announced in the Notice of Availability published in the **Federal Register** for the Final Guidance. The proposed improvements include: Elimination of the reporting requirements for information on FTA's measures for operating efficiencies and environmental benefits; optional submission of information related to land use; reduction in number of projects required to submit information for the Annual Report on Funding Recommendations; request for grantees to allow FTA's reviews of descriptions of alternatives to be timely; requirement for travel models to be validated based on recent transit surveys; an approach for accounting for additional user benefits for new transit modes to an area; use of a five-tiered rating for a project's overall rating; consideration of overmatch for Small and Very Small Starts; new measures for mobility of transit dependents; consolidation of the subfactors used for the capital and operating components of the financial rating; rating credit for consideration of private contracting for operations and maintenance; treatment of FTA rating information in planning studies; and consideration of congestion management/pricing strategies and ''make-the-case'' document as ''other factors'' for project justification. Comments received will be used to develop the ratings, evaluations, and procedures for projects seeking funds from the New and Small Starts programs, and will be issued in spring of 2007. FTA will respond to comments received in response to this Notice in a second **Federal Register** notice to be published after the close of the comment period. The notice will announce the availability of the Reporting Instructions for the Section 5309 New Starts Criteria and the Interim Guidance for Small Starts, reflecting the changes implemented as a result of this policy guidance and comments received thereon.

Issued in Washington, DC this 5th day February 2007.

James S. Simpson,

Administrator.

[FR Doc. E7–2249 Filed 2–9–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket: PHMSA–98–4957]

Request for Public Comments and Office of Management and Budget Approval of an Existing Information Collection (2137–0522)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice requests public participation in the OMB approval process for the renewal of an existing PHMSA information collection. This renewal of information complies with the natural gas pipeline operator's reporting requirements. PHMSA is requesting OMB approval for renewal of this information collection under the Paperwork Reduction Act of 1995. With this notice, PHMSA invites the public to submit comments over the next 60 days on ways to minimize the burden associated with the collection of information related to natural gas pipelines operator's reports.

DATES: Comments must be submitted on or before April 13, 2007.

ADDRESSES: Comments should reference Docket No. PHMSA–98–4957 and may be submitted in the following ways:

- *DOT Web Site: http://dms.dot.gov.* To submit comments on the DOT electronic docket site, click ''Comment/Submissions,'' click ''Continue,'' fill in the requested information, click ''Continue,'' enter your comment, then click ''Submit.''
- *Fax:* 1–202–493–2251.
- *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: You should identify the docket number, PHMSA–98–4957, at the beginning of your comments. If you mail your comments, you should send two copies. If you wish to receive confirmation that PHMSA received your comments, you should 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: L.E. Herrick at (202) 366–5523, or by e-mail at *le.herrick@dot.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of the Department. These include (1) Whether the information will have practical utility; (2) the accuracy of the Department's estimate of the burden of the information collections; (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, including the use of automated collection techniques or other forms of information technology.

PHMSA collects information on distribution, transmission, and gathering pipeline incidents as part of its efforts to minimize natural gas pipeline failures. The requirements for reporting are found in 49 CFR Part 191. PHMSA requires the immediate telephonic notification (§ 191.5) to address potentially significant safety issues related to an incident. The follow-up individual reports for each incident (§§ 191.9 and 191.15) are submitted within 30 days of the incident. PHMSA also requires operators to submit an annual report containing system information. These reports enable PHMSA to identify and evaluate existing and potential pipeline safety problems and to develop statistical and data/safety reports. A copy of these report forms can be found in the docket for this information collection renewal.

As used in this notice, the term ''information collection'' includes all work related to preparing and disseminating information related to these recordkeeping requirements including completing paperwork, gathering information, and conducting telephone calls.

Type of Information Collection Request: Renewal of existing collection.

Title of Information Collection: Incident and Annual Reports for Gas Pipeline Operators.

Respondents: 2100 gas pipeline operators.

Estimated Total Annual Burden on Respondents: 36,105 hours.

Issued in Washington, DC, on February 6, 2007.

Florence L. Hamn,

Director of Regulations, Office of Pipeline Safety.

[FR Doc. E7–2222 Filed 2–9–07; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket: PHMSA–98–4957]

Request for Public Comments and Office of Management and Budget (OMB) Approval of an Existing Information Collection (2137–0614)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice requests public participation in the OMB approval process regarding the renewal of an existing PHMSA information collection. This renewal of information complies with the hazardous liquid and carbon dioxide pipeline operator's annual report requirement. PHMSA is requesting OMB approval for renewal of this information collection under the Paperwork Reduction Act of 1995. With this notice, PHMSA invites the public to submit comments over the next 60 days on ways to minimize the burden associated with the collection of information related to the hazardous liquid and carbon dioxide pipelines operator's annual report.

DATES: Comments must be submitted on or before April 13, 2007.

ADDRESSES: Comments should reference Docket No. PHMSA–98–4957 and may be submitted in the following ways:

- *DOT Web Site: http://dms.dot.gov.* To submit comments on the DOT electronic docket site, click ''Comment/Submissions,'' click ''Continue,'' fill in the requested information, click ''Continue,'' enter your comment, then click ''Submit.''
- *Fax:* 1–202–493–2251.

• *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: You should identify the docket number, PHMSA–98–4957, at the beginning of your comments. If you mail your comments, you should send two copies. If you wish to receive confirmation that PHMSA received your comments, you should 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: L.E. Herrick at (202) 366–5523, or by e-mail at *le.herrick@dot.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on whether the proposed information collection is necessary for the proper performance of the functions of the Department. These include (1) Whether the information will have practical utility; (2) the accuracy of the Department's estimate of the burden of the information collections; (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, including the use of automated collection techniques or other forms of information technology.

PHMSA requires operators to complete and submit an annual report (49 CFR 195.49). The operator provides details about the crude oil, highly volatile liquid (including anhydrous ammonia), petroleum products, or carbon dioxide pipeline systems operated at the end of the previous year. These reports enable PHMSA to identify and evaluate existing and potential pipeline safety problems and to develop statistical and data/safety reports. A copy of this report (Form PHMSA F7000.1.1) is available in the docket for this information collection renewal.

As used in this notice, the term ''information collection'' includes all work related to preparing and disseminating information related to this recordkeeping requirement including completing paperwork, gathering information, and conducting telephone calls.

Type of Information Collection Request: Renewal of existing collection.

Title of Information Collection: Hazardous Liquid Pipeline Operator Annual Reports.

Respondents: 298 hazardous liquid pipeline operators completing 447 annual reports.

Estimated Total Annual Burden on Respondents: 5,364 hours.

Issued in Washington, DC, on February 6, 2007.

Florence L. Hamn,

Director of Regulations, Office of Pipeline Safety.

[FR Doc. E7–2223 Filed 2–9–07; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

[Docket No. BTS–2005–22232]

Notice of Request for Clearance of a New Information Collection: Omnibus Household Survey Program

AGENCY: Bureau of Transportation Statistics (BTS), Research and Innovative Technology Administration (RITA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the BTS to request the Office of Management and Budget's (OMB's) approval for a new information collection related to the use of and satisfaction with the nation's transportation system.

DATES: Comments must be submitted on or before April 13, 2007.

ADDRESSES: You can mail or hand-deliver comments to the U.S. Department of Transportation (DOT), Dockets Management System (DMS). You may submit your comments by mail or in person to the Docket Clerk, Docket No. BTS–2005–22232, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590–0001. Comments should identify the docket number; paper comments should be submitted in duplicate. The DMS is open for examination and copying, at the above address, from 9 a.m. to 5 p.m., Monday through Friday, except federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on Docket BTS–2005–22232.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (the Internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT. You may fax your comments to the DMS at (202) 493–2251.

If you wish to file comments using the Internet, you may use the DOT DMS Web site at *http://dms.dot.gov.* Please follow the online instructions for submitting an electronic comment. You can also review comments on-line at the DMS Web site at *http://dms.dot.gov.* The electronic docket is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 202–512–1661. Internet users may reach the Federal Register's home page at *http://www.gpoaccess.gov/fr/index.html* and the Government Printing Office's database at *http://www.gpoaccess.gov/nara/index.html.*

Please note that anyone is able to electronically search all comments received into our docket management system by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19475–19570) or you may review the Privacy Act Statement at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. June Taylor Jones, (202) 366–4743, Passenger Travel Program Manager, BTS, RITA, Department of

Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Title:* Omnibus Household Survey Program.

Background: In 2005, Congress passed, and the President signed, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU; Pub. L. 109–59). SAFETEA-LU contained a number of legislative mandates including providing data, statistics and analyses to transportation decision-makers. The Research and Innovative Technology Administration, Bureau of Transportation Statistics (RITA/BTS) was tasked to accomplish this legislative mandate under 49 U.S.C. 111(c)(1). RITA/BTS plans to use the Omnibus Household Survey (OHS) to:

• Assess the public's evaluation of the nation's transportation system in light of the DOT's strategic goals (safety, reduced congestion, global connectivity, environmental stewardship and security, preparedness and response),

•Provide a vehicle for the operating administrations within the DOT as well as other governmental agencies, to survey the public about current transportation issues, and

•Provide national estimates of transportation mode usage.

Each version of the OHS will focus on some subset of topics taken from the list below. Topics may vary from survey to survey since covering all topics in one questionnaire would make the respondent burden unacceptable:

Frequency of mode use in the month prior to the survey month: Commercial air, Privately-owned vehicle, Taxi, Light rail, Commuter rail, Public bus, Intercity Rail (Amtrak), Other modes such as biking and walking.

Confidence in the safety of the following modes of transportation: Commercial air, Privately-owned vehicle, Taxi, Light rail, Commuter rail, Water transportation (taxis, ferries, ships), Public bus, Intercity Rail (Amtrak), Other modes such as biking/walking/ferries.

Confidence in the security procedures for the following modes of transportation: Commercial air, Charter/general aviation, Privately-owned vehicle, Taxi, Light rail, Commuter rail, Water transportation (taxis, ferries, ships), Public bus, Intercity Rail (Amtrak).

Assessment of/satisfaction with security procedures for the following modes of transportation: Commercial air, Charter/general aviation, Privately-owned vehicle, Taxi, Light rail, Commuter rail, Water transportation (taxis, ferries, ships), Public bus, Intercity Rail (Amtrak).

Processing through security at: Commercial airports, Train stations, Waterway entry points for ferries, water taxis, cruises.

Knowledge of/confidence in the Registered Traveler Program: Knowledge of Registered Traveler Program, Have used Registered Traveler Program, Confidence in Registered Traveler Program.

Knowledge of current check-in procedures at: Commercial airports, Train stations, Waterway entry points for ferries, water taxis, cruises.

Knowledge of/confidence in the Alien Flight Student Program and TSA Vetting Programs.

Experiences with transit delays related to suspicious/unattended baggage.

Willingness/tolerance of transportation security risk management procedures.

In formation on journey to work

Transportation used (single mode/multiple mode)

Time required for one-way trip

Number of days traveled

Assessment of congestion

Methods for dealing with congestion

Telecommuting information, Commuting costs

Availability of transportation subsidies.

Impact of congestion on commute.

Impact of fuel costs on transportation use/travel behavior.

Impact of on-line shopping on passenger and freight travel.

Respondents: The population for the OHS Program is the non-institutionalized population, aged 18 and older, who live in the United States. The sampling frame will be a list-assisted random digit dialing (RDD) sample of U.S. residential telephone numbers. The sampling frame will be constructed to produce samples proportional to population density, resulting in nationally representative samples of residential telephone numbers. Individual survey respondents within selected households will be chosen at random.

Estimated Average Burden per Response: The burden per respondent is estimated to be an average of 15 minutes based on calculations from previous data collections.

Estimated Total Annual Burden: The total annual burden is estimated to be 250 hours (that is 15 minutes times 1000 respondents equals 15,000 minutes or 250 hours).

Frequency: This survey is currently scheduled to be conducted yearly but may be conducted as much as 3 times per year based on data needs of agencies using the OHS for data collection.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the DOT; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Authority: Sections 1801(e) and 5601 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (P.L. 109–59; 2005) and 49 CFR 1.46.

Issued in Washington, DC on the 6th day of February, 2007.

William Bannister,

Acting Deputy Director, Bureau of Transportation Statistics, Research and Innovative Technology Administration.

[FR Doc. E7–2336 Filed 2–9–07; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 6, 2007.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before March 14, 2007 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0007.

Type of Review: Extension.

Title: Forest Activities Schedule.

Form: T.

Description: Form T is filed by individuals and corporations to report income and deductions from the timber business. The IRS uses Form T to determine if the correct amounts of income and deductions are reported.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 446,208 hours.

OMB Number: 1545–0889.

Type of Review: Revision.

Form: 8275–R.

Title: Disclosure Statement (Form 8275), and Regulation Disclosure Statement (Form 8275–R).

Description: IRC section 6662 imposes accuracy related penalties for substantial understatement of tax liability or negligence or disregard of rules and regulations. Section 6694 imposes similar penalties on return preparers. Regulations sections 1.6662–4(e) and (f) provide for reduction of these penalties if adequate disclosure of the tax treatment is made on Form 8275 or, if the position is contrary to a regulation on Form 8275–R.

Respondents: Individuals or households.

Estimated Total Burden Hours: 4,164,325 hours.

OMB Number: 1545–1718.

Title: REG–106030–98 (NPRM) Source of Income from Certain Space and Ocean Activities; Also, Source of Communications Income.

Type of Review: Extension.

Description: The collection of information requirements in proposed sections 1.863–8(g) and 1.863–9(h) are necessary for the service to audit taxpayers' returns to ensure that taxpayers are applying the regulations properly.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 1,250 hours.

OMB Number: 1545–0043.

Title: Consent of Shareholder to Include Specific Amount in Gross Income.

Type of Review: Revision.

Form: 972.

Description: Form 972 is filed by shareholders of corporations to elect to include an amount in gross income as a dividend. The IRS uses Form 972 as a check to see if an amended return is filed to include the amount in income and to determine if the corporation claimed the correct amount.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 385 hours.

Clearance Officer: Glenn P. Kirkland (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E7–2329 Filed 2–9–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Treasury Inspector General for Tax Administration; Privacy Act of 1974: Computer Matching Program

AGENCY: Treasury Inspector General for Tax Administration, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 552a, the Privacy Act of 1974, as amended, notice is hereby given of the agreement between the Treasury Inspector General for Tax Administration (TIGTA) and the Internal Revenue Service (IRS) concerning the conduct of TIGTA's matching program.

EFFECTIVE DATES: March 14, 2007.

ADDRESSES: Comments or inquires may be mailed to the Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Disclosure Officer, Treasury Inspector General for Tax Administration, (202) 622–4068.

SUPPLEMENTARY INFORMATION: TIGTA's computer matching program assists in the detection and deterrence of fraud, waste, and abuse in the programs and operations of the IRS and related entities as well as protects against attempts to corrupt or interfere with tax administration. TIGTA's computer matching program is also designed to proactively detect and to deter criminal and administrative misconduct by IRS employees. Computer matching is the most feasible method of performing comprehensive analysis of data.

Name of Source Agency: Internal Revenue Service.

Name of Recipient Agency: Treasury Inspector General for Tax Administration.

Beginning and Completion Dates: This program of computer matches is expected to commence on February 28, 2007, but not earlier than the fortieth day after copies of the Computer Matching Agreement are provided to the Congress and OMB unless comments dictate otherwise. The program of computer matches is expected to conclude on August 31, 2009.

Purpose: This program is designed to deter and detect fraud, waste, and abuse in Internal Revenue Service programs and operations, to investigate criminal and administrative misconduct by IRS employees, and to protect against attempts to corrupt or threaten the IRS and/or its employees.

Authority: The Inspector General Act of 1978, 5 U.S.C. App. 3, and Treasury Order 115–01.

Categories of Individuals Covered: Current and former employees of the Internal Revenue Service as well as individuals and entities about whom information is maintained in the systems of records listed below.

Categories of Records Covered: Included in this program of computer matches are records from the following Treasury or Internal Revenue Service systems.

a. Treasury Payroll and Personnel System [Treasury .001]

b. Treasury Child Care Tuition Assistance Records [Treasury .003]

c. Treasury Financial Management Systems [Treasury .009]

d. Correspondence Files (including Stakeholder Relationship files) and Correspondence Control Files [Treasury/IRS 00.001]

e. Correspondence Files/Inquiries About Enforcement Activities [Treasury/IRS 00.002]

f. Taxpayer Advocate Service and Customer Feedback and Survey Records System [Treasury/IRS 00.003]

g. Volunteer Records [Treasury/IRS 10.555]

h. Annual Listing of Undelivered Refund Checks [Treasury/IRS 22.003]

i. File of Erroneous Refunds [Treasury/IRS 22.011]

j. Foreign Information System (FIS) [Treasury/IRS 22.027]

k. Individual Returns Files, Adjustments and Miscellaneous Documents Files [Treasury/IRS 22.034]

l. Unidentified Remittance File [Treasury/IRS 22.059]

m. Automated Non-Master File (ANMF) [Treasury/IRS 22.060]

n. Individual Return Master File (IRMF) [Treasury/IRS 22.061]

o. Electronic Filing Records [Treasury/IRS 22.062]

p. Combined Account Number File, Taxpayer Services [Treasury/IRS 24.013]

q. Individual Account Number File (IANF) [Treasury/IRS 24.029]

r. CADE Individual Master File (IMF) [Treasury/IRS 24.030]

s. CADE Business Master File (BMF) [Treasury/IRS 24.046]

t. Audit Underreporter Case File [Treasury/IRS 24.047]

u. Debtor Master File (DMF) [Treasury/IRS 24.070]

v. Acquired Property Records [Treasury/IRS 26.001]

w. IRS and Treasury Employee Delinquency [Treasury/IRS 26.008]

x. Lien Files (Open and Closed) [Treasury/IRS 26.009]

y. Offer in Compromise (OIC) File [Treasury/IRS 26.012]

z. Record 21, Record of Seizure and Sale of Real Property [Treasury/IRS 26.014]

aa. Returns Compliance Programs (RCP) [Treasury/IRS 26.016]
bb. Taxpayer Delinquent Accounts (TDA) Files [Treasury/IRS .019]
cc. Taxpayer Delinquency Investigation (TDI) Files [Treasury/IRS 26.020]
dd. Audit Trail Lead Analysis System (ATLAS) [Treasury/IRS 34.020]
ee. IRS Audit Trail and Security Records System [Treasury/IRS .037]
ff. General Personnel and Payroll Records [Treasury/IRS 36.003]
gg. Medical Records [Treasury/IRS 36.005]
hh. Enrolled Agents Records [Treasury/IRS 37.009]
ii. Examination Administrative File [Treasury/IRS 42.001]
jj. Audit Information Management System (AIMS) [Treasury/IRS 42.008]
kk. Internal Revenue Service Employees' Returns Control Files [Treasury/IRS 42.014]
ll. Classification/Centralized and Scheduling Files [Treasury/IRS 42.016]
mm. Compliance Programs and Projects Files [Treasury/IRS 42.021]
nn. Appeals Centralized Data System [Treasury/IRS 44.003]
oo. Criminal Investigation Management Information System [Treasury/IRS 46.002]
pp. Controlled Accounts (Open and Closed) [Treasury/IRS 46.004]
qq. Treasury Enforcement Communications System (TECS) Criminal Investigation Division [Treasury/ IRS 46.022]
rr. Automated Information Analysis System [Treasury/IRS 46.050]
ss. Criminal Investigation Audit Trail Records System [Treasury/IRS 46.051]
tt. Tax Exempt/Government Entities (TE/GE) Case Management Records [Treasury/IRS 50.222]
uu. Counsel Automated Tracking System (CATS) Records [Treasury/IRS 90.016]

Dated: February 5, 2007.

Wesley T. Foster,

Acting Assistant Secretary for Management.

[FR Doc. E7–2331 Filed 2–9–07; 8:45 am]

BILLING CODE 4810–04–P

DEPARTMENT OF THE TREASURY

Comment Request for the Financial Literacy and Education Commission on Kindergarten Through Postsecondary Financial Education

AGENCY: Departmental Offices, Treasury.

ACTION: Request for comment.

SUMMARY: The Financial Literacy and Education Improvement Act, Title V of the Fair and Accurate Credit Transactions (''FACT'') Act of 2003 (Pub. L. 108–159), established the Financial Literacy and Education Commission (the ''Commission''). On behalf of the Commission, the Department of the Treasury invites the public to comment on the topic of raising the financial literacy levels of kindergarten through postsecondary students.

DATES: Comments should be received on or before April 12, 2007 to be assured consideration.

ADDRESSES: Written comments should be sent to the Department of the Treasury, Financial Literacy and Education Commission, Room 1406, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, or via e-mail to *FLECstrategy@do.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Luz Figuereo at (202) 622–7881 (not a toll free number), or by e-mail to the above address. Additional information regarding the Financial Literacy and Education Commission and the Department of the Treasury's Office of Financial Education may be obtained through the Office of Financial Education's Web site at: *http://www.treas.gov/financialeducation.*

SUPPLEMENTARY INFORMATION:

Request for Comments: Comments are specifically requested concerning the following questions:

(1) What are some ways to overcome the challenges faced in bringing financial literacy programs into kindergarten through grade 12 classrooms? (2) Are there unique problems encountered when trying to improve the financial literacy of postsecondary students? If so, what are some ways to solve those problems? (3) What are the essential elements of an effective teacher-training program for financial education? (4) What should be the role of private sector companies in youth financial education? What are the benefits and challenges of this type of involvement? (5) What should be the role of not-for-profit organizations in youth financial education? What are the benefits and challenges of this type of involvement?

When appropriate, cite specific examples to illustrate your responses to any of these questions. Respondents are urged to keep comments succinct and responsive to these questions.

The Commission: The Commission is chaired by the Secretary of the Treasury and is comprised of the heads of the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Securities and Exchange Commission, the Departments of Education, Agriculture, Defense, Health and Human Services, Housing and Urban Development, Labor, and Veterans Affairs, the Federal Trade Commission, the General Services Administration, the Small Business Administration, the Social Security Administration, the Commodity Futures Trading Commission, and the Office of Personnel Management. The Commission was established to improve financial literacy and education of persons in the United States.

Dated: February 5, 2007.

Dan Iannicola, Jr.,

Deputy Assistant Secretary for Financial Education.

[FR Doc. E7–2238 Filed 2–9–07; 8:45 am]

BILLING CODE 4811–42–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—February 23, 2007, Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: Carolyn Bartholomew, Chairman of the U.S.–China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, evaluate and report to Congress annually on ''the national security implications and impact of the bilateral trade and economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on February 23, 2007 to address ''The Extent of the Government's Control of China's Economy, and its impact on the United States.''

Background

This event is the second in a series of public hearings the Commission will hold during its 2007 report cycle to collect input from leading experts in academic, business, industry, government and the public on the impact of the economic and national security implications of the U.S. bilateral trade and economic relationship with China. The February

23 hearing is being conducted to obtain commentary about the Chinese government's control of key industries, the effect on the United States and the world economy, and whether such control violates the principles of the WTO.

The February 23 hearing will address ''The Extent of the Government's Control of China's Economy, and its Impact on the United States,'' and will be co-chaired by Commissioners Michael R. Wessel and Kerri Houston.

Information on hearings, as well as transcripts of past Commission hearings, can be obtained from the USCC Web site *http://www.uscc.gov.*

Any interested party may file a written statement by February 23, 2007, by mailing to the contact below. On February 23, the hearing will be held in two sessions, one in the morning and one in the afternoon, where Commissioners will take testimony from invited witnesses. There will be a question and answer period between the Commissioners and the witnesses.

Date and Time: Friday, February 23, 2007, 8:30 a.m. to 5:30 p.m. Eastern Standard Time. A detailed agenda for the hearing will be posted to the Commission's Web site at *http://www.uscc.gov* in the near future.

ADDRESSES: The hearing will be held on Capitol Hill in Room 562 Dirksen Senate Office Building located at First Street and Constitution Avenue, NE., Washington, DC 20510. Public seating is limited to about 50 people on a first come, first served basis. Advance reservations are not required.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing should contact Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington, DC 20001; phone: 202–624–1409, or via e-mail at *kmichels@uscc.gov.*

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: February 7, 2007.

Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission.

[FR Doc. E7–2333 Filed 2–9–07; 8:45 am]

BILLING CODE 1137–00–P

Corrections

Federal Register

Vol. 72, No. 28

Monday, January 12, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

The President

3 CFR

To Modify the Harmonized Tariff Schedule of the United States, To Adjust Rules of Origin Under the United States-Australia Free Trade Agreement and for Other Purposes

Correction

In Presidential document 07–4 beginning on page 453 in the issue of Thursday, January 4, 2007, make the following corrections:

1. In the document heading, ''Proclamation 8097 of December 27, 2006'' should read ''Proclamation 8097 of December 29, 2006''.

2. The Federal Register running head is corrected to read as follows: ''**Federal Register**/ Vol. 72, No. 2/ Thursday, January 4, 2007/ Presidential Documents''.

[FR Doc. C7–4 Filed 2–9–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
February 12, 2007

Part II

Department of Labor

Office of Disability Employment Policy

Solicitation of Nominations for the Secretary of Labor's New Freedom Initiative Award; Notice

DEPARTMENT OF LABOR

Office of Disability Employment Policy

[OMB Number 1230–0002]

Solicitation of Nominations for the Secretary of Labor's New Freedom Initiative Award

The Secretary of Labor's New Freedom Initiative Award presented by Secretary Elaine L. Chao, United States Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210:

1. *Subject:* The Secretary of Labor's New Freedom Initiative Award.

2. *Purpose:* To outline the eligibility criteria, the nomination process and the administrative procedures for the New Freedom Initiative Award, and to solicit the Secretary of Labor's New Freedom Initiative Award nominations.

3. *Originator:* Office of Disability Employment Policy (ODEP).

4. *Background:* To encourage the use of public-private partnerships, the Secretary of Labor will present the Secretary of Labor's New Freedom Initiative Award. Initiated in 2002, this award is made annually to individual(s), non-profit organization(s), or business(es), that have, through programs or activities, demonstrated exemplary and innovative efforts in furthering the employment objectives of President George W. Bush's New Freedom Initiative. See *http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html*.

By increasing access to assistive technologies, and by utilizing innovative training, hiring, and retention strategies, the recipient(s) will have established and instituted comprehensive strategies to enhance the ability of Americans with disabilities to enter and advance within the 21st Century workforce and to participate in daily community life.

5. *Eligibility Criteria:* The following criteria apply to the New Freedom Initiative Award Nominees:

A. The nominees must be individuals, businesses, or non-profit organizations whose activities exemplify the goals of President George W. Bush's New Freedom Initiative, which include the Office of Disability Employment Policy's mission of increasing employment opportunities for youth and adults with disabilities. Nominations may be submitted by other persons and entities with the knowledge and permission of the nominee. Self-nomination is also encouraged.

B. Nominees must have developed and implemented a multi-faceted program directed toward increasing employment opportunities for people with disabilities through increased access to assistive technologies, and use of innovative training, hiring, and retention techniques.

C. Federal, State and local government organizations are not eligible for this award.

6. *Nomination Submission Requirements:*

A. The single program or multiple programs for which the individual or company is being nominated must demonstrate a commitment to people with disabilities, and clearly show measurable results in terms of significantly enhancing employment opportunities for people with disabilities. The programs or activities may also address such issues as the widening skills gap among persons with disabilities, a diversified 21st Century workforce, and discrimination based on disability.

B. The nomination packages should be limited to only that information relevant to the nominee's program(s). Nomination packages should be no longer than twenty (20) typed pages double-spaced. A page is 8.5 x 11 (on one side only) with one-inch margins (top, bottom, and sides).

C. Nomination packages must include the following for consideration:

1. An executive summary prepared by or on behalf of the nominee, which clearly identifies the specific activities, program(s), or establishment under nomination and fully describes the results achieved.

2. A full description of the specific activities, program(s), or establishment for which the nomination is being submitted.

3. Specific data on training, placements, resources expended and other relevant information that will facilitate evaluation of the nominee's submission.

4. A description of how the program(s) and/or activities that are the subject of the nomination have had a positive and measurable impact on the employment of people with disabilities.

5. A data summary on the nominee. See Section 6(D).

6. A report detailing any unresolved violations of State or Federal law, as determined by compliance evaluations, complaint investigations, or other Federal inspections and investigations. In addition, the nominee must report any pending Federal or State enforcement actions, and any corrective actions or consent decrees that have resulted from litigation under the Americans with Disabilities Act (ADA) or the laws enforced by the Department of Labor (DOL).

D. A data summary on the Nominee will include the following:

1. Name(s) of the individual, organization or business being nominated.

2. Full street address, telephone number and e-mail address where applicable.

3. Name of highest ranking official(s) (where appropriate).

4. Name of executive(s) responsible for human resources, equal employment opportunity, and/or disability awareness at nominee's establishment and/or corporate office (where appropriate).

5. Name of parent company (where appropriate).

6. Name, street address, telephone number and email address of CEO or President of parent company (where appropriate).

7. Name, title, street address, telephone number and e-mail address of a contact person.

8. Number of employees at the establishment or business being nominated (where appropriate).

9. Name and description of principal program(s) or service(s).

E. Timing and Acceptable Methods of Submission of Nominations:

Nomination packages must be submitted to Secretary of Labor's New Freedom Initiative Award, Office of Disability Employment Policy, Room S–1303, 200 Constitution Avenue, NW., Washington, DC 20210 by April 30, 2007. Any application received after 4:45 p.m. EDT on April 30, 2007, will not be considered unless it was received before the award is made and:

1. It was sent by registered or certified mail no later than April 24, 2007.

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. EDT at the place of mailing, April 27, 2007.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date will be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (not a postage meter

machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Office of Disability Employment Policy on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by other delivery services, such as Federal Express, UPS, e-mail, etc., will also be accepted; however, the applicant bears the responsibility of timely submission.

Confirmation of receipt of your application can be made by contacting Margaret Roffee of the Office of Disability Employment Policy, *nfinomination@dol.gov*, telephone (202) 693–7880, (866) ODEP–DOL, TTY (202) 693–7881, prior to the closing deadline.

7. *The Administrative Review Process:*

A. The ODEP Steering Committee will perform preliminary administrative review to determine the sufficiency of all submitted application packages.

B. An Executive Evaluation Committee made up of representatives appointed by the Assistant Secretary of Labor, Office of Disability Employment Policy, from Department of Labor employees will perform secondary review.

C. The Secretary of Labor will conduct the final review and selections.

8. *Other Factors to be Considered During the Administrative Review Process:*

A. If a nominee merges with another company during the evaluation process, only that information relative to the nominated company will be evaluated, and the award, if any, will be limited to the nominated company.

B. Prior receipt of this award will not preclude a nominee from being considered for the New Freedom Initiative Award in subsequent years. Programs and activities serving as the basis of a prior award, however, may not be considered as the basis for a subsequent award application.

9. *Procedures Following Selection:*

A. Awardees will be notified of their selection via the contact person identified in the application package at least six weeks prior to the awards ceremony. Non-selected nominees will also be notified within 45 days of the selection of the awardees.

B. As a precondition to acceptance of the award, the nominee agrees to:

1. Submit to ODEP for review a two-minute video of the program(s) or activity(ies) for which it is being recognized within 30 days of notification of award selection;

2. Participate in any New Freedom Initiative workshops hosted by ODEP in conjunction with or within 12 months following the awards ceremony.

C. The awardee may also display an exhibit or showcase of the program(s)/activity(ies) for which it is being recognized at the awards ceremony, with contents of the display submitted to ODEP for review within 30 days of notification of award selection.

D. Materials developed by the awardees in conjunction with Section 11(B) and (C) will be subject to legal review at the Department of Labor to ensure compliance with applicable ethics standards.

10. *Location:* The awards ceremony will generally be held during the month of October at a location to be determined by the Secretary of Labor.

Paperwork Reduction Act Notice (Pub. L. 104–13): Persons are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection of information is approved under OMB Number 1230–0002 (Expiration Date: 12/31/2008). The obligation to respond to this information collection is voluntary; however, only nominations that follow the nomination procedures outlined in this notice will receive consideration. The average time to respond to this information of collection is estimated to be 10 hours per response; including the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Submit comments regarding this estimate; including suggestions for reducing response time to the U.S. Department of Labor, Office of Disability Employment Policy, Room S–1303, 200 Constitution Avenue NW., Washington, DC 20210. Please reference OMB Number 1230–0002.

We are very interested in your thoughts and suggestions about your experience in preparing and filing this nomination packet for the Secretary of Labor's New Freedom Initiative Award. Your comments will be very useful to the Office of Disability Employment Policy in making improvements in our solicitation for nominations for this award in subsequent years. All comments are strictly voluntary and strictly private. We would appreciate your taking a few minutes to tell us—for example, whether you thought the instructions were sufficiently clear; what you liked or disliked; what worked or didn't work; whether it satisfied your need for information or if it didn't, or anything else that you think is important for us to know. Your comments will be most helpful if you can be very specific in relating your experience.

We value your comments, and would really like to hear from you. Please send any comments you have to Margaret Roffee at *nfinomination@dol.gov* or via mail to the Office of Disability Employment Policy, Room S–1303, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 6th day of February 2007.

John R. Davey,

Director of Operations.

[FR Doc. E7–2280 Filed 2–9–07; 8:45 am]

BILLING CODE 4510–23–P

Federal Register

Monday,
February 12, 2007

Part III

Securities and Exchange Commission

17 CFR Parts 232, 239, 270, and 274

Extension of Interactive Data Voluntary Reporting Program on the EDGAR System To Include Mutual Fund Risk/Return Summary Information; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 239, 270 and 274

[Release Nos. 33–8781, IC–27697; File Number S7–05–07]

RIN 3235–AJ59

Extension of Interactive Data Voluntary Reporting Program on the EDGAR System To Include Mutual Fund Risk/Return Summary Information

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing rule amendments to extend the current interactive data voluntary reporting program to enable mutual funds voluntarily to submit supplemental tagged information contained in the risk/return summary section of their prospectuses. A mutual fund choosing to tag its risk/return summary information also would continue to file this information in HTML or ASCII format, as currently required. This extension of the voluntary program is intended to help us evaluate the usefulness to investors, third-party analysts, registrants, the Commission, and the marketplace of data tagging and, in particular, of tagging mutual fund information.

DATES: Comments should be submitted on or before March 14, 2007.

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*);
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–05–07 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 S7–05–07. 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: If you have questions about the proposed rules, please contact Alberto H. Zapata, Senior Counsel, Christopher Kaiser, Branch Chief, or Brent J. Fields, Assistant Director, Office of Disclosure Regulation, Division of Investment Management, at (202) 551–6784, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5720. If you have questions about the EDGAR system, please contact Richard Heroux, EDGAR Program Manager, at (202) 551–8800, in the Office of Information Technology.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is proposing for comment amendments to rules 401 [1] and 402 [2] of Regulation S–T [3], rule 8b–33 [4] under the Investment Company Act of 1940 (''Investment Company Act''), and Form N–1A [5] under the Investment Company Act and the Securities Act of 1933 (''Securities Act'').

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[1] 17 CFR 232.401.

[2] 17 CFR 232.402.

[3] 17 CFR 232.10 *et seq.*

[4] 17 CFR 270.8b–33.

[5] 17 CFR 239.15A and 274.11A.

I. Background

A. Interactive Data and XBRL

For the past several years, the Commission has been evaluating the expanded use of interactive data tagging as a tool to improve the timeliness and accessibility of the information contained in filings with the Commission under the federal securities laws.[6] Data tagging uses standard definitions (or data tags) to translate text-based information into data that is interactive, that is, data that can be retrieved, searched, and analyzed through automated means.[7]

Interactive data has enormous potential to enable investors and other market participants to analyze and compare data from different sources more efficiently and effectively and to exchange information across various software platforms automatically. Through interactive data, static text-based information can be transformed into dynamic databases that can readily be searched and analyzed, facilitating the comparison of information across companies, reporting periods, and industries. Tagged information can help investors, analysts, and other users to mine the wealth of information contained in detailed paper disclosure documents, providing users with the ability to access precisely the

[6] *See SEC to Rebuild Public Disclosure System to Make It 'Interactive'*, Securities and Exchange Commission Press Release, Sept. 25, 2006, available at: *http://www.sec.gov/news/press/2006/2006–158.htm* (Commission awards contracts totaling $54 million to transform public company disclosure system to create a dynamic real-time search tool with interactive capabilities) (''September 25 Press Release''); *Commission Announces Interactive Data Roundtable on New Software to Make Better Information a Reality,* Securities and Exchange Commission Press Release, Sept. 25, 2006, available at: *http://www.sec.gov/news/press/2006/2006–160.htm*; *Commission Announces Roundtable Series Giving Investors and Analysts Better Financial Data via Internet,* Securities and Exchange Commission Press Release, Mar. 9, 2006, available at: *http://www.sec.gov/news/press/2006–34.htm*; *SEC Offers Incentives for Companies to File Financial Reports with Interactive Data,* Securities and Exchange Commission Press Release, Jan. 11 2006, available at: *http://www.sec.gov/news/press/2006–7.htm*; *SEC Announces Initiative to Assess Benefits of Tagged Data in Commission Filings,* Securities and Exchange Commission Press Release, July 22, 2004, available at: *http://www.sec.gov/news/press/2004–97.htm.*

[7] The Commission's Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR'') has allowed certain tagged data since its inception, for example, by using Standard Generalized Markup Language and Extensible Markup Language (''XML'') to tag form-specific information (such as the form type, central index key, and file number) that accompanies electronic documents submitted on EDGAR. More recently, EDGAR has employed HyperText Markup Language (''HTML'') to format documents and made limited use of XML related to financial and business information contained within certain EDGAR submissions.

information in which they are interested and to analyze that data.

Interactive data also provides a significant opportunity to automate information processing throughout the business and reporting cycle, with the potential to increase accuracy and reduce costs. By ensuring that information is classified properly at each step of the cycle, and minimizing the need for human intervention and, therefore, human error, interactive data may improve the quality of information at decreased cost. These benefits can begin at the time of an initial transaction and carry forward to the point of disclosure in a Commission filing and, ultimately, to the use of the disclosed information by investors and other market participants. At each step in the process, interactive data offers the potential to replace manual reentry of information with automated processing of previously tagged data.

Tags are standardized through the development of taxonomies, which are essentially data dictionaries that describe individual items of information and mathematical and definitional relationships among the items. As tagging has continued to gain prominence in recent years, there has been substantial progress in developing data tagging taxonomies related to a language for the electronic communication of business and financial data known as eXtensible Business Reporting Language (''XBRL'').[8] XBRL was developed as an open source specification that describes a standard format for tagging financial and other information to facilitate the preparation, publication, and analysis of that information by software applications.[9] XBRL was developed and continues to be supported by XBRL International, a collaborative consortium of approximately 450 organizations representing many perspectives in the financial reporting community.[10] Organizations in the consortium include issuers, public accounting firms, software companies, filing agents, data aggregators, stock exchanges, regulators, financial services companies, and industry associations.[11] XBRL International and its related entities have been developing standard taxonomies that are designed to classify and define financial information in accordance with U.S. Generally Accepted Accounting Principles (''GAAP'') and Commission regulations. The Commission recently announced that it is contracting with XBRL US, Inc., the U.S. based arm of XBRL International, to help complete the writing of XBRL taxonomies that would enable companies in all industries to file financial reports with the Commission using XBRL.[12]

B. The Voluntary Program

As part of our evaluation of the potential of interactive data tagging technology, the Commission adopted rules in 2005 instituting a program that permits filers, on a voluntary basis, to submit specified, supplemental disclosure tagged in XBRL format as an exhibit to certain filings on the Commission's Electronic Data Gathering, Analysis and Retrieval System (''EDGAR'').[13] The Commission adopted the voluntary program to help evaluate the usefulness of data tagging and XBRL to registrants, investors, the Commission, and the marketplace.[14] In 2006, the Commission initiated an interactive data test program, in which companies, including investment companies, voluntarily agree to furnish financial data in XBRL format for at least one year and provide feedback on their experiences, including the costs and benefits.[15]

Under the voluntary program, filers may submit financial information using XBRL as an exhibit to the filing to which it relates, an amendment to such filing, or, if the filer is eligible, to a filing on Form 8–K [16] or Form 6–K.[17] The XBRL exhibits submitted in the voluntary program are supplemental submissions that do not replace the required American Standard Code for Information Interchange (''ASCII'') or Hypertext Markup Language (''HTML'') versions of the financial information they contain.[18] The data currently permitted in XBRL exhibits is limited to financial information.

The voluntary program permits any registrant to participate merely by submitting an XBRL exhibit in the required manner. XBRL exhibits are publicly available but are considered furnished rather than filed.[19] Although XBRL exhibits are required to accurately reflect the information that appears in the corresponding part of the official filing, the purpose of submitting XBRL data is to test the related format and technology and, as a result, investors and others should continue to rely only on the official version of a filing and not on the XBRL exhibit in making investment decisions. We have included cautionary language to this effect on the Commission Web site.[20]

C. Tagging of Mutual Fund Information

The current voluntary program extends to investment companies, including open-end management investment companies (''mutual funds'').[21] Investment companies may presently submit XBRL exhibits only to Form N–CSR,[22] the semi-annual filing to submit certified shareholder reports, or to Form N–Q,[23] the quarterly report of portfolio holdings.[24]

As part of our evaluation of data tagging, the Commission held a

[8] *See* Edward Hand, ''XBRL: The Future of Business Reporting,'' NETWORK COMPUTING, Aug. 31, 2006, available at: *http://www.networkcomputing.com/showArticle.jhtml?articleID=192202551&pgno=1.*

[9] ''Open Source'' means that the software can be used by anyone without charge and is being developed in an open and collaborative setting. For a more detailed discussion about XBRL, see ''How XBRL Works'' on the XBRL International Web site available at: *http://www.xbrl.org/HowXBRLWorks/.*

[10] *See* ''About the Organisation'' page and subpages on the XBRL International Web site, available at: *http://www.xbrl.org/AboutTheOrganisation/.*

[11] *See* ''Member Organisations'' page and subpages on the XBRL International Web site, available at: *http://xbrl.org/viewmembers.aspx.*

[12] September 25 Press Release, *supra* note 6.

[13] Securities Act Release No. 8529 (Feb. 3, 2005) [70 FR 6556 (Feb. 8, 2005)] (''XBRL Adopting Release''). *See also* Securities Act Release No. 8496 (Sept. 27, 2004) [69 FR 59094 (Oct. 1, 2004)] (''XBRL Proposing Release''); Securities Act Release No. 8497 (Sept. 27, 2004) [69 FR 59111 (Oct. 1, 2004)] (concept release soliciting comment on data tagging).

[14] XBRL Adopting Release, *supra* note 13, 70 FR at 6556.

[15] *More Companies Join SEC's Program to Use Interactive Data for Financial Statements,* Securities and Exchange Commission Press Release, June 20, 2006, available at: *http://www.sec.gov/news/press/2006/2006-99.htm*; *17 Companies Join SEC Pilot Program to Use ''Interactive Data'' in Financial Reports,* Securities and Exchange Commission Press Release, Mar. 29, 2006, available at: *http://www.sec.gov/news/press/2006-43.htm*; *SEC Offers Incentives for Companies to File Financial Reports with Interactive Data,* Securities and Exchange Commission Press Release, Jan. 11, 2006, available at: *http://www.sec.gov/news/press/2006-7.htm.* For more information about the Commission's interactive data initiatives, see the Commission Web page ''Spotlight On: Interactive Data and XBRL Initiatives'' available at: *http://www.sec.gov/spotlight/xbrl.htm.*

[16] 17 CFR 249.308.

[17] 17 CFR 249.306.

[18] *See* EDGAR Filer Manual, Volume II, Section 5.1 (Version 3, Feb. 2006).

[19] *See infra* note 57 and accompanying text.

[20] *See* ''XBRL Data Submitted in the XBRL Voluntary Program on EDGAR'' page on the Commission Web site, available at: *http://www.sec.gov/Archives/edgar/xbrl.html.*

[21] *See SEC XBRL Voluntary Program Extends to Investment Companies,* Securities and Exchange Commission Press Release, Aug. 8, 2005, available at: *http://www.sec.gov/news/press/2005-112.htm.*

[22] 17 CFR 249.331 and 274.128.

[23] 17 CFR 249.332 and 274.130.

[24] Voluntary participants must use the standard U.S. GAAP investment management taxonomy (Version 2.1) approved by XBRL International. *See* EDGAR Filer Manual, Volume II, Section 5.2.4.1 (Version 3, Feb. 2006); ''Frequently Asked Questions about the XBRL Voluntary Filing Program'' page on the Commission Web site, available at: *http://www.sec.gov/info/edgar/xbrlfaq032105.htm.*

roundtable in June 2006 that focused, in part, on the role of data tagging and interactive data in improving the quality of mutual fund disclosures. Representatives from investor groups, the mutual fund industry, analysts, and others discussed how the Commission could leverage the power of interactive data and other technology to provide mutual fund investors with better information.[25]

Significant discussion at the June roundtable concerned the importance of providing mutual fund investors with better, more user-friendly access to key information, such as information about investment objectives and strategies, risks, and costs.[26] This key information is included in the mutual fund prospectus,[27] but it can be difficult for investors to extract this key information from lengthy prospectuses, which often cover multiple funds and contain a wealth of other information. Much of this information is required to be included in the risk/return summary section of the prospectus,[28] and tagging this information could provide powerful tools for investors.[29]

We believe that exploring the tagging of the information in the risk/return summary section is an important step in our interactive data program. With almost half of all U.S. households owning mutual funds,[30] typically to fund their education, retirement, and other basic needs, improving the quality of mutual fund disclosure is important to millions of Americans. Tagging of key mutual fund information could help to streamline the delivery of mutual fund information and provide investors, analysts, and others with improved tools to compare funds based upon, among other things, costs, investment objectives, strategies, and risks. In addition, the risk/return summary information is largely narrative in format, and exploring the viability of tagging this information will provide us with valuable insights as we assess the potential for tagging other primarily narrative information.

As noted above, XBRL International has approved an investment management XBRL U.S. GAAP financial reporting taxonomy.[31] That taxonomy generally does not extend to the information in the risk/return summary section. In March 2006, the Investment Company Institute (the ''ICI'')[32] announced an initiative to create a taxonomy to cover the risk/return summary information in the prospectus.[33] The ICI recently released its draft risk/return summary taxonomy and announced that it would provide a 45-day period for public review and comment.[34] We are proposing amendments to the voluntary program that would, if adopted, permit mutual funds to tag the information in the risk/return summary section of their prospectuses using the taxonomy developed by the ICI.

II. Discussion

As part of our ongoing effort to evaluate the usefulness of data tagging, we are proposing amendments to extend the voluntary program to enable mutual funds to submit exhibits containing tagged risk/return summary information attached to EDGAR filings.[35] We expect to permit any mutual fund to participate, without pre-approval, merely by submitting the risk/return summary information in the required manner. As we continue to gain experience with interactive data, we will evaluate the benefits of data tagging to investors, analysts, and others. If, in the future, we consider requiring filers to tag the risk/return summary information, that would be the subject of a separate rulemaking proposal.

A. Expansion of Voluntary Program Content

Currently, the XBRL data furnished under the voluntary program must consist of at least one item from a list of enumerated mandatory content (''Mandatory Content''), including financial statements, earnings information, and, for registered management investment companies, financial highlights or condensed financial information.[36] This may be accompanied by one or more related items from a list of optional content, including (1) audit opinions; (2) interim review reports; (3) reports of management on the financial statements; (4) certifications; (5) management's discussion and analysis of financial condition and results of operations; (6) management's discussion and analysis or plan of operation; (7) operating and financial review and prospects; and (8) management's discussion of fund performance.[37]

We propose to add the risk/return summary information set forth in Items 2 and 3 of Form N–1A as a new item of Mandatory Content.[38] As with all tagged exhibits under the voluntary program, submissions of tagged exhibits containing risk/return summary

[25] *See* Transcript of June 12 Interactive Data Roundtable, June 12, 2006, available at: *http://www.sec.gov/spotlight/xbrl/xbrlofficialtranscript0606.pdf* (''June 12 Roundtable Transcript''); Webcast Archive of June 12 Interactive Data Roundtable, June 12, 2006, available at: *http://www.connectlive.com/events/secxbrl/. See also* Agenda of October 3 Interactive Roundtable, Oct. 3, 2006 available at: *http://www.sec.gov/spotlight/xbrl/xbrlroundagenda-100306.htm*; Webcast Archive of October 3 Interactive Data Roundtable, Oct. 3, 2006, available at: *http://www.connectlive.com/events/secinteractivedata100306/* (''October 3 Roundtable Webcast'') (second Commission interactive data roundtable, focusing on new software using interactive data to provide investor-friendly research tools).

[26] *See* Barbara Roper, Director of Investor Protection, Consumer Federation of America, June 12 Roundtable Transcript, *supra* note 25, at 20 & 22. *See also* Paul G. Haaga, Jr., Executive Vice President, Capital Research and Management Company, *id.* at 90; William D. Lutz, Ph.D., Professor of English, Rutgers University, *id.* at 88; Elisse B. Walter, Senior Executive Vice President, NASD, *id.* at 40–41.

[27] Items 2 and 3 of Form N–1A [17 CFR 239.15A and 274.11A] (risk/return summary section of the prospectus).

[28] *Id.*

[29] *See* Chairman Christopher Cox, June 12 Roundtable Transcript, *supra* note 25, at 8 (''Interactive data, the tagging of these key facts [in the prospectus] so that they can easily be identified and extracted[,] offers the possibility of dramatic improvement over traditional disclosure delivery for mutual fund investors.''); Paul Schott Stevens, President and Chief Executive Officer, Investment Company Institute, *id.* at 72 (''XBRL tagging can help turn the Risk/Return Summary into an even more powerful tool than the Commission envisioned when it first adopted it in 1998 as a way to help investors compare one fund with another through the standardization of the information and the format in which it's presented.'').

[30] *2006 Investment Company Fact Book*, at 47, Investment Company Institute (2006), available at: *http://www.icifactbook.org/pdf/2006_factbook.pdf.*

[31] *Supra* note 24.

[32] The ICI is a national association of the American investment company industry.

[33] *Stevens Calls for Greater Use of Internet; Announces Initiative to Develop XBRL Data Tagging Technology,* ICI Press Release, Mar. 20, 2006, available at: *http://ici.org/statements/nr/06_news_mfimc.html#TopOfPage*; Remarks of Paul Schott Stevens, President and Chief Executive Officer, Investment Company Institute, at the Mutual Funds and Investment Management Conference, Mar. 20, 2006, available at: *http://ici.org/statements/remarks/06_mfimc_stevens_spch.html#TopOfPage*; Statement of the Investment Company Institute at the June 12, 2006 Interactive Data Roundtable, available at: *http://www.sec.gov/news/press/4-515/ici050906.pdf.*

[34] *ICI Unveils Draft XBRL Taxonomy For Public Review,* Investment Company Institute Press Release, Jan. 4, 2007, available at: *http://www.ici.org/home/07_news_xbrl_txnmy.html#TopOfPage.* The taxonomy, as well as instructions for commenting on the taxonomy, are available at *http://members.ici.org/xbrl. See also Statements of SEC Chairman Christopher Cox and Division of Investment Management Director Andrew Donohue Regarding the Investment Company Institute's Mutual Fund Interactive Data Taxonomy*, Securities and Exchange Commission Press Release, Jan. 4, 2007, available at: *http://www.sec.gov/news/press/2007/2007-2.htm.*

[35] The proposed amendments, if adopted, would not alter the voluntary program as it applies to the furnishing of XBRL information by non-investment companies.

[36] Rule 401(b)(1) of Regulation S–T [17 CFR 232.401(b)(1)].

[37] Rule 401(b)(2) of Regulation S–T [17 CFR 232.401(b)(2)].

[38] Proposed rule 401(b)(1)(iv).

information would be supplemental and would not replace the required HTML or ASCII version of the information called for in Form N–1A. Volunteers would be required to file their complete official registration statements to ensure that all investors have access to information upon which to base their investment decisions.[39] While tagged exhibits would be required to reflect the same information contained in the risk/return summary section of the related official Form N–1A filing, we emphasize that investors and others should continue to rely on the official filing rather than the tagged exhibit.

Any mutual fund submitting tagged risk/return summary information would be required to include this information as an exhibit to an amendment to a previous filing on Form N–1A.[40] Form N–1A filings, which contain mutual fund registration statements (or amendments thereto), differ from the other filings used in the voluntary program in that they are often subject to revision prior to effectiveness. For this reason, the proposed rules would not permit the submission of a tagged exhibit that is related to a registration statement or an amendment that is not yet effective. More specifically, the proposed rules would provide that a tagged exhibit to a Form N–1A filing, whether the filing is an initial registration statement or an amendment thereto, could be submitted only as an amendment to the filing to which the tagged exhibit relates and only after the effective date of such filing.[41] An exhibit containing tagged risk/return summary information could be submitted under rule 485(b) of the Securities Act, which provides for immediate effectiveness of amendments filed to make non-material changes and for certain other purposes, and would only need to contain the new exhibit, a facing page, a signature page, a cover letter explaining the nature of the filing, and a revised exhibit index. Filers submitting tagged risk/return summary information should not include the ICI taxonomy in their submissions as this taxonomy will be stored as a part of the EDGAR system.

Similar to the current voluntary program, volunteers would be free to submit tagged risk/return summary information regularly or from time to time, and volunteers could stop and start as they choose. Participating in the voluntary program would not create a continuing obligation for a volunteer to submit tagged risk/return summary information as an exhibit to a subsequent post-effective amendment. A volunteer would, however, be required to amend any tagged risk/return summary exhibits that do not comply with the content and format requirements of rule 401, *e.g.*, because they do not reflect the same information as the corresponding official filing.[42]

We also propose amendments that will require investment companies to tag information in a manner that will permit the information for each class[43] to be separately identified.[44] Currently, rule 8b–33 under the Investment Company Act requires that investment companies participating in the voluntary program submit tagged documents in a manner that will permit the information for each series of an investment company registrant[45] and each contract of an insurance company separate account[46] to be separately identified.[47] We propose to amend this rule to require that investment companies submit tagged documents in a manner that will permit the information for each class to be separately identified because expense and performance information in the risk/return summary is class-specific.[48]

The amendments we are proposing also would provide mutual funds with an additional option to submit tagged financial highlights or condensed financial information. Currently, mutual funds may submit this information as an exhibit to Form N–CSR.[49] The proposals, if adopted, also would permit mutual funds to submit their financial highlights or condensed financial information as a tagged exhibit to an amendment to the Form N–1A filing to which the information relates.[50]

We request comment on the proposed expansion of the voluntary program to include risk/return summary information.

- Is it beneficial to tag mutual fund risk/return summary information? Is this portion of the mutual fund prospectus an appropriate place to begin evaluating the tagging of non-financial information? Is there other mutual fund information that should be included in the voluntary program?
- What effect would tagged data have on investors', analysts', and other users' ability to analyze mutual funds' risk/return summary disclosure? Would tagged risk/return summary information have an effect on the usefulness of disclosure in Commission filings?
- We are not proposing to amend that portion of rule 401(b)(1) that currently

[39] Consistent with the current voluntary program, once received by the Commission, the official filing and the tagged risk/return summary information submitted as exhibits to the official filing would undergo technical validations. The official filing would continue to follow the normal process for receipt and acceptance. That is, it would be suspended if it fails its validation criteria. If the official filing meets its validation criteria, but any tagged risk/return summary document submitted as an exhibit to the official filing fails its own validation criteria, all tagged documents would be removed and the official filing would be accepted and disseminated without the tagged documents. The volunteer would be notified of the submission problem with the tagged documents. If the official filing failed to meet the required receipt and acceptance process and was suspended for any reason, any tagged risk/return summary information submitted with the official filing would also be suspended.

[40] *See* proposed rule 401(a) of Regulation S–T; proposed rule 8b–33. A mutual fund submitting tagged risk/return summary information as an exhibit to Form N–1A would be required to name each document ''EX–100'' as specified in the EDGAR Filer Manual. Proposed rule 8b–33. We also propose a technical amendment to General Instruction B.4.(b) of Form N–1A to add rule 8b–33 to the list of general provisions that apply to the filing of registration statements on Form N–1A.

[41] Proposed rule 401(a); *see also* proposed rule 8b–33.

[42] XBRL Adopting Release, *supra* note 13, 70 FR at 6559 n. 48. *See* rule 401(c)(1) (requires tagged exhibits to reflect the same information as corresponding official filing).

[43] A mutual fund may issue more than one class of shares that represent interests in the same portfolio of securities with each class, among other things, having a different arrangement for shareholder services or the distribution of securities, or both. Rule 18f–3 under the Investment Company Act [17 CFR 270.18f–3].

[44] Proposed rule 8b–33.

[45] A mutual fund may issue multiple ''series'' of shares, each of which is preferred over all other series in respect of assets specifically allocated to that series. Rule 18f–2 under the Investment Company Act [17 CFR 270.18f–2]. Each series is, in effect, a separate investment portfolio.

[46] Variable annuity contracts and variable life insurance contracts are issued through insurance company separate accounts.

[47] Rule 8b–33 under the Investment Company Act [17 CFR 270.8b–33].

[48] We have previously indicated that rule 8b–33 would require investment companies to submit tagged XBRL documents separately for each series of an investment company registrant. *See* XBRL Proposing Release, *supra* note 13, 69 FR at 59097 n. 49. Under proposed amended rule 8b–33, a mutual fund would not be required to submit tagged risk/return summary information in separate documents for each series or class, provided that the information is tagged in such a manner that the information may be separately identified by series and class.

[49] Rule 401(a) and (b)(1)(iii) of Regulation S–T [17 CFR 401(a) and (b)(1)(iii)] (permitting financial highlights or condensed financial information set forth in Item 8(a) of Form N–1A to be submitted as Mandatory Content); rule 8b–33. Mutual funds must include their financial highlights or condensed financial information in every annual and semi-annual report transmitted to shareholders. Items 22(b)(2) and (c)(2) of Form N–1A (requiring annual or semi-annual reports to include the information required by Item 8(a) of Form N–1A). Mutual funds must include a copy of their annual or semi-annual report transmitted to shareholders with their Form N– CSR filed with the Commission. Item 1 of Form N–CSR.

[50] Proposed rule 8b–33 (permitting tagged exhibits under the voluntary program to be submitted on Form N–1A); Item 8(a) of Form N–1A (requiring mutual funds to provide financial highlights information); rule 401(a) and (b)(1)(iii) of regulation S–T (permitting information set forth in Item 8(a) of Form N–1A as Mandatory Content under the voluntary program).

requires that Mandatory Content ''consist of a complete set of information for all periods presented in the corresponding official EDGAR filing.'' Should mutual funds that submit tagged risk/return summary information be required to tag all of the information in the risk/return summary section of the corresponding official filing or should they be permitted to tag some, but not all, of the information? For example, if a fund's official filing contains information for more than one series or class, should the fund be permitted to submit tagged risk/return summary information for fewer than all of the series and classes? As another example, should a mutual fund be permitted to tag discrete portions of the risk/return summary information, such as cost and performance information, while not tagging others, such as narrative information?

• Should mutual funds be permitted to submit tagged risk/return information related to registration statements or post-effective amendments that are not yet effective? Would this raise any liability issues? If mutual funds are permitted to submit tagged risk/return summary information prior to effectiveness, what safeguards would be appropriate? For example, should funds be required to submit revised tagged documents if there are any changes (or any material changes) to the risk/return summary disclosure in the effective registration statement or amendment and/or should there be additional required disclosure to specifically caution investors and others that the information may differ from that in the effective filing?

• The proposed amendments would not create a continuing obligation for a volunteer to submit tagged risk/return summary information as an exhibit to a subsequent post-effective amendment. When a mutual fund that has submitted tagged risk/return summary information amends its registration statement, should we require the fund to submit updated tagged risk/return summary information? Should it depend on the materiality of the amendments? How would a requirement to update tagged exhibits affect participation in the voluntary program? If we do not impose a continuing obligation to update tagged exhibits, should we require additional disclosure or other safeguards?

• Will the proposed amendment to rule 8b–33, providing that investment companies must tag information in a manner that will permit the information for each class to be separately identified, raise any issues with respect to any investment company information that may be tagged under the voluntary program? Should we specify that only risk/return summary information must be tagged in a manner that will permit the information for each class to be separately identified? Will the risk/return summary taxonomy in its current state of development permit the information for each series and class to be separately identified? If not, how should it be modified to permit this?

• Should mutual funds be required to submit separate tagged risk/return summary exhibits for each series or class? Instead, should they be permitted to submit exhibits that combine multiple series or classes of the same registrant, provided that the information is tagged in such a manner that the information may be separately identified by series and class?

• We plan to permit all filers on Form N–1A to submit documents containing tagged risk/return summary information as exhibits to their official Form N–1A filings so long as they comply with the requirements of the voluntary program. Should we limit participation, such as by size or type of mutual fund? If so, what should be the criteria for participating? If so, why?

• What steps can we take to encourage mutual funds to participate in the expanded voluntary program?

B. Required Disclosure

Under the current voluntary program, any official filing with which tagged exhibits are submitted must disclose that the purpose of submitting the tagged exhibits is to test the related format and technology and, as a result, investors should not rely on the exhibits in making investment decisions.[51] We are proposing that this disclosure be required in the exhibit index of any Form N–1A filing that includes a tagged exhibit.[52]

The current voluntary program also requires any official filing with which tagged exhibits are submitted to disclose that the information contained in the exhibits is ''unaudited'' or ''unreviewed.''[53] We are proposing to require this disclosure in a Form N–1A filing with which tagged financial highlights or condensed financial information is submitted. We are not proposing to require this disclosure in a Form N–1A filing when the tagged exhibits to the filing contain only risk/return summary information because this information is not ordinarily audited or reviewed by an independent auditor.[54]

We request comment on the proposed cautionary disclosures that would be required to accompany the submission of tagged information that accompanies a Form N–1A filing.

• Should we require the disclosure concerning whether the information is ''unaudited'' or ''unreviewed'' to accompany exhibits containing tagged risk/return summary information?

• Is additional or different language necessary for the cautionary disclosures?

• Is the exhibit index to a Form N–1A filing the appropriate place for the cautionary disclosures?

C. Liability Issues

We propose to extend to tagged risk/return summary information limited protection from liability that is similar to the protection provided under the current voluntary program. As is the case with the current program, we would provide this protection because liability remains for the official filing, and the program is experimental, contains certain safeguards, and should not unnecessarily deter volunteers from participating.

Currently, tagged exhibits are not deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934 (''Exchange Act'')[55] or Section 34(b) of the Investment Company Act,[56] or otherwise subject to the liability of these sections.[57] In addition, the current rules also provide more general relief from liability under the securities laws, including the Securities Act, the Exchange Act, the Trust Indenture Act of 1939, and the Investment Company Act, for information in a tagged exhibit that complies with the content and format requirements of the voluntary program to the extent that the information in the corresponding portion of the official EDGAR filing was not materially false or misleading.[58]

Unlike the filings currently included in the voluntary program, Form N–1A is

[51] Rule 401(d)(1)(ii) of Regulation S–T [17 CFR 232.401(d)(1)(ii)].

[52] Proposed rule 401(d)(2)(i). Rule 483(a) of Regulation C [17 CFR 230.483(a)] requires, among other things, that a registration statement of a registered investment company ''contain an exhibit index, which should immediately precede the exhibits filed with such registration statement.''

[53] Rule 401(d)(1)(i) of Regulation S–T [17 CFR 232.401(d)(1)(i)].

[54] Proposed rule 401(d)(1)(i).

[55] 15 U.S.C. 78r.

[56] 15 U.S.C. 80a–33(b).

[57] Rule 402(a)(1) under Regulation S–T [17 CFR 232.402(a)(1)]. Further, because the tagged documents are not filed under the Exchange Act, they are not incorporated by reference into registration statements filed under the Securities Act or prospectuses they contain. These protections apply regardless of whether the documents are exhibits to a document otherwise incorporated by reference into a filing.

[58] Rule 402(b) of Regulation S–T [17 CFR 232.402(b)].

a registration form under both the Securities Act and the Investment Company Act; and volunteers submitting tagged exhibits to that form also could face potential registration statement liability under the Securities Act. As a result, we propose to extend the liability protection under the voluntary program to include Section 11 of the Securities Act.[59] Specifically, we propose to amend rule 402(a) to provide that tagged exhibits are not deemed filed for purposes of Section 11 or otherwise subject to the liabilities of that section. In addition, we propose to amend rule 402(a) to state explicitly that tagged exhibits are not part of any registration statement to which they relate.[60] We will continue to caution users on the Commission's Web site that documents submitted under the voluntary program should not be relied upon for making investment decisions, and users should continue to rely on the company's official filing.[61]

We do not propose to modify the provision that affords volunteers general relief from liability under the federal securities laws to the extent that the information in the corresponding portion of the official EDGAR filing was not materially false or misleading.[62] That provision includes liability protections under the Securities Act, and it would apply to tagged documents submitted as exhibits on Form N–1A.

We request comment on the proposed liability protections for tagged risk/return summary information.

- Is it necessary or appropriate to extend liability protection to Section 11 of the Securities Act? Should we modify the proposed liability provisions in any way?
- Should the tagged risk/return summary information be considered filed or furnished for purposes of the voluntary program? Should the tagged risk/return summary documents be deemed not to be part of any registration statement to which they relate?
- With regard to risk/return summary submissions, are the proposed liability provisions sufficient to protect volunteers and to encourage participation in the voluntary program? To encourage participation in the voluntary program, should liability protections be increased beyond those proposed? Would investors have sufficient protection under the proposed amendments? For the protection of investors, should liability protections be decreased from those proposed?

D. The Risk/Return Summary Taxonomy and Software Tools

As discussed above, the taxonomy to tag the risk/return summary information is being developed by the Investment Company Institute. The ICI has released the draft risk/return summary taxonomy for public review and comment, and we expect that the ICI will submit the taxonomy to XBRL US, Inc., for evaluation and approval in accordance with their procedures.[63] In light of the purpose of the voluntary program, which is to test and evaluate tagging technology, we anticipate permitting mutual funds to submit documents containing risk/return summary information that is tagged using the ICI's taxonomy prior to final approval of the taxonomy by XBRL US, Inc.

Commercial off-the-shelf products that provide means to view tagged information in a rendered, or human readable, format and to compare or analyze tagged information are available. We will assess whether to provide such software tools on our Web site for use with risk/return summary information. For example, the Commission Web site currently provides access to a prototype XBRL Web application that converts tagged data received in the current voluntary program into rendered format.[64] If we do provide rendering or analysis tools, we intend to include appropriate cautionary language to the effect that investors should rely only on the information in the official version of a filing and not on the tagged documents submitted as part of the voluntary program in making investment decisions. While we may decide to proceed with the expansion of the voluntary program without providing rendering or analysis tools, we will continue to evaluate the use of such tools to aid the investing public.

We request comment on the proposed use of the ICI's risk/return summary taxonomy and the need for the development of rendering and other tools.

- Is the taxonomy for risk/return summary information created by the ICI sufficiently developed that we should permit its use in the voluntary program? If not, explain what changes or procedural steps are needed prior to use. What specific criteria should be applied to determine whether the risk/return summary taxonomy is sufficiently developed?
- Is there anything related to the process for developing and approving the risk/return summary taxonomy that should affect its use or otherwise raise concerns?
- The process for approving a taxonomy as XBRL includes testing and technical modification. Should the Commission permit use of a risk/return summary taxonomy in the voluntary program that has not been acknowledged or approved as XBRL?
- A tagged submission that a volunteer creates can adhere to either a standard taxonomy or a standard taxonomy with extensions. Extensions to a standard taxonomy are additional tags defined by a particular user that further refine the tags contained in the standard taxonomy. We expect that mutual funds will be permitted to submit extensions to the standard risk/return summary taxonomy. Given the narrative format of much risk/return summary information, does tagging of this information raise particular problems with regard to extensions or other facets of data tagging? For what purposes would mutual funds want or need to make use of extensions? Are there sufficient software tools available to develop extensions to the risk/return summary taxonomy, if necessary? To what extent would the use of extensions reduce the comparability among risk/return summary information that is tagged? Are there any reasons why the use of extensions would be inappropriate with regard to risk/return summary information?
- What are the advantages and disadvantages of the Commission providing on its Web site tools to render

[59] In addition, the current provisions of rule 402(a) would apply to tagged risk/return summary information. In particular, a tagged exhibit on Form N–1A would not be deemed incorporated by reference into another filing, regardless of whether the tagged exhibit is an exhibit to a document otherwise incorporated by reference into another filing. Rule 402(a)(2) under Regulation S–T [17 CFR 232.402(a)(2)]. All other liability and antifraud provisions of the Securities Act, Exchange Act, and Investment Company Act would apply. Rule 402(a)(3) under Regulation S–T [17 CFR 232.402(a)(3)]. For example, material misstatements or omissions in a tagged submission would continue to be subject to liability under Section 10(b) [15 U.S.C. 78j(b)] and rule 10b–5 [17 CFR 240.10b–5] under the Exchange Act.

[60] Section 11 of the Securities Act applies to ''any part of the registration statement, when such part became effective.'' The Commission takes a similar approach with unofficial PDF copies contained in electronic submissions. *See* Rule 104(d) of Regulation S–T [17 CFR 232.104(d)]. Similar to the other protections in the current voluntary program, Section 11 liability relief, under the proposed rules, would not extend to the information the official filing contains.

[61] *See supra* note 20.

[62] Rule 402(b). We are, however, proposing technical amendments to rule 402(b) to replace each reference to ''Item 401'' with ''Rule 401.'' Proposed rule 402(b).

[63] XBRL US, Inc., represents the United States to XBRL International. XBRL US, Inc., is responsible for organizing and sponsoring taxonomies from the United States, including the main accounting standards for United States business reporting.

[64] *See* ''Interactive Financial Report Viewer—Preview Release'' Web page on the Commission Web site, available at: *http://www.sec.gov/spotlight/xbrl/xbrlwebapp.htm*

the tagged risk/return summary information in human readable form or to permit users to analyze and compare tagged risk/return summary information submitted by different mutual funds? If we were to provide a rendering tool, what, if any, liability or other concerns would be raised by the fact that the presentation would be different from the risk/return summary information as presented in a registrant's official prospectus? What, if any, liability or other concerns would analytical or comparison tools raise? What, if any, disclaimers would be necessary to address any liability concerns related to rendering, analytical, or comparison tools? If we were to provide a rendering tool, would it hinder the ability of a volunteer to present its tagged risk/return summary information in as much detail as, and in a manner substantially similar to, its official filing? If we do not provide rendering, analytical, or comparison tools, would it hinder participation in the voluntary program or limit our ability to explore the usefulness of tagged risk/return summary information?

E. Effective Date

If we adopt the proposed amendments, we expect the effective date to be thirty days after publication of the adopting release in the **Federal Register**. The Commission requests comment on this proposed effective date.

III. General Request for Comments

We request comment not only on the specific issues we discuss in this release, but on any other approaches or issues that we should consider in connection with the proposed amendments. We seek comment from any interested persons, including those required to file information with us on the EDGAR system, as well as investors, disseminators of EDGAR data, industry analysts, EDGAR filing agents, and any other members of the public.

IV. Paperwork Reduction Act

The proposed rule and form amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[65] We are submitting the proposed collection of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. Provision of information under the proposed amendments would be voluntary and would not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

The title for the collection of information is ''Voluntary XBRL-Related Documents'' (OMB Control No. 3235–0611). The proposed amendments would extend the current interactive data voluntary reporting program to enable mutual funds voluntarily to submit tagged information contained in the risk/return summary section of their prospectuses on EDGAR as exhibits to Form N–1A filings.

A. Reporting and Cost Burden Estimate

1. The Voluntary Program

We are proposing to increase the burden associated with the existing collection of information for Voluntary XBRL-Related Documents to reflect the proposed amendments, which would extend the current interactive data voluntary reporting program to enable mutual funds voluntarily to submit tagged information contained in the risk/return summary section of their prospectuses on EDGAR as exhibits to Form N–1A filings. The proposed expansion of the voluntary program would be open to any mutual fund choosing to participate. We estimate that 10% of the 545 fund complexes that have mutual funds, or 55 fund complexes, would each submit documents containing tagged risk/return summary information for one mutual fund.[66] This estimate is higher than the number of mutual funds participating in the current voluntary program. However, we believe that additional mutual funds will participate in the proposed expanded voluntary program.[67]

Submission of tagged risk/return summary information would not directly affect the burden of preparing the mutual funds' registration statements or the registrants' official EDGAR filings. In order to provide tagged risk/return summary information, a participating mutual fund would have to tag the risk/return summary section of its prospectus using the risk/return summary taxonomy and potentially develop taxonomy extensions and would submit an exhibit to its filing. Based on our previous estimates and our experience with registrants who have submitted tagged financial information in the current voluntary program, we estimate that the initial creation of tagged documents containing risk/return summary information would require, on average, approximately 110 burden hours per mutual fund,[68] and the creation of such tagged documents in subsequent years would require an average 10 burden hours per mutual fund.[69] Because the PRA estimates represent the average burden over a three-year period, we estimate the average hour burden for the submission of tagged documents containing risk/return summary information for one mutual fund to be approximately 43 hours.[70]

Based on the estimates of 55 participants submitting tagged documents containing risk/return summary information for one mutual fund per year and incurring 43 hours per submission we estimate that, in the aggregate, the industry would incur an additional 2,365 burden hours associated with the proposed amendments.[71] We further estimate that 75% of this burden increase, or

[65] 44 U.S.C. 3501 *et seq.*

[66] In the case of a mutual fund with multiple series, our estimate treats each series as a separate mutual fund.

[67] The ICI has stated that it will launch an educational effort to encourage mutual funds to use the risk/return summary taxonomy to tag the information in their EDGAR filings. *ICI Details Project to Extend XBRL to Key Investor Information,* Investment Company Institute Press Release, June 12, 2006, available at: *http://www.ici.org/statements/nr/06_news_xbrl.html#TopOfPage.*

[68] In the current voluntary program, we estimated that an initial set of submissions would require an average of 130 burden hours, 75% of which (or 97.5 hours) represents the internal burden hour estimate. *See* XBRL Adopting Release, *supra* note 13, at 70 FR 6563; XBRL Proposing Release, *supra* note 13, 69 FR at 59101. Based upon our experience with filers who have submitted tagged financial information in the current voluntary program, we believe that this burden estimate for submitting an initial set of submissions may have been too high. *See, e.g.,* Indra K. Nooyi, Chief Executive Officer, PepsiCo, Inc., October 3 Roundtable Webcast, *supra* note 25 (initial submission in voluntary program required approximately 60 to 80 total labor hours); John Stantial, Director of Financial Reporting, United Technologies Corporation, June 12 Roundtable Transcript, *supra* note 25, at 160 (initial submission in voluntary program required about 80 hours of effort). We, therefore, estimate that the initial creation of tagged documents containing risk/return summary information would require, on average, approximately 110 burden hours per mutual fund, 75% of which (or 82.5 hours) represents the internal burden hour estimate. These estimates more closely approximate the experience of filers in the current voluntary program.

[69] In the current voluntary program, we estimated that each set of submissions, after the initial set, would take 10 burden hours. *See* XBRL Adopting Release, *supra* note 13, at 70 FR 6563; XBRL Proposing Release, *Supra* note 13, 69 FR at 59101. We continue to believe that this estimate is appropriate.

[70] (110 hours in the first year + 10 hours in the second year + 10 hours in the third year) ÷ 3 years = 43 hours. While the PRA requires an estimate based on a hypothetical three years of participation, a registrant, as noted earlier, could participate in the expanded voluntary program by submitting tagged risk/return summary information over a shorter period or even just once as the registrant chooses.

[71] 55 documents per year x 43 hours per submission = 2,365 hours.

approximately 1,774 hours, would be borne internally by the mutual fund complex. We estimate that this internal burden increase converted to dollars would amount to approximately $384,958.[72]

We also estimate that 25% of the burden, or approximately 591 hours, would be outsourced to external professionals and consultants retained by the mutual fund complex at an average cost of $266.25 per hour for a total annual increase of approximately $157,354.[73] In addition, it is our understanding that many participants would also have annual software licensing costs. We estimate that the cost of licensing software would be $333 per participant per year, for a total annual increase of $18,315.[74] Altogether the total annual increase in external costs related to the proposed amendment would be $175,669.[75]

Our cost estimates are intended to reflect both initial and ongoing costs over a three-year period. In calculating these costs, we have tried to take into account, among other things, the current state of reporting process automation, automation that likely would be introduced in connection with the initial cost incurred, and the efficiencies that likely would be realized over the course of three years.

2. Regulation S–T

Regulation S–T (OMB Control No. 3235–0424) specifies the requirements that govern the electronic submission of documents. The proposed amendments would revise rules under Regulation S–T, but the associated increase in burden is reflected in the ''Voluntary XBRL-Related Documents'' collection of information as described above.

B. Request for Comments

We request comment to evaluate the accuracy of our estimates pursuant to 44 U.S.C. 3506(c)(2)(B) and solicit comments with regard to:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Whether our estimate of the burden of the proposed collection of information is accurate;
- Whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and
- Whether there are ways to minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Any member of the public may direct to the Commission any comments concerning the accuracy of these cost and burden estimates and any suggestions for reducing them. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549, with reference to File No. S7–05–07. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–05–07, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., Washington, DC 20549. Because OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, your comments are best assured of having their full effect if OMB receives them within 30 days of publication.

V. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The goal of the voluntary program is to increase EDGAR's efficiency and utility and to enhance the usefulness to investors of the information collected through EDGAR. In order to evaluate data tagging further, we have proposed amendments to extend the current interactive data voluntary reporting program to enable mutual funds voluntarily to submit tagged information contained in the risk/return summary section of their prospectuses on EDGAR as exhibits to Form N–1A filings.

A. Benefits

We believe that tagged information may allow more efficient and effective retrieval, research, and analysis of company information through automated means. The proposed expansion of the voluntary program would assist us in assessing whether using interactive data tags enhances users' ability to analyze and compare mutual fund risk/return summary information included in mutual funds' filings with the Commission. The proposed expansion of the voluntary program to include narrative, non-financial information, such as that contained in the risk/return summary, also would facilitate our ability to assess further the technical requirements of processing tagged documents using EDGAR.

Currently, a number of companies use computers and data entry staff to mine risk/return summary information provided by mutual funds on EDGAR in order to populate databases that are used to package information for sale to analysts, funds, investors, and others. Permitting funds to tag risk/return summary information in Commission filings would aid this data-mining process in that it would identify points of data at the source, which could reduce the cost to populate databases and improve the accuracy of that data. Additionally, the expanded voluntary program may benefit funds and the

[72] This cost increase is estimated by multiplying the increase in annual internal hour burden (1,774) by the estimated hourly wage rate of $217.00. The estimated wage figure is based on published rates for compliance attorneys and programmer analysts outside New York City, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding effective hourly rates of $271 and $199, respectively. *See* Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2005* (Sept. 2005) (''SIA Report''). The estimated wage rate was further based on the estimate that compliance attorneys would account for one quarter of the hours worked and senior system analysts would account for the remaining three quarters, resulting in a weighted wage rate of $217.00 (($271 x .25) + ($199 x .75)).

[73] 591 hours × $266.25 per hour = $157,354. The estimated wage figure is based on published rates for attorneys and senior programmers outside New York City, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding effective hourly rates of $312 and $251, respectively. *See* SIA Report, *supra* note 72. The estimated wage rate was further based on the estimate that attorneys would account for one quarter of the hours worked and senior programmers would account for the remaining three quarters, resulting in a weighted wage rate of $266.25 (($312 × .25) + ($251 × .75)).

[74] $333 per participant × 55 participants = $18,315. The estimated annual cost of the software comes from our previous voluntary program estimate PRA. *See* XBRL Adopting Release, *supra* note 13, at 70 FR 6563 and n. 113 That estimate was based on our discussions with software providers and others familiar with XBRL. We estimated that the cost of licensing software would range from $200 to $3,000 each year, with the majority of companies licensing less complex software in the $200 to $500 range. We set our software cost estimate at $500, which is the highest cost for the simpler XBRL software license, and we assumed that the first year license fee would be waived (based upon our understanding that software providers indicated that they would provide these products for free in the initial stages of the voluntary program). Because the PRA estimates represent the average burden over a three-year period, we estimated the average burden for software license costs to be $333 per year. *Id.*

[75] This annual total consists of $157,354 in outside professional costs plus $18,315 in software costs.

public by permitting experimentation with data tagged using the risk/return summary taxonomy.

In the future, the availability of potentially more accurate tagged information about mutual funds could also reduce the cost of research and analysis and create new opportunities for companies that compile, provide, and analyze data to produce more value added services. Enhanced access to tagged information also has the potential to allow retail investors (or financial advisers assisting such investors) to perform more personalized and sophisticated analyses and comparisons of mutual funds, which could result in investors making better informed investment decisions, and therefore in a more efficient distribution of assets by investors among different funds. This may, in turn, also contribute to increased competition among mutual funds and result in a more efficient allocation of resources among competing investment products. Although it is not possible to quantify precisely the beneficial effects of more efficient allocation of investors' assets and increased competition, they may be significant, given the size of the mutual fund industry.

B. Costs

The proposed expansion of the voluntary program would lead to some additional costs for funds choosing to submit tagged documents containing risk/return summary information as exhibits to their Form N–1A filings. For purposes of the PRA, we estimated that the increase in annual internal burden hours to the industry would be 1,774 hours, which would amount to approximately $384,958 and that the increase in annual external costs would amount to approximately $175,669 for a total estimated increase of $560,627 on an annual basis.[76]

We based these cost estimates upon, among other things, experience with filers who have submitted tagged financial information in the current voluntary program.[77] Due to the ongoing nature of the project to develop the risk/return summary taxonomy, however, we have limited data to quantify the cost of implementing the use of interactive data tags applied to risk/return summary information, and we seek comments and supporting data on our estimates with regard to the proposed amendments. In the future, there may be additional costs to current users of EDGAR data. For example, companies that currently provide tagging and dissemination of EDGAR data may experience decreased demand for their services. These entities have developed certain products and services based on data in EDGAR; many entities disseminate, repackage, analyze, and sell the information. Allowing mutual funds to submit tagged risk/return summary information, even voluntarily, may have an impact on entities providing EDGAR-based services and products. Because the Commission does not regulate all these entities, it is currently not feasible to accurately estimate the number or size of these potentially affected entities. The limited, voluntary nature of the program will help the Commission assess the effect, if any, on these entities. Additionally, the availability of mutual fund tagged data on EDGAR may provide these companies with alternative business opportunities.

C. Request for Comments

We request comment on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed rule and form amendments. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VI. Promotion of Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act[78] and section 2(b) of the Securities Act[79] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The proposed amendments would extend the current interactive data voluntary reporting program to enable mutual funds voluntarily to submit tagged information contained in the risk/return summary section of their prospectuses on EDGAR as exhibits to Form N–1A filings. The expansion of the voluntary program is intended to help us evaluate the usefulness to investors, third-party analysts, mutual funds, the Commission, and the marketplace of data tagging and, in particular, of tagging mutual fund information. Because compliance with the proposed amendments would be voluntary, the Commission estimates that the impact of the proposal would be limited. However, because the tagging of risk/return summary information has the potential to facilitate analysis of that information, we believe that the proposed amendments could promote efficiency by allowing us and others to gain experience with tagged mutual fund information in Commission filings.

Further, tagging of the risk/return summary information has the potential to help streamline the delivery of mutual fund information, and provide investors and others with improved tools to compare funds based upon, among other things, costs, investment objectives, strategies, and risks. We believe that the potential to streamline the delivery of mutual fund information and to provide investors and others with improved mutual fund comparison tools could promote efficiency and competition through more efficient allocation of investments by investors and more efficient allocation of assets among competing funds. In the future, companies that currently provide tagging and dissemination of EDGAR data may experience decreased demand for their services. The availability of mutual fund tagged data on EDGAR, however, may provide these companies with alternative business opportunities. We do not anticipate that the proposed amendments would have a significant impact on capital formation. Finally, because the proposals are designed to permit mutual funds to provide information in a format that we believe would be more useful to investors, we believe that the proposed amendments are appropriate in the public interest and for the protection of investors.

We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VII. Initial Regulatory Flexibility Analysis

We prepared this Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with the Regulatory Flexibility Act.[80] The proposed amendments would extend the current interactive data voluntary reporting program to enable mutual funds voluntarily to submit tagged information contained in the risk/return summary section of their prospectuses on EDGAR as exhibits to Form N–1A filings.

A. Reasons for, and Objectives of, the Proposals

The purpose of the proposed amendments is to help us evaluate the

[76] *See supra* Section IV.A.1.

[77] *See supra* note 68.

[78] 15 U.S.C. 80a–2(c).

[79] 15 U.S.C. 77(b).

[80] 5 U.S.C. 603 *et seq.*

usefulness to investors, third-party analysts, mutual funds, the Commission, and the marketplace of data tagging and, in particular, of tagging mutual fund information. We believe the proposed expanded voluntary program would enable us to further study the extent to which interactive data tags enhance the comparability of that data, the usefulness of data tags for dissemination, and our staff's ability to review and assess the accuracy and adequacy of that data. The proposed expanded voluntary program would also help us assess the effect of interactive data tags on the quality and transparency of risk/return summary information, as well as the compatibility of data tagging with the Commission's disclosure requirements.

More specifically, we believe that the proposed expanded voluntary program would better enable us to study the extent to which interactive data enhances the:

- Search capability of the EDGAR database to allow more efficient and effective extraction and analysis of specific data,
- Capability to perform comparisons among mutual funds, and
- Ability to perform analyses of mutual fund data and whether it would reduce the resources needed for data analysis.

In addition, we believe the proposed expanded voluntary program would enhance our ability to evaluate the:

- Impact on the staff's ability to review filings on a more timely and efficient basis,
- Use of tagged data for risk assessment and surveillance procedures, and
- Compatibility of interactive data with reporting quality, transparency, and other Commission reporting requirements.

B. Legal Basis

We are proposing rule and form amendments under the authority set forth in Sections 5, 6, 7, 10, 19(a), and 28 of the Securities Act and Sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act.

C. Small Entities Subject to the Proposed Rules

The proposed expansion of the voluntary program may have an effect on mutual fund participants in the voluntary program. Under Rule 0–10 under the Investment Company Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[81] We estimate that there are approximately 131 mutual funds that meet this definition. A smaller subset of those issuers may voluntarily submit tagged risk/return summary information under the voluntary program, but, because submitting risk/return summary information would be voluntary, we anticipate that only complexes with sufficient resources would elect to participate. To date, no small entity mutual funds have elected to participate in the current voluntary program.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The voluntary program is designed to assist us in assessing the feasibility of using interactive data on a broader basis. Experience with the current voluntary program indicates that the cost of participating in the expanded program, the associated burden on the EDGAR system, and the possible effect of the expanded voluntary program on those entities that use the EDGAR data would be minimal. Nevertheless, the impact of the proposed amendments remains somewhat speculative at this point.

No registrant would be required to submit tagged documents under the proposed extension to the voluntary program. The submission of tagged risk/return summary information would require a participating mutual fund to tag the risk/return summary section of its prospectus using the risk/return summary taxonomy and potentially develop extensions and to submit exhibits to its filing. Volunteers may also need to purchase software or retain a consultant to assist in tagging data. For purposes of the PRA, we estimated that each volunteer, including small entities, would incur approximately 43 burden hours and $333 in software costs annually.

E. Duplicative, Overlapping, or Conflicting Federal Rules

We believe that there are no rules that duplicate, overlap, or conflict with the proposals.

F. Agency Action to Minimize the Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. The purpose of the proposed amendments is to help us evaluate the usefulness to investors, third-party analysts, mutual funds, the Commission, and the marketplace of data tagging and, in particular, of tagging mutual fund information. Submitting documents containing tagged risk/return summary information would be entirely voluntary. We have considered different or simpler procedures for small entities, including:

- The establishment of different compliance or reporting requirements or timetables;
- The clarification, consolidation, or simplification of the proposed requirements;
- The use of performance rather than design standards; and
- Exemption from coverage.

For tagged data to provide benefits such as ready comparability, however, the data tagging system cannot have alternative procedures. Similarly, in order to achieve the benefits of interactive data tagging, use of a single data tagging technology is necessary. If we determine to require data tagging in the future, we will look to the results of the voluntary program, including those of the proposed expansion of the program to risk/return summary information, to find alternatives to minimize any burden on small entities. We solicit comment on how the proposals could be modified to minimize the effect on small entities.

G. Request for Comments

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comment on the number of small entities that would be affected by the proposals; the existence or nature of the potential effect of the proposals on small entities as discussed in the analysis; how to quantify the effect of the proposal; and how different procedures, if necessary, could be provided for small entities while remaining consistent with our goal to assess tagged data. We ask commenters to describe the nature of any effect and provide empirical data and other factual support for their views, if possible. These comments will be considered in preparing the Final Regulatory Flexibility Analysis, if the proposals are adopted, and will be placed in the same public file as comments on the proposal.

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of

[81] 17 CFR 270.0–10.

1996,[82] a rule is ''major'' if it results or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

The Commission requests comment on the potential impact of the proposed amendments on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

IX. Statutory Authority

The Commission is proposing the rule amendments outlined above under Sections 5, 6, 7, 10, 19(a), and 28 of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, 77s(a), and 77z–3] and Sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–8, 80a–24(a), 80a–29, and 80a–37].

List of Subjects

17 CFR Parts 232 and 239

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment Companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set forth above, the Commission proposes to amend title 17, Chapter II of the Code of Federal Regulations as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The general authority citation for Part 232 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

2. Amend § 232.401 by:

a. Revising the first sentence of paragraph (a);

b. Removing the word ''or'' at the end of paragraph (b)(1)(ii);

c. Removing the period at the end of paragraph (b)(1)(iii) and adding in its place ''; or'';

d. Adding new paragraph (b)(1)(iv);

e. Revising paragraph (d)(1)(i); and

f. Removing the term ''or 20–F'' and in its place adding '', 20–F or N–1A (§§ 239.15A and 274.11A of this chapter)'' in paragraph (d)(2)(i).

The addition and revisions read as follows:

§ 232.401 XBRL-Related Document Submissions.

(a) An electronic filer that participates in the voluntary XBRL (eXtensible Business Reporting Language) program may submit XBRL-Related Documents (§ 232.11) in electronic format as an exhibit to: The filing (other than a Form N–1A filing) to which the XBRL-Related Documents relate; an amendment to such filing, but, in the case of a Form N–1A filing, an amendment made only after the effective date of the Form N–1A filing to which the XBRL-Related Documents relate; or if the electronic filer is eligible to file a Form 8–K (§ 249.308 of this chapter) or a Form 6–K (§ 249.306 of this chapter), a Form 8–K or a Form 6–K, as applicable, that references the filing to which the XBRL-Related Documents relate if such Form 8–K or Form 6–K is submitted no earlier than the date of that filing. * * *

(b) * * *

(1) * * *

(iv) The risk/return summary information set forth in Items 2 and 3 of Form N–1A (§ 239.15A and § 274.11A of this chapter).

* * * * *

(d) * * *

(1) * * *

(i) That the financial information contained in the XBRL-Related Documents is ''unaudited'' or ''unreviewed,'' as applicable (but only if the mandatory content contained in the XBRL-Related Documents contains information other than risk/return summary information submitted under paragraph (b)(1)(iv) of this section);

* * * * *

3. Revise § 232.402(a)(1) to read as set forth below, and amend paragraph (b) by removing each reference to ''Item 401'' and adding in its place ''Rule 401''.

§ 232.402 Liability for XBRL-Related Documents.

(a) * * *

(1) Are not deemed filed for purposes of section 11 of the Securities Act (15 U.S.C 77k), section 18 of the Exchange Act (15 U.S.C. 78r), or section 34(b) of the Investment Company Act (15 U.S.C. 80a–33(b)), or otherwise subject to the liabilities of these sections, and are not part of any registration statement to which they relate;

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

4. The general authority citation for Part 239 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 270—GENERAL RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

5. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

6. Revise § 270.8b–33 to read as follows:

§ 270.8b–33 XBRL-Related Documents.

A registrant that participates in the voluntary XBRL (eXtensible Business Reporting Language) program may submit, in electronic format as an exhibit to a filing on Form N–1A (§§ 239.15A and 274.11A of this chapter), Form N–CSR (§§ 249.331 and 274.128 of this chapter), or Form N–Q (§§ 249.332 and 274.130 of this chapter) to which they relate, XBRL-Related Documents (§ 232.11 of this chapter). A registrant that submits XBRL-Related Documents as an exhibit to a form must name each XBRL-Related Document ''EX 100'' as specified in the EDGAR Filer Manual and submit the XBRL-Related Documents in such a manner that will permit the information for each series and class of an investment company registrant and each contract of an insurance company separate account to be separately identified. A registrant may submit such exhibit with, or in an amendment to, the Form N–CSR or Form N–Q filing to which it relates, or in an amendment to the Form N–1A filing to which it relates, in accordance with rule 401 of Regulation S–T (§ 232.401).

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

7. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

8. Amend General Instruction B.4.(b) of Form N–1A (referenced in §§ 239.15A and 274.11A) by revising ''8b–32 [17

[82] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

CFR 270.8b–1–270.8b–32]'' to read ''8b–33 [17 CFR 270.8b–1–270.8b–33]''.

Note: The text of Form N–1A will not appear in the Code of Federal Regulations.

Dated: February 6, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–2254 Filed 2–9–07; 8:45 am]

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Ozone-depleting substances use; essential-use designations; removed; comments due by 2-20-07; published 12-7-06 [FR E6-20797]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 188/P.L. 110–3

To provide a new effective date for the applicability of certain provisions of law to Public Law 105-331. (Feb. 8, 2007; 121 Stat. 6)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1	(869–060–00001–4)	5.00	[4] Jan. 1, 2006
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

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