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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, June 12, 2007
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 72, No. 95

Thursday, May 17, 2007

Agriculture Department
See Forest Service

Centers for Disease Control and Prevention
NOTICES
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panels, 27817
Healthcare Infection Control Practices Advisory Committee, 27817

Coast Guard
RULES
Pollution:
Vessels carrying oil, noxious liquid substances, garbage, municipal or commercial waste, and ballast water, 27738–27739
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Atchafalaya River, Berwick Bay, LA, 27740–27741
Regattas and marine parades:
ULHRA Hydroplane Races; withdrawn, 27735–27738
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27832–27833
Organization, functions, and authority delegations:
Docket Operations Facility; relocation, 27833–27834

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Corporation for National and Community Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27805–27806

Defense Department
NOTICES
Meetings:
National Defense University Board of Visitors, 27806
President's Commission on Care for America's Returning Wounded Warriors, 27806

Employment and Training Administration
RULES
Aliens; permanent employment in U.S.; labor certification:
Fraud and abuse incentives and opportunities reduction; program integrity enhancement, 27904–27947
NOTICES
Adjustment assistance; applications, determinations, etc.:
Bayer Clothing Group, Target Sales Corp., 27851
Best Artex, LLC, et al., 27851–27853
Intel Corp., 27853
Tool Dex, Inc., et al., 27853–27856

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Delaware, 27787–27789
Water programs:
Water quality standards—
Puerto Rico, 27789–27798
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27809–27811
Air pollution control:
State operating permits programs—
Idaho, 27811
Meetings:
Gulf of Mexico Program Citizens Advisory Committee, 27811

Federal Aviation Administration
RULES
Agency information collection activities; proposals, submissions, and approvals, 27732–27733
Airworthiness directives:
APEX Aircraft, 27721–27722
Boeing, 27723–27725
Cessna Aircraft Co., 27725–27730
Empresa Brasileira de Aeronautica S.A. (EMBRAER), 27730–27732
PROPOSED RULES
Airworthiness directives:
Cirrus Design Corp., 27766–27768
Diamond Aircraft Industries GmbH, 27768–27770
NOTICES
Exemption petitions; summary and disposition, 27898

Federal Bureau of Investigation
NOTICES
Meetings:
Criminal Justice Information Services Advisory Policy Board, 27851

Federal Communications Commission
NOTICES
Television broadcasting:
Home shopping stations; reconsideration petition; update, 27811–27813

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Illinois and North Carolina, 27752–27759
Various States, 27741–27752
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27834
Disaster and emergency areas:
Kansas, 27834–27835
Maine, 27835
New Hampshire, 27835–27836
New York, 27836
Texas, 27836
Vermont, 27836–27837

West Virginia, 27837

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 27807–27809
Applications, hearings, determinations, etc.:
CenterPoint Energy - Mississippi River Transmission Corp., 27806
Southern Star Central Gas Pipeline, Inc., 27806–27807

Federal Motor Carrier Safety Administration
NOTICES
Motor carrier safety standards:
Driver qualifications; diabetes exemptions; correction, 27901

Federal Reserve System
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27813–27814
Banks and bank holding companies:
Formations, acquisitions, and mergers, 27814–27815

Fish and Wildlife Service
NOTICES
Comprehensive conservation plans; availability, etc.:
Holla Bend National Wildlife Refuge, AR, 27837–27838
Long Lake National Wildlife Refuge Complex, ND, 27838–27839
Endangered and threatened species:
Incidental take permits—
Brevard County, FL; Florida scrub jay, 27839–27840
Escambia County, FL; Perdido Key beach mice, 27840–27841
Lake County, FL; sand skink, 27840

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Ivermectin; implantation or injectable dosage form, 27734–27735
Ivermectin and clorsulon; implantation or injectable dosage form, 27733–27734
Pimobendan; oral dosage form, 27733

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Puerto Rico
Merck Sharpe & Dohme Auimica De Puerto Rico, Inc.; pharmaceutical manufacturing facility, 27801

Forest Service
NOTICES
Environmental statements; notice of intent:
Nez Perce National Forest; Idaho County, ID; designated route and motorized vehicle use, 27800–27801

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27815
National Toxicology Program:
Alternative toxicological methods evaluation—
Murine local lymph node assay; comment request, scientific experts nominations, and data submission, 27815–27817

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27899–27900
Meetings:
Taxpayer Advocacy Panels, 27900

International Trade Administration
NOTICES
Antidumping:
Carbon and certain alloy steel wire rod from—
Mexico, 27801–27802
Hot-rolled carbon steel flat products from—
Thailand, 27802–27804

International Trade Commission
NOTICES
Import investigations:
Sucralose, sweeteners containing sucralose, and related intermediate compounds; correction, 27848

Justice Department
See Federal Bureau of Investigation
NOTICES
Pollution control; consent judgments:
F.A.G. Bearings LLC, 27848
Honolulu, 27849
Hudson Sand and Gravel, Inc., et al., 27849
Keystone Environmental Services, Inc., 27849–27850
Pursue Energy Corp., 27850
Tire Depot, Inc., et al., 27850–27851

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
New Mexico, 27841–27842
Wyoming, 27842–27843

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 27856

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Council; Science Committee, 27856–27857

National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27817–27818
Inventions, Government-owned; availability for licensing, 27818–27821
Meetings:
National Center for Complementary and Alternative Medicine, 27821
National Eye Institute, 27821–27822
National Human Genome Research Institute, 27822
National Institute of Allergy and Infectious Diseases, 27822–27823, 27826
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 27823–27824
National Institute of Child Health and Human Development, 27824
National Institute of Dental and Craniofacial Research, 27825–27826
National Institute of Diabetes and Digestive and Kidney Diseases, 27823
National Institute of Neurological Disorders and Stroke, 27823
National Institute on Aging, 27826–27827
National Institute on Alcohol Abuse and Alcoholism, 27824–27825
Recombinant DNA Advisory Committee, 27827
Scientific Counselors Boards; Chairpersons, 27827–27828
Scientific Review Center, 27828–27832

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
West Coast States and Western Pacific fisheries—Pacific Coast groundfish, 27759–27765
PROPOSED RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—Bering Sea and Aleutian Islands Limited Access Privilege Program; public workshop, 27798–27799
NOTICES
Meetings:
Western Pacific Regional Fishery Management Council, 27804–27805

National Park Service
NOTICES
Native American human remains, funerary objects; inventory, repatriation, etc.:
Forest Service, Cibola National Forest, Albuquerque, NM, 27843–27844
History, and Anthropology, and Philosophy Department Archaeology Laboratory; Augusta State University; Augusta, GA, 27844
Indian Affairs Bureau, Washington, DC and University of Colorado Museum, Boulder, CO, 27845
Museum of Anthropology, Washington State University, Pullman, WA, 27845–27846
Slater Museum of Natural History, University of Puget Sound, Tacoma, WA, 27846
Texas Archeological Research Laboratory, University of Texas, Austin, TX, 27846–27847
Washington State Parks and Recreation Commission and Thomas Burke Memorial State Museum of Natural History, WA, 27847–27848

Nuclear Regulatory Commission
PROPOSED RULES
Geologic repository operations area; security requirements and material control and accounting requirements, 27766
NOTICES
Environmental statements; availability, etc.:
GlaxoSmithKline Biologicals-Hamilton facility, MT, 27858–27859
Meetings; Sunshine Act, 27860
Applications, hearings, determinations, etc.:
Entergy Nuclear Vermont Yankee, L.L.C., et al, 27857–27858

Occupational Safety and Health Administration
PROPOSED RULES
Safety and health standards, etc.:
Personal protective equipment; agency standards update, 27771–27782

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Lincoln Variable Insurance Products Trust, et al., 27860–27867
Joint Industry Plan:
American Stock Exchange LLC, et al., 27867–27868
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 27868–27881
Chicago Mercantile Exchange, 27881–27884
International Securities Exchange, LLC, 27884–27885
NASDAQ Stock Market LLC, 27885–27891
National Association of Securities Dealers, Inc., 27891–27893
New York Stock Exchange LLC, 27893–27895
NYSE Arca Inc., 27895–27896

Small Business Administration
NOTICES
Disaster loan areas:
Maine, 27896–27897
New York, 27897

Social Security Administration
NOTICES
Privacy Act; computer matching programs, 27897–27898

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
West Virginia, 27782–27787

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
PROPOSED RULES
Economic regulations:
Aircraft gate returns; reporting requirements; meeting, 27771
Airline data; Internet submissions; meeting, 27770–27771

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27898–27899

Separate Parts In This Issue

Part II
Labor Department, Employment and Training Administration, 27904–27947

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

10 CFR

Proposed Rules:

26 27766
60 27766
63 27766
73 27766
74 27766

14 CFR

39 (4 documents) 27721, 27723, 27725, 27730
401 27732
415 27732
431 27732
435 27732
440 27732
460 27732

Proposed Rules:

39 (2 documents) 27766, 27768
217 27770
234 27771
241 27770
248 27770
250 27770
291 27770
298 27770
374a 27770

20 CFR

656 27904

21 CFR

520 27733
522 (2 documents) 27733, 27734

29 CFR

Proposed Rules:

1910 27771
1915 27771
1917 27771
1918 27771

30 CFR

Proposed Rules:

948 27782

33 CFR

100 27735
151 27738
165 27740

40 CFR

Proposed Rules:

52 27787
131 27789

44 CFR

65 27741
67 27752

50 CFR

660 27759

Proposed Rules:

679 27798

Rules and Regulations

Federal Register

Vol. 72, No. 95

Thursday, May 17, 2007

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27531 Directorate Identifier 2007–CE–020–AD; Amendment 39–15054; AD 2007–10–13]

RIN 2120–AA64

Airworthiness Directives; APEX Aircraft (Type Certificate No. A36EU Formerly Held by AVIONS MUDRY et CIE) Model CAP 10 B Airplanes

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 discovery of cracks on aileron spades of an in-service CAP 10B aircraft.

The consequence on the aircraft of these cracks might be the loss of the airplane rolling control.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 21, 2007.

On June 21, 2007, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. The streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This 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 March 23, 2007 (72 FR 13712). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

* * * the discovery of cracks on aileron spades of an in-service CAP 10B aircraft.

The consequence on the aircraft of these cracks might be the loss of the airplane rolling control.

APEX AIRCRAFT has designed a new models of inboard and mid-aileron spades supports which shall be installed in place of the previous supports models if cracks are found.

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 FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 31 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $2,480 or $80 per product.

In addition, we estimate that any necessary follow-on actions would take about 6 work-hours and require parts costing $2,500, for a cost of $2,980 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation

is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory 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 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:

2007–10–13 APEX Aircraft (Type Certificate No. A36EU formerly held by AVIONS MUDRY et CIE): Amendment 39–15054; Docket No. FAA–2007–27531; Directorate Identifier 2007–CE–020–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 21, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model CAP 10 B airplanes; serial numbers 001 through 299, fitted with major change 000302 (fiber carbon spar), and serial numbers 300 and up; that are certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 57: Wings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

* * * the discovery of cracks on aileron spades of an in-service CAP 10B aircraft.

The consequence on the aircraft of these cracks might be the loss of the airplane rolling control.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within the next 50 hours time-in-service (TIS) after the effective date of this AD and repetitively thereafter at intervals not to exceed 50 hours TIS, inspect the spades supports for cracks following the ACCOMPLISHMENT INSTRUCTIONS of APEX Aircraft Mandatory Service Bulletin No. 040401, dated October 29, 2004. Replacement of the spades supports with ones with a letter ''A'' marking per APEX Aircraft Mandatory Service Bulletin No. 040401, dated October 29, 2004, terminates the inspection requirements of this AD.

(2) Before further flight, if cracks are found during any inspection required by paragraph (f)(1) of this AD, replace the spades supports following the ACCOMPLISHMENT INSTRUCTIONS of APEX Aircraft Mandatory Service Bulletin No. 040401, dated October 29, 2004.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The MCAI and service bulletin require the initial inspection action within 10 hours TIS. We consider 10 hours TIS an urgent safety of flight compliance time, and we do not consider this unsafe condition to be an urgent safety of flight condition. Because we do not consider this unsafe condition to be an urgent safety of flight condition, we issued this action through the normal notice of proposed rulemaking (NPRM) AD process. The initial inspection time of 50 hours TIS is an adequate compliance for this AD action and met the FAA requirements for an NPRM followed by a final rule.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Staff, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(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 Direction générale de l'aviation civile AD No. F–2005–049, dated March 30, 2005; and APEX Aircraft Mandatory Service Bulletin No. 040401, dated October 29, 2004.

Material Incorporated by Reference

(i) You must use APEX Aircraft Mandatory Service Bulletin No. 040401, dated October 29, 2004, 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 Apex Aircraft, Bureau de Navigabilité, 1, route de Troyes, 21121 DAROIS—France; telephone: +33 380 35 65 10; fax +33 380 35 65 15; e-mail: *airworthiness@apex-aircraft.com;* Internet: *http://www.apex-aircraft.com.*

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or 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 Kansas City, Missouri, on May 9, 2007.

Charles L. Smalley,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–9393 Filed 5–16–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22288; Directorate Identifier 2005–NM–132–AD; Amendment 39–15050; AD 2007–10–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 747–400 series airplanes. This AD requires repetitive inspections for any crack in the upper deck floor beam at station 400, which include inspecting the floor beam web and chords, certain fastener holes at the intersection of the floor beam and frame on both sides of the airplane, and certain floor panel attachment fastener holes at the floor beam upper chords. This AD also requires corrective action if necessary. This AD results from several reports indicating that fatigue cracking was found in upper deck floor beams made from 7000 series aluminum alloy. We are issuing this AD to detect and correct cracking in the upper deck floor beam at station 400, which could extend and sever the floor beam. A severed floor beam could result in loss of controllability and rapid decompression of the airplane.

DATES: This AD becomes effective June 1, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 1, 2007.

We must receive comments on this AD by July 16, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this AD.

- DOT Docket web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 747–400 series airplanes. That NPRM was published in the **Federal Register** on September 6, 2005 (70 FR 52943). That NPRM proposed to require doing a conductivity test of the upper deck floor beam at station 400 to identify the floor beam material. If the floor beam is manufactured from 7050 aluminum alloy, that NPRM also proposed to require inspecting the upper deck floor beam and certain fastener holes at the floor beam upper chord for cracking; repairing any cracking if necessary; and doing a preventative modification.

Actions Since NPRM Was Issued

Since we issued the NPRM, Boeing has published Alert Service Bulletin 747–53A2660, dated November 16, 2006, to replace Boeing Alert Service Bulletin 747–53A2509, dated June 9, 2005. In the NPRM, we referred to Boeing Alert Service Bulletin 747–53A2509 as the appropriate source of service information for accomplishing the proposed conductivity test, one-time inspections of the upper deck floor beam and certain fastener holes for cracking and repair if necessary, reporting requirement, and preventative modification. We proposed the conductivity test and reporting requirement to find the two upper deck floor beams that were made from 7050–T7451 aluminum alloy, which are more susceptible to fatigue cracking. After several operators accomplished the conductivity test specified in Boeing Alert Service Bulletin 747–53A2509, the discrepant upper deck floor beams were found on two airplanes at station 400. Therefore, we have revised the applicability in paragraph (c) of this AD to include only those affected airplanes. Since the proposed conductivity test and reporting requirement, which were specified in paragraphs (f) and (f)(2) of the NPRM respectively, are no longer required, we have deleted those actions from this AD. Further, we have also deleted the preventative modification, which was specified in paragraph (f)(3) of the NPRM. This AD instead requires accomplishing new repetitive inspections, which are specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD. We have determined that the new repetitive inspections are sufficient to maintain an acceptable level of safety. We have described the new repetitive inspections under ''Relevant Service Information.''

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–53A2660, dated November 16, 2006. Part 1 of the Accomplishment Instructions of the service bulletin describes procedures for doing (1) repetitive detailed inspections for any crack in the upper deck floor beam at the intersection of the floor beam and frame on both sides of the airplane, (2) repetitive open hole high frequency eddy current (HFEC) inspections for any crack in certain fastener holes at the intersection of the floor beam upper chord and the frame inner chord on both sides of the airplane, and (3) corrective actions if necessary. The corrective actions include (1) contacting Boeing for repair instructions if any crack is found in the floor beam during any detailed inspection, (2) oversizing the cracked fastener holes at the intersection of the floor beam upper chord and frame inner chord, and doing open hole HFEC inspections of the oversized faster holes, if any crack is found in the fastener holes during any HFEC inspection, (3) installing an oversized fastener, if no crack is found in an oversized fastener hole and a minimum edge margin of 1.7D is maintained, and (4) contacting Boeing for repair instructions if any crack in a fastener hole cannot not be removed by oversizing the fastener hole and maintaining a minimum edge margin of 1.7D.

Part 2 of the Accomplishment Instructions of the service bulletin describes procedures for doing repetitive open hole HFEC inspections for any crack in the upper deck floor beam at all floor panel attachment fastener holes through the forward and aft horizontal flanges of the floor beam upper chord, from the left body frame to the right body frame; and doing corrective actions if necessary. The corrective action includes contacting Boeing for repair instructions if any crack is found at the floor panel attachment fastener holes.

The service bulletin specifies accomplishing the initial inspections in Parts 1 and 2 of the Accomplishment Instructions before the airplane has accumulated 18,000 total flight cycles. The service bulletin also specifies a repetitive interval of 10,000 flight cycles for the inspections in Part 1 of the Accomplishment Instructions and a repetitive interval of 6,000 flight cycles for the inspection in Part 2 of the Accomplishment Instructions.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

Comments

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

Request To Clarify the Source of Reported Cracking

Boeing requests that we clarify that this AD results from several reports of fatigue cracking found in upper deck floor beams made from 7000 series aluminum alloy, not 7050 aluminum alloy. Boeing states that 7050 aluminum alloy was not yet an option when cracking was found in the upper deck floor beams on Model 747 airplanes; cracking was found on airplanes with 7075–T6 upper deck floor beams, which prompted issuance of other related rulemaking (as identified in the NPRM) to address that unsafe condition. The commenter also states that the fatigue and crack growth in the 7050 beams is expected to be marginally better than in the 7075 beams.

We agree with Boeing's request and have revised the ''Summary'' and paragraph (d) of this AD.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design that may be registered in the U.S. at some time in the future. Therefore, we are issuing this AD to detect and correct cracking in the upper deck floor beam, which could extend and sever the floor beam. A severed floor beam could result in loss of controllability and rapid decompression of the airplane. This AD requires accomplishing the actions specified in the service information described previously.

Explanation of Changes to Costs of Compliance

In the NPRM, we estimated that there are about 123 airplanes of the affected design in the worldwide fleet and about 17 airplanes of U.S. registry. However, since issuance of the NPRM, we have determined that only 2 airplanes are affected by this AD. Those affected airplanes are currently operated by non-U.S. operators under foreign registry. Therefore, we have revised the ''Costs of Compliance'' accordingly.

After the NPRM was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $65 per work hour to $80 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

If an affected airplane is imported and placed on the U.S. Register in the future, the required inspections would take about 5 work hours, at an average labor rate of $80 per work hour. Based on these figures, we estimate the cost of this AD to be $400 per airplane, per inspection cycle.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety. The new requirements, which are to be done in accordance with Boeing Alert Service Bulletin 747–53A2660, dated November 16, 2006, were not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2005–22288; Directorate Identifier 2005–NM–132–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

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 the 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 AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–10–09 Boeing: Amendment 39–15050. Docket No. FAA–2005–22288; Directorate Identifier 2005–NM–132–AD.

Effective Date

(a) This AD becomes effective June 1, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–400 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–53A2660, dated November 16, 2006.

Unsafe Condition

(d) This AD results from several reports indicating that fatigue cracking was found in upper deck floor beams made from 7000 series aluminum alloy. We are issuing this AD to detect and correct cracking in the upper deck floor beam at station 400, which could extend and sever the floor beam. A severed floor beam could result in loss of controllability and rapid decompression of the airplane.

Compliance

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

Repetitive Inspections and Corrective Actions

(f) At the applicable times specified in Table 1 of paragraph 1.E. of Boeing Alert Service Bulletin 747–53A2660, dated November 16, 2006, do the actions specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD and do all applicable corrective actions, by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2660, dated November 16, 2006; except where the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with paragraph (g) of this AD. Do all applicable corrective actions before further flight.

(1) Repetitive detailed inspections for any crack in the upper deck floor beam at the intersection of the floor beam and frame on both sides of the airplane.

(2) Repetitive open hole high frequency eddy current (HFEC) inspections for any crack in certain fastener holes at the intersection of the floor beam upper chord and the frame inner chord on both sides of the airplane.

(3) Repetitive open hole HFEC inspections for any crack in the upper deck floor beam at all floor panel attachment fastener holes through the forward and aft horizontal flanges of the floor beam upper chord, from the left body frame to the right body frame.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

Material Incorporated by Reference

(h) You must use Boeing Alert Service Bulletin 747–53A2660, dated November 16, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, S.W., Renton, Washington; or 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 Renton, Washington, on May 7, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–9396 Filed 5–16–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26498; Directorate Identifier 2006–CE–83–AD; Amendment 39–15056; AD 2007–10–15]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 208 and 208B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) to supersede AD 2006–06–06, which applies to certain Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes. AD 2006–06–06 currently requires you to incorporate information into the applicable section of the Airplane Flight Manual (AFM) and Pilot's Operating Handbook (POH) and requires you to install placards. Since we issued AD 2006–06–06, Cessna issued new S1 Known Icing Equipment AFM supplements and developed a low airspeed awareness system. Consequently, this AD requires you to incorporate the applicable AFM supplement revision and temporarily retain the requirements of AD 2006–06–06 until the above revisions are incorporated. One of the AFM requirements is the installation of a functional low airspeed awareness system to operate the airplane in known icing conditions. We are issuing this AD to assure that the pilot has enough information and the necessary equipment to prevent loss of control of the airplane while in-flight during icing conditions.

DATES: This AD becomes effective on June 21, 2007.

ADDRESSES: To get the service information identified in this AD, contact the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number FAA–2006–26498; Directorate Identifier 2006–CE–83–AD.

FOR FURTHER INFORMATION CONTACT: Robert P. Busto, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4157; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

On January 25, 2007, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Cessna Models 208 and 208B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 1, 2007 (FR 72 4663). The NPRM proposed to supersede AD 2006–06–06, which currently requires you to incorporate information into the applicable section of the Airplane Flight Manual (AFM) and Pilot's Operating Handbook (POH) and requires you to install placards. The NPRM would require you to incorporate new S1 Known Icing Equipment AFM supplements and to install a low airspeed awareness system.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment. As policy, we do not address anonymous comments.

Comment Issue No. 1: Provide More Time for Installation of the Low Airspeed Awareness System

Corporate Air, the Regional Air Cargo Carriers Association (RACCA), and Federal Express request an extension to the compliance time for installing the low airspeed awareness system. The NPRM proposes a compliance time of 30 days, and the commenters want an extension until September 2007 in order to prevent unnecessary grounding of their airplanes. The commenters state that this should not present a safety problem since the icing season does not start until the end of September or early October.

The FAA concurs that the compliance time for the low airspeed awareness system can be extended and will increase it from 30 days to 90 days after the effective date of the AD. Cessna has issued new S1 Known Icing Equipment AFM supplements, dated February 20, 2007. These supplements incorporate all the actions from the NPRM, including the requirement for the installation of a functional low airspeed awareness system when flying into known icing conditions.

We are changing the final rule to require the incorporation of the applicable S1 Known Icing Equipment AFM supplement, dated February 20, 2007, and to extend the compliance time from 30 days to 90 days after the effective date of the AD.

Comment Issue No. 2: Do Not Retain the Actions From AD 2006–06–06

RACCA believes that there is no need for the FAA to restate the actions of AD 2006–06–06 in the AD. The commenter states that as soon as the new AD becomes effective, the actions of AD 2006–06–06 are superseded and are no longer necessary.

We concur that, as of the effective date of the new AD, the actions of AD 2006–06–06 are superseded. However, we are allowing 90 days after the effective date of this AD before the new actions must be incorporated. It is essential to address the unsafe condition and assure that the actions of AD 2006–06–06 remain in effect until the actions required by the new AD are incorporated.

We have not made changes to the final rule based on this comment.

Comment Issue No. 3: Clarify Whether Alternative Methods of Compliance (AMOC) Approved per AD 2006–06–06 Are Retained for This AD

Since the FAA is retaining the actions of AD 2006–06–06 until the new actions are done, RACCA questions whether it is the FAA's intent to allow the AMOCs approved for AD 2006–06–06.

It is the FAA's intent to retain the AMOCs approved for AD 2006–06–06 during the 90-day compliance period until the new actions are required.

We are changing the final rule to state that AMOCs approved for AD 2006–06–06 are approved for this AD until the actions required by paragraph (e) of this AD are done.

Comment Issue No. 4: Concern About the Reliability and Accuracy of the Low Airspeed Awareness Alert System

Corporate Air expresses concern about the reliability and accuracy of the low airspeed awareness alert system. The commenter did not request a specific change other than the change in compliance time referenced previously. We infer that the commenter either wants the requirement taken out of the AD or the AD delayed until further research can be done.

The FAA and Cessna conducted flight tests of the low airspeed awareness system during certification where the system passed all certification tests and was found acceptable. The system was designed to meet reliability certification requirements. We have determined that a functional low airspeed awareness system is necessary for the Cessna Models 208 and 208B to safely operate in known icing conditions.

We have not made changes to the final rule based on this comment.

Comment Issue No. 5: Require Equipment Other Than the Low Airspeed Awareness System

Stephen McClure believes that there will not be any benefit in safety from the installation of the low airspeed awareness system, because the airplane airspeed indicators already fill the need. He feels that pilots need to be trained to avoid and/or exit icing conditions once encountered. As an alternative, the commenter believes a better wing ice detection light system, automatic boot cycling system, and Goodrich ice detection system would provide a better safety benefit than the low airspeed awareness system.

We do not agree that the low airspeed awareness system is not necessary and have determined that it is necessary for flight in known icing conditions. The accident/incident history of the Model 208 indicates that pilots have not been diligent in the management of the aircraft when operating in icing conditions, as aircraft performance can decay very quickly. Additionally, the accident that occurred in Moscow in 2006 and recent flight tests have shown that the aural stall warning system does not provide sufficient time before a stall in all icing conditions. The low airspeed awareness system addresses each of these concerns by providing an alert with sufficient time to allow pilots to take the proper corrective action. The commenter is correct in stating that training pilots to avoid and/or exit icing conditions is a prudent course of action. Cessna has issued new S1 Known Icing Equipment AFM supplements, dated

February 20, 2007. These supplements incorporate all the actions from the NPRM, including the requirement for the installation of a functional low airspeed awareness system when flying into known icing conditions.

We agree with the commenter that the additional systems referenced would enhance safety. However, the accident/incident history on the Models 208 and 208B does not justify requiring the installation of such equipment through AD action. The pilot's failure to detect icing conditions has not been the problem on the affected airplanes; the problem has been having the information, training, and/or equipment necessary to operate safely once icing conditions are encountered. Additionally, the FAA examined the effectiveness of auto deice boot cycling during icing tunnel tests in 2005 and discovered that, at typical speeds associated with the Models 208 and 208B airplanes, the deice boot clearing effectiveness was not significantly improved over manually cycling at a certain accretion thickness. Therefore, the benefit of an automatic deice boot cycling system would be to relieve pilot workload. Service history on the Models 208 and 208B airplanes and many other aircraft with manual boot cycling systems does not justify the need to mandate an automatic system.

We are changing the final rule to require the incorporation of the applicable S1 Known Icing Equipment AFM supplement, dated February 20, 2007, and the extension of the compliance time from 30 days to 90 days after the effective date of the AD.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes previously discussed and minor editorial corrections. We have determined that these changes and minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than is already required.

Costs of Compliance

We estimate that this AD affects 765 airplanes in the U.S. registry.

The AD requires inserting the applicable new S1 Known Icing Equipment AFM supplement, dated February 20, 2007, into the AFM/POH, which includes the installation of a low airspeed awareness alert system. We estimate the following costs to do the actions of this AD:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
22 work-hours × $80 per hour = $1,760	$6,440	$8,200	$6,273,000

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 AD.

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 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 summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2006–26498; Directorate Identifier 2006–CE–83–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2006–06–06, Amendment 39–14514, (71 FR 13533, March 16, 2006), and adding the following new AD:

2007–10–15 Cessna Aircraft Company: Amendment 39–15056; Docket No. FAA–2006–26498; Directorate Identifier 2006–CE–83–AD.

Effective Date

(a) This AD becomes effective on June 21, 2007.

Affected ADs

(b) This AD supersedes AD 2006–06–06, Amendment 39–14514.

Applicability

(c) This AD applies to Models 208 and 208B, all serial numbers, that are certificated in any category.

Unsafe Condition

(d) This AD results from our determination that the revisions dated February 20, 2007, to the S1 Known Icing Equipment AFM supplement are necessary and should be incorporated into the Airplane Flight Manual (AFM)/Pilot's Operating Handbook (POH); and that a low airspeed awareness system should be required when operating in known icing conditions. We are issuing this AD to assure that the pilot has enough information and the necessary equipment to prevent loss of control of the airplane while in-flight during icing conditions.

New Actions Required by this AD

(e) Unless already done, within the next 90 days after the effective date of this AD,

incorporate the applicable new S1 Known Icing Equipment AFM supplement, dated February 20, 2007, into the AFM/POH:

Document	Affects
(1) Model 208 (675 SHP) FAA-approved Flight Manual Supplement S1 ''Known Icing Equipment,'' Cessna document D1352-S1–10, dated February 20, 2007, or later FAA-approved revision that incorporates the same information.	Cessna Model 208 airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114A turboprop engine installed (675 SHP) or FAA-approved engine of equivalent or higher horsepower installed, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing
(2) Model 208 (600 SHP) FAA-approved Flight Manual Supplement S1 ''Known Icing Equipment,'' Cessna document D1307-S1–09, dated February 20, 2007, or later FAA-approved revision that incorporates the same information.	Cessna Model 208 airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114 turboprop engine installed (600 SHP) or FAA-approved engine of equivalent horsepower installed, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing.
(3) Model 208B (675 SHP) FAA-approved Flight Manual Supplement S1 ''Known Icing Equipment,'' Cessna document D1329-S1–10, dated February 20, 2007, or later FAA-approved revision that incorporates the same information.	Cessna Model 208B airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114A turboprop engine installed (675 SHP) or FAA-approved engine of equivalent or higher horsepower installed, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing.
(4) Model 208B (600 SHP) FAA-approved Flight Manual Supplement S1 ''Known Icing Equipment,'' Cessna document D1309-S1–10, dated February 20, 2007, or later FAA-approved revision that incorporates the same information.	Cessna Model 208B airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114 turboprop engine installed (600 SHP) or FAA-approved engine of equivalent horsepower installed, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing.

Note: The above supplements require the installation of a functional low airspeed awareness system. Cessna Service Bulletin CAB06–11 and Service Kit SK 208–171, both dated October 9, 2006, provide instructions for such an installation.

(f) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may insert the information into the POH specified in all paragraphs (e)(1) through (e)(4) of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

Actions Retained From AD 2006–06–06

(g) The actions in paragraphs (h) and (i) of this AD below are retained in this AD from AD 2006–06–06. The new actions required by this AD in paragraph (e) above terminate the requirement for the actions in paragraphs (h) and (i) of this AD.

(h) No later than March 27, 2006 (3 days after March 24, 2006, which is the effective date of AD 2006–06–06), incorporate the following revisions into the Airplane Flight Manual (AFM), unless already done:

Affected airplanes	Incorporate the following AFM revision document
(1) Cessna Model 208 airplanes and Model 208B airplanes, all serial numbers.	Section 2: Limitations and Section 4: Normal Procedures: Temporary Revision 208PHTR05, dated June 27, 2005, to the POH and FAA-approved AFM.
(2) Cessna Model 208 airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114A turboprop engine installed (675 SHP) or FAA-approved engine of equivalent horsepower installed, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing.	Section 9: Optional Systems Description and Operating Procedures: Revision 6 of the 208 (675 SHP) POH/FAA-approved AFM Supplement S1 ''Known Icing Equipment,'' Cessna document D1352–S1–06, dated June 27, 2005.
(3) Cessna Model 208 airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114 turboprop engine installed (600 SHP) or FAA-approved engine of equivalent horsepower installed, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing.	Section 9: Optional Systems Description and Operating Procedures: Revision 6 of the Cessna Model 208 (600 SHP) POH/FAA-approved AFM Supplement S1 ''Known Icing Equipment,'' Cessna document D1307–S1–06, dated June 27, 2005.
(4) Cessna Model 208B airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114A turboprop engine installed (675 SHP) or FAA-approved engine of equivalent horsepower installed, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing.	Section 9: Optional Systems Description and Operating Procedures: Revision 7 of the 208B (675 SHP) POH/FAA-approved AFM Supplement S1 ''Known Icing Equipment,'' Cessna document D1329–S1–07, dated June 27, 2005.
(5) Cessna Model 208B airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114 turboprop engine installed (600 SHP) or FAA-approved engine of equivalent horsepower installed, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing.	Section 9: Optional Systems Description and Operating Procedures: Revision 6 of the 208B (600 SHP) POH/FAA-approved AFM Supplement S1 ''Known Icing Equipment,'' Cessna document D1309-S1–06, dated June 27, 2005.

(i) No later than March 27, 2006 (3 days after March 24, 2006, which is the effective date of AD 2006–06–06), you must do the following actions, unless already done. These changes are to the POH and FAA-approved AFM and to the POH/FAA-approved AFM Supplement S1 ''Known Icing Equipment'' mandated in paragraph (h) of this AD. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may do the placard POH/AFM requirements as specified in the paragraphs below. Make an entry into the aircraft records showing compliance with portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9):

(1) *For Cessna Model 208 airplanes and Model 208B airplanes, all serial numbers, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing:* You are prohibited from continued flight after

encountering moderate or greater icing conditions. The airplane can dispatch into forecast areas of icing but must exit moderate or greater icing conditions if encountered.

(2) *For Cessna Model 208 airplanes and Model 208B airplanes, all serial numbers, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing:*

(i) Insert the text in Appendix 1 of this AD preceding the KINDS OF OPERATION LIMITS paragraph in the LIMITATIONS section of the Cessna Models 208 or 208B POH and FAA-approved AFM.

(ii) Insert the text in Appendix 2 of this AD in the LIMITATIONS section of the Cessna Models 208 or 208B POH and FAA-approved AFM KNOWN ICING EQUIPMENT SUPPLEMENT S1 at the beginning of the paragraph ''REQUIRED EQUIPMENT.''

(3) *For Cessna Models and Models 208B airplanes, all serial numbers, equipped with airframe deicing pneumatic boots that are not currently prohibited from flight in known or forecast icing:* Install three placards with black letters on a white background. The placards must be located on the instrument panel under the radio stack, immediately above the pilot's flight instruments, or below the vertical speed indicator. Lettering on the placard must be a minimum height of 1/8-inch.

(i) Placard 1 must include the text of Appendix 3 of this AD.

(ii) Placard 2 must include the following text: ''120 KIAS Minimum in Icing Flaps Up except 110 KIA if Climbing to Exit Icing.''

(iii) Placard 3 must include the following text: ''Disconnect autopilot at first indication of ice accretion.''

(4) *For Cessna Models 208 and 208B airplanes, all serial numbers, equipped with airframe deicing pneumatic boots that are not currently prohibited from flight into known or forecast icing:*

(i) Insert the text in Appendix 4 of this AD under the ''AIRSPEED LIMITATIONS'' paragraph in the LIMITATIONS section of the Cessna Models 208 and 208B POH and FAA-approved AFM.

(ii) Replace the text in the KNOWN ICING EQUIPMENT SUPPLEMENT S1 under the ''MINIMUM SPEED IN ICING CONDITIONS'' paragraph with the text in Appendix 4 of this AD.

(iii) Insert the following text in the LIMITATIONS section of the POH/AFM under the ''OTHER LIMITATIONS'' paragraph and in the LIMITATIONS section of the KNOWN ICING EQUIPMENT SUPPLEMENT S1 under the ''AUTOPILOT OPERATION IN ICING CONDITIONS'' paragraph: ''Disconnect autopilot at first indication of ice accretion.''

(5) *For Cessna Model 208 airplanes and Model 208B airplanes, all serial numbers, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing:*

(i) Replace the text in the PERFORMANCE section of the Cessna Models 208 or 208B POH and FAA-approved AFM KNOWN ICING EQUIPMENT SUPPLEMENT S1 under the ''STALL SPEEDS'' paragraph with the text in Appendix 5 of this AD.

(ii) Replace the ''WARNING'' text in the LIMITATIONS section of the Cessna Models 208 or 208B POH and FAA-approved AFM KNOWN ICING EQUIPMENT SUPPLEMENT S1 under ''ENVIRONMENTAL CONDITIONS'' with: ''FLIGHT IN THESE CONDITIONS ARE PROHIBITED.''

(iii) Replace the last two sentences in the LIMITATIONS section of the Cessna Models 208 or 208B POH and FAA-approved AFM KNOWN ICING EQUIPMENT SUPPLEMENT S1 under ''ENVIRONMENTAL CONDITIONS'' with the following text: ''Exit strategies should be determined during pre-flight planning.''

Alternative Methods of Compliance (AMOCs)

(j) The Manager, Wichita Aircraft Certication (ACO), has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Robert P. Busto, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4157; fax: (316) 946–4107. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(k) AMOCs approved for AD 2006–06–06 are approved for this AD until the actions in paragraph (e) of this AD are done. After this, they are no longer valid. The paragraph designations of the AMOC refer to paragraphs (e) and (f) of AD 2006–06–06, which are paragraphs (h) and (i) of this AD respectively.

Related Information

(l) To get copies of the AFM supplements and service information referenced in this AD, contact: Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*. The docket number is Docket No. FAA–2006–26498; Directorate Identifier 2006–CE–83–AD.

Appendix 1 Retained From AD 2006–06–06

Changes to the Cessna Models 208 or 208B Pilot's Operating Handbook (POH) and FAA-Approved Airplane Flight Manual (AFM)

Affected Cessna Models 208 or 208B POH and FAA-Approved AFM

Insert the following text at the beginning of the KINDS OF OPERATION LIMITS paragraph in the LIMITATIONS section of the Cessna Models 208 or 208B POH and FAA-approved AFM. This may be done by inserting a copy of this AD into the POH/AFM:

''Continued flight after encountering moderate or greater icing conditions is prohibited. One or more of the following defines moderate icing conditions for this airplane:

Indicated airspeed in level cruise flight at constant power decreases by 20 knots.

Engine torque required to maintain airspeed increases by 400 ft. lbs.

Airspeed of 120 KIAS cannot be maintained in level flight.

An accretion of ¼-inch of ice is observed on the wing strut.

Disregard any mention of approval for flight in icing conditions within the POH/AFM.''

Appendix 2 Retained From AD 2006–06–06

Changes to the Cessna Models 208 or 208B Pilot's Operating Handbook (POH) and FAA-Approved Airplane Flight Manual (AFM)

Affected Cessna Models 208 or 208B POH and FAA-Approved AFM

Insert the following text in the LIMITATIONS section of the POH and FAA-approved AFM KNOWN ICING EQUIPMENT SUPPLEMENT S1, at the beginning of the paragraph ''REQUIRED EQUIPMENT.'' This may be done by inserting a copy of this AD into the POH/AFM:

''Continued flight after encountering moderate or greater icing conditions is prohibited. One or more of the following defines moderate icing conditions for this airplane:

Indicated airspeed in level flight at constant power decreases by 20 knots.

Engine torque required to maintain airspeed increases by 400 ft. lbs.

Airspeed of 120 KIAS cannot be maintained in level flight.

An accretion of ¼-inch of ice is observed on the wing strut.

Disregard any mention of approval for flight in icing conditions within the POH/AFM.''

Appendix 3 Retained From AD 2006–06–06

Cessna Model 208 Airplanes and Model 208B Airplanes, Equipped With Airframe Deicing Pneumatic Boots, That Are Not Currently Prohibited From Flight in Known or Forecast Icing

Install a placard with black letters on a white background. The placard shall be located on the instrument panel in one of the following areas: Under the radio stack, immediately above the pilot's flight instruments, or below the pilot's vertical speed indicator. Lettering on the placard shall be a minimum ⅛-inch tall and state the following:

''Continued flight after encountering moderate or greater icing conditions is prohibited. One or more of the following defines moderate icing conditions for this airplane:

Airspeed in level flight at constant power decreases by 20 KIAS.

Engine torque required to maintain airspeed increases by 400 ft. lbs.

120 KIAS cannot be maintained in level flight.

Ice accretion of 1/4 inch observed on the wing strut.''

Appendix 4 Retained From AD 2006–06–06

Changes to the Cessna Models 208 or 208B Pilot's Operating Handbook (POH) and FAA-Approved Airplane Flight Manual (AFM) Supplement S1

Affected Cessna Models 208 or 208B POH and FAA-Approved AFM and FAA-Approved Supplement S1

Insert the following text into the LIMITATIONS section under the ''AIRSPEED LIMITATIONS'' paragraph of the Cessna Models 208 or 208B POH and FAA-approved AFM, and replace the text in the KNOWN ICING EQUIPMENT SUPPLEMENT S1 under the ''MINIMUM SPEED IN ICING CONDITIONS'' paragraph with the following text. This may be done by inserting a copy of this AD into the POH/AFM:

''Minimum airspeed in icing conditions, for all flight phases including approach, except takeoff and landing:

Flaps up: 120 KIAS
Flaps 10°: 105 KIAS
Flaps 20°: 95 KIAS

Exception for flaps up: when climbing to exit icing conditions airspeed can be reduced to 110 KIAS minimum.

Flaps must be extended during all phases (takeoff and landing included) at airspeeds below 110 KIAS, except adhere to published AFM procedures when operating with ground deicing/anti-icing fluid applied.

Warning

The aural stall warning system does not function properly in all icing conditions and should not be relied upon to provide adequate stall warning when in icing conditions.''

Note: These are minimum speeds for operations in icing conditions. Disregard any reference to the original speeds within the POH/AFM.

Appendix 5 Retained From AD 2006–06–06

Changes to the Cessna Models 208 or 208B Pilot's Operating Handbook (POH) and FAA-Approved Airplane Flight Manual (AFM) Supplement S1

Replace the text in the PERFORMANCE section of the POH/AFM KNOWN ICING EQUIPMENT SUPPLEMENT S1 under the ''STALL SPEEDS'' paragraph with the following text:

''Ice accumulation on the airframe may result in a 20 KIAS increase in stall speed. Either buffet or aural stall warning should be treated as an imminent stall.''

''WARNING—The aural stall warning system does not function properly in all icing conditions and should not be relied upon to provide adequate stall warning when in icing conditions.''

Issued in Kansas City, Missouri, on May 10, 2007.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–9398 Filed 5–16–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24696; Directorate Identifier 2006–NM–038–AD; Amendment 39–15052; AD 2007–10–11]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145LR, –145XR, and –145MP Airplanes; and Model EMB–135BJ and –135LR Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain EMBRAER Model EMB–145LR, –145XR, and –145MP airplanes; and Model EMB–135BJ and –135LR airplanes. This AD requires replacing the electrical bonding clamps inside the fuel tanks and adjacent areas. This AD results from a report of the failure of a fitting clamp of an electrical bonding cable for the fuel tubing. We are issuing this AD to prevent loss of bonding protection in the interior of the fuel tanks or adjacent areas, and a consequent potential source of ignition in a fuel tank and possible fire or explosion.

DATES: This AD becomes effective June 21, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 21, 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.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this AD.

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain EMBRAER Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; and Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes. That supplemental NPRM was published in the **Federal Register** on December 6, 2006 (71 FR 70648). That supplemental NPRM proposed to require replacing the electrical bonding clamps inside the fuel tanks and adjacent areas. That supplemental NPRM also proposed to add airplanes to the applicability.

Comments

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

Request To Remove Airplanes From the Applicability of the Supplemental NPRM

ExpressJet points out that the supplemental NPRM specified that the newly added EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes accomplish the required actions in accordance with EMBRAER Service Bulletin 145LEG–28–0030, dated April 19, 2006. ExpressJet asserts that this service bulletin is not applicable to any of these airplanes, except the Model EMB–135BJ airplanes. Therefore, ExpressJet states that EMBRAER Model EMB–135ER, –135KE, –135KL, and –135LR airplanes should not be included in the applicability of the supplemental NPRM.

From this comment, we infer that ExpressJet is requesting that EMBRAER Model EMB–135ER, –135KE, –135KL, and –135LR airplanes be removed from the applicability of the AD. We partially agree. As we stated in the supplemental NPRM, the Agincia Nacional de Aviarno Civil (ANAC), which is the airworthiness authority for Brazil, notified us that the unsafe condition identified in the original NPRM might exist on EMBRAER ''Model EMB–135 airplanes,'' in addition to the airplanes identified in the original NPRM. ANAC

subsequently issued Brazilian airworthiness directive 2006–02–03R2, effective October 8, 2006, to address the subject unsafe condition on ''Model EMB–135 airplanes.''

However, we have verified the effectivity of EMBRAER Service Bulletins 145–28–0028, dated November 7, 2005; and 145LEG–28–0030, dated April 19, 2006; with EMBRAER. EMBRAER Service Bulletin 145LEG–28–0030 applies only to Model EMB–135BJ airplanes. EMBRAER Service Bulletin 145–28–0028 applies only to Model EMB–135LR airplanes, and to Model EMB–145LR, –145XR, and –145MP airplanes. Therefore, we agree that Model EMB–135ER, –135KE, and –135KL airplanes are not subject to the requirements of this AD and we have removed those airplanes from the applicability of this AD. We do not agree to remove Model EMB–135LR airplanes from the applicability of this AD, but we do agree that these airplanes are not subject to EMBRAER Service Bulletin 145LEG–28–0030. Therefore, we have revised Tables 1 and 2 of this AD to specify that these airplanes are identified in and must use EMBRAER Service Bulletin 145–28–0028 to accomplish the actions required by this AD.

In addition, we have removed Model EMB–145, –145ER, –145MR, and –145EP airplanes from the applicability of this AD. These airplanes are not identified in EMBRAER Service Bulletin 145–28–0028 and are not subject to the requirements of this AD.

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. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Replacement of bonding clamp (all airplane groups).	2	$80	Between $33 and $87, per kit (depending on kit/airplane group).	Between $193 and $247 (depending on kit/airplane group).	20	Between $3,860 and $4,940 (depending on kit/airplane group).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–10–11 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–15052. Docket No. FAA–2006–24696; Directorate Identifier 2006–NM–038–AD.

Effective Date

(a) This AD becomes effective June 21, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

EMBRAER model—	As identified in—
EMB–145LR, –145XR, –145MP, and –135LR airplanes	EMBRAER Service Bulletin 145–28–0028, dated November 7, 2005.

TABLE 1.—APPLICABILITY—Continued

EMBRAER model—	As identified in—
EMB–135BJ airplanes	EMBRAER Service Bulletin 145LEG–28–0030, dated April 19, 2006.

Unsafe Condition

(d) This AD results from a report of the failure of a fitting clamp of an electrical bonding cable for the fuel tubing. We are issuing this AD to prevent loss of bonding protection in the interior of the fuel tanks or adjacent areas, and a consequent potential source of ignition in a fuel tank and possible fire or explosion.

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.

Electrical Bonding Clamp Replacement

(f) At the time specified in paragraph (f)(1) or (f)(2) of this AD, as applicable: Replace the electrical bonding clamps having part numbers AN735D6 and AN735D4 inside the forward fuel tank or the ventral, wing stub, and wing fuel tanks, and adjacent areas, as applicable; by accomplishing all actions specified in the Accomplishment Instructions of the applicable service bulletin identified in Table 2 of this AD.

TABLE 2.—APPLICABLE SERVICE INFORMATION

For EMBRAER model—	Use—
EMB–145LR, –145XR, –145MP, and –135LR airplanes	EMBRAER Service Bulletin 145–28–0028, dated November 7, 2005
EMB–135BJ airplanes	EMBRAER Service Bulletin 145LEG–28–0030, dated April 19, 2006.

(1) For Model EMB–145LR, –145XR, and –145MP airplanes; and Model EMB–135LR airplanes: Within 5,000 flight hours after the effective date of this AD.

(2) For Model EMB–135BJ airplanes: Within 4,000 flight hours or 48 calendar months after the effective date of this AD, whichever occurs first.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) Brazilian airworthiness directive 2006–02–03R2, effective October 8, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use EMBRAER Service Bulletin 145–28–0028, dated November 7, 2005; or EMBRAER Service Bulletin 145LEG–28–0030, dated April 19, 2006; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or 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 Renton, Washington, on May 7, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–9401 Filed 5–16–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

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

[Docket No. FAA–2005–23449]

Human Space Flight Requirements for Crew and Space Flight Participants

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Office of Management and Budget Approval for Information Collection.

SUMMARY: This notice announces the Office of Management and Budget's (OMB) approval of the information collection requirement in the final rule published on December 15, 2006. The sections of the final rule pending approval of this information collection request are effective upon publication of this notice.

DATES: On April 16, 2007, the FAA received OMB approval for the information collection requirement in the final rule published at 71 FR 75616 (December 15, 2006). The compliance date for information collection requirements in §§ 460.5, 460.7, 460.9, 460.19, 460.45, and 460.49 is May 17, 2007.

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

SUPPLEMENTARY INFORMATION:

Background

On December 15, 2006, the FAA published the final rule, Human Space Flight Requirements for Crew and Space Flight Participants, in the **Federal Register**. The rule established requirements for human space flight as required by the Commercial Space Launch Amendments Act of 2004. In the **DATES** section of the final rule, we noted that affected parties did not need to comply with the information collection requirements in specified sections of the rule until the Office of Management and Budget (OMB) approved the FAA's request to collect the information.

According to the Paperwork Reduction Act, OMB approved the FAA's request for new information collection on April 16, 2007, and assigned the information collection OMB Control Number 2120–0720. The

control number was not available when the final rule was published, thus necessitating publication of this notice. The FAA request was approved by OMB without change and expires on April 30, 2010.

Title 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105, grants authority to the Administrator to publish this notice. The final rule (71 FR 75616) became effective on February 13, 2007 and the compliance date for information collection requirements in §§ 460.5, 460.7, 460.9, 460.19, 460.45, and 460.49 is May 17, 2007.

Issued in Washington, DC on May 8, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking Aviation Safety.

[FR Doc. E7–9480 Filed 5–16–07; 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; Pimobendan

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 Boehringer Ingelheim Vetmedica, Inc. The NADA provides for the veterinary prescription use of pimobendan chewable tablets in dogs for the management of the signs of congestive heart failure.

DATES: This rule is effective May 17, 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: Boehringer Ingelheim Vetmedica, Inc., 2621 N. Belt Hwy., St. Joseph, MO 64506–2002, filed NADA 141–273 that provides for the veterinary prescription use of VETMEDIN (pimobendan) Chewable Tablets in dogs for the management of the signs of mild, moderate, or severe (modified New York Heart Association Class II, III, or IV) congestive heart failure due to atrioventricular valvular insufficiency or dilated cardiomyopathy; for use with concurrent therapy for congestive heart failure as appropriate on a case-by-case basis. The NADA is approved as of April 30, 2007, and the regulations in 21 CFR part 520 are amended by adding § 520.1780 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.

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 on the date of the approval.

The agency 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 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 § 520.1780 to read as follows:

§ 520.1780 Pimobendan.

(a) *Specifications*. Each chewable tablet contains 1.25, 2.5, or 5 milligrams (mg) pimobendan.

(b) *Sponsor*. See No. 000010 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount*. Administer orally at a total daily dose of 0.23 mg per pound (0.5 mg per kilogram) body weight, using a suitable combination of whole or half tablets. The total daily dose should be divided into two portions administered approximately 12 hours apart.

(2) *Indications for use*. For the management of the signs of mild, moderate, or severe (modified New York Heart Association Class II, III, or IV) congestive heart failure due to atrioventricular valvular insufficiency or dilated cardiomyopathy; for use with concurrent therapy for congestive heart failure as appropriate on a case-by-case basis.

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

Dated: May 7, 2007.

Bernadette Dunham,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. E7–9516 Filed 5–16–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Ivermectin and Clorsulon

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 an abbreviated new animal drug application (ANADA) filed by Norbrook Laboratories, Ltd. The ANADA provides for the use of an ivermectin and clorsulon solution by subcutaneous injection in cattle for control of various internal and external parasites.

DATES: This rule is effective May 17, 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 ANADA 200–436 that provides for use of NOROMECTIN Plus (ivermectin and clorsulon) Injection for Cattle by subcutaneous injection in cattle for control of various internal and external parasites. Norbrook Laboratories, Ltd.'s NOROMECTIN Plus Injection for Cattle

is approved as a generic copy of Merial, Ltd.'s IVOMEC Plus Injection for Cattle, approved under NADA 140–833. The ANADA is approved as of April 23, 2007, and the regulations are amended in 21 CFR 522.1193 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 the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

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 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

■ 2. Amend § 522.1193 as follows:

a. Revise the section heading and paragraphs (a) and (b);

b. Redesignate paragraph (d) as paragraph (e);

c. Add new paragraph (d); and

d. Revise newly redesignated paragraph (e).

The revisions, redesignation, and addition read as follows:

§ 522.1193 Ivermectin and clorsulon.

(a) *Specifications*. Each milliliter (mL) of solution contains 10 milligrams (mg) (1 percent) ivermectin and 100 mg (10 percent) clorsulon.

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

* * * * *

(d) *Special considerations*. See § 500.25 of this chapter.

(e) *Conditions of use in cattle*—(1) *Amount*. Administer 1 mL (10 mg ivermectin and 100 mg clorsulon) per 50 kilograms (110 pounds) by subcutaneous injection.

(2) *Indications for use*. For the treatment and control of gastrointestinal nematodes (adults and fourth-stage larvae) (*Haemonchus placei, Ostertagia ostertagi* (including inhibited larvae), *O. lyrata, Trichostrongylus axei, T. colubriformis, Cooperia oncophora, C. punctata, C. pectinata, Oesophagostomum radiatum, Nematodirus helvetianus* (adults only), *N. spathiger* (adults only), *Bunostomum phlebotomum*; lungworms (adults and fourth-stage larvae) (*Dictyocaulus viviparus*); liver flukes (adults only) (*Fasciola hepatica*); grubs (parasitic stages) (*Hypoderma bovis, H. lineatum*); lice (*Linognathus vituli, Haematopinus eurysternus, Solenopotes capillatus*); mites (*Psoroptes ovis* (syn. *P. communis* var. *bovis*), *Sarcoptes scabiei* var. *bovis*); and for control of infections of *D. viviparus* and *O. radiatum* for 28 days afer treatment; *O. ostertagi, T. axei*, and *C. punctata* for 21 days after treatment; and *H. placei and C. oncophora* for 14 days after treatment.

(3) *Limitations*. For subcutaneous use only. Not for intravenous or intramuscular use. Do not treat cattle within 49 days of slaughter. Because a withdrawal time in milk has not been established, do not use in female dairy cattle of breeding age. Do not use in other animal species because severe adverse reactions, including fatalities in dogs, may result. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

Dated: May 7, 2007.

Bernadette Dunham,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. E7–9517 Filed 5–16–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Ivermectin

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 an abbreviated new animal drug application (ANADA) filed by Norbrook Laboratories, Ltd. The ANADA provides for use of a one percent ivermectin solution by subcutaneous injection in cattle, swine, reindeer, and American bison for the treatment and control of various internal and external parasites.

DATES: This rule is effective May 17, 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 supplemental ANADA 200–437 that provides for use of NOROMECTIN (ivermectin) Injection for Cattle and Swine by subcutaneous injection in cattle, swine, reindeer, and American bison for the treatment and control of various internal and external parasites. Norbrook Laboratories, Ltd.'s NOROMECTIN Injection for Cattle and Swine is approved as a generic copy of Merial, Ltd.'s IVOMEC Injection for Cattle and Swine approved under NADA 128–409. The ANADA is approved as of April 20, 2007, and the regulations are amended in 21 CFR 522.1192 to reflect the approval and a current format.

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 the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

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 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

■ 2. Revise § 522.1192 to read as follows:

§ 522.1192 Ivermectin.

(a) *Specifications*—(1) Each milliliter (mL) of solution contains 20 milligrams (mg) ivermectin.

(2) Each mL of solution contains 10 mg ivermectin.

(3) Each mL of solution contains 2.7 mg ivermectin.

(b) *Sponsors*. See sponsors in § 510.600(c) of this chapter for use as in paragraph (e) of this section.

(1) No. 050604 for use of the product described in paragraph (a)(1) of this section as in paragraph (e)(1) of this section; the product described in paragraph (a)(2) of this section as in paragraphs (e)(2)(i), (e)(2)(ii)(A), (e)(2)(ii)(C), (e)(2)(iii), (e)(3), (e)(4) and (e)(5) of this section; and the product described in paragraph (a)(3) of this section as in paragraphs (e)(3) and (e)(6) of this section.

(2) Nos. 059130 and 055529 for use of the product described in paragraph (a)(2) of this section as in paragraphs (e)(2)(i), (e)(2)(ii)(A), (e)(2)(ii)(B), (e)(2)(iii), (e)(3), (e)(4), and (e)(5) of this section.

(c) *Related tolerances*. See § 556.344 of this chapter.

(d) *Special considerations*—(1) See § 500.25 of this chapter.

(2) Labeling shall bear the following precaution: ''This product should not be used in other animal species as severe adverse reactions, including fatalities in dogs, may result.''

(e) *Conditions of use*—(1) *Horses*—(i) *Amount*. 200 micrograms per kilogram (μg/kg) of body weight by intramuscular injection.

(ii) *Indications for use*. For the treatment and control of large strongyles (adult) (*Strongylus vulgaris*, *S. edentatus*, *Triodontophorus* spp.), small strongyles (adult and fourth stage larvae) (*Cyathostomum* spp., *Cylicocyclus* spp., *Cylicostephanus* spp.), pinworms (adult and fourth-stage larvae) (*Oxyuris equi*), large roundworms (adult) (*Parascaris equorum*), hairworms (adult) (*Trichostrongylus axei*), large mouth stomach worms (adult) (*Habronema muscae*), neck threadworms (microfilariae) (*Onchocerca* spp.), and stomach bots (*Gastrophilus* spp.).

(iii) *Limitations*. Not for use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cattle*—(i) *Amount*. 200 μg/kg of body weight by subcutaneous injection.

(ii) *Indications for use*—(A) For the treatment and control of gastrointestinal nematodes (adults and fourth-stage larvae) (*Haemonchus placei*, *Ostertagia ostertagi* (including inhibited larvae), *O. lyrata*, *T. axei*, *T. colubriformis*, *Cooperia oncophora*, *C. punctata*, *C. pectinata*, *Oesophagostomum radiatum*, *Nematodirus helvetianus* (adults only), *N. spathiger* (adults only), *Bunostomum phlebotomum*); lungworms (adults and fourth-stage larvae) (*Dictyocaulus viviparus*); grubs (parasitic stages) (*Hypoderma bovis*, *H. lineatum*); sucking lice (*Linognathus vituli*, *Haematopinus eurysternus*, *Solenopotes capillatus*); mites (scabies) (*Psoroptes ovis* (syn. *P. communis* var. *bovis*), *Sarcoptes scabiei* var. *bovis*).

(B) For control of infections of *D. viviparus* for 28 days after treatment, and *O. ostertagi* for 21 days after treatment, and *H. placei*, *T. axei*, *C. punctata*, *C. oncophora*, and *O. radiatum* for 14 days after treatment.

(C) For control of infections and to protect from reinfection with *D. viviparus* and *O. radiatum* for 28 days after treatment; *O. ostertagi*, *T. axei*, and *C. punctata* for 21 days after treatment; *H. placei* and *C. oncophora* for 14 days after treatment.

(iii) *Limitations*. Do not treat cattle within 35 days of slaughter. Because a withdrawal time in milk has not been established, do not use in female dairy cattle of breeding age. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal.

(3) *Swine*—(i) *Amount*. 300 μg/kg of body weight by subcutaneous injection.

(ii) *Indications for use*. For the treatment and control of gastrointestinal roundworms (adults and fourth-stage larvae) (large roundworm, *Ascaris suum*; red stomach worm, *Hyostrongylus rubidus*; nodular worm, *Oesophagostomum* spp.; threadworm, *Strongyloides ransomi* (adults only)); somatic roundworm larvae (threadworm, *S. ransomi* (somatic larvae)); lungworms (*Metastrongylus* spp. (adults only)); lice (*H. suis*); and mites (*S. scabiei* var. *suis*).

(iii) *Limitations*. Do not treat swine within 18 days of slaughter.

(4) *American bison*—(i) *Amount*. 200 μg/kg of body weight by subcutaneous injection.

(ii) *Indications for use*. For the treatment and control of grubs (*H. bovis*).

(iii) *Limitations*. Do not slaughter within 56 days of last treatment.

(5) *Reindeer*—(i) *Amount*. 200 μg/kg of body weight by subcutaneous injection.

(ii) *Indications for use*. For the treatment and control of warbles (*Oedemagena tarandi*).

(iii) *Limitations*. Do not treat reindeer within 56 days of slaughter.

(6) *Ranch-raised foxes*—(i) *Amount*. 200 μg/kg of body weight by subcutaneous injection. Repeat in 3 weeks.

(ii) *Indications for use*. For treatment and control of ear mites (*Otodectes cynotis*).

Dated: May 7, 2007.

Bernadette Dunham,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. E7–9515 Filed 5–16–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD13–07–013]

RIN 1625–AA00

Special local regulation: ULHRA Hydroplane Races, Howard Amon Park, Richland, WA

AGENCY: Coast Guard, DHS.

ACTION: Special local regulation temporary final rule.

SUMMARY: The Coast Guard is undertaking two actions with regard to the above captioned regulation. The first is to withdraw the temporary final rule previously published on April 23, 2007 because it erroneously described the race area. The second is to correct the previous error by establishing a temporary special local regulation for the ULHRA National Series Hydroplane Race to be held on the waters of the Columbia River in the vicinity of Howard Amon Park, Richland, WA. These special local regulations limit the movement of non-participating vessels in the regulated race area. This

temporary rule is needed to provide for the safety of life on navigable waters during the event.

DATES: This regulation is effective from 7 a.m. (PDT) to 7 p.m. (PDT) on May 19 and 20, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD13–07–013) and are available for inspection or copying at U. S. Coast Guard Sector Portland, 6767 N. Basin Avenue, Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Michelle Duty, c/o Captain of the Port, Portland 6767 N. Basin Avenue, Portland, Oregon 97217, (503) 240–2590.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and spectators. If normal notice and comment procedures were followed, or if the effective date of this rule were delayed by 30 days, this rule would not become effective until after the date of the event. For this reason, following normal rulemaking procedures in this case would be contrary to the public interest.

Background and Purpose

The Coast Guard is undertaking two actions in this document. The first is to withdraw the temporary final rule previously published on April 23, 2007 at 72 FR 20047 because it erroneously described the race area. The second is to correct the previous error by establishing a temporary special local regulation for the ULHRA National Series Hydroplane Race to be held on the waters of the Columbia River in the vicinity of Howard Amon Park, Richland, WA.

The Coast Guard is establishing a temporary special local regulation to allow for a safe racing event. This event occurs on the Columbia River in the vicinity of Howard Amon Park in Richland, WA and is scheduled to start at 7 a.m. (PDT) and last until 7 p.m. (PDT) on May 19 and 20, 2007. This event may result in a number of recreational vessels congregating near the hydroplane races. The hydroplane race poses several dangers to the public including excessive noise, objects falling from any accidents, and hydroplanes racing at high speeds in proximity to other vessels. Accordingly, the Special local regulation is needed to protect watercraft and their occupants from safety hazards associated with the event. This Special local regulation will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal, state, and local agencies.

Discussion of Rule

This temporary rule will create a regulated area to assist in minimizing the inherent dangers associated with hydroplane races. These dangers include, but are not limited to, excessive noise, race craft traveling at high speed in close proximity to one another and to spectator craft, and the risk of airborne objects from any accidents associated with hydroplanes. In the event that hydroplanes require emergency assistance, rescuers must have immediate and unencumbered access to the craft. The Coast Guard, through this action, intends to promote the safety of personnel, vessels, and facilities in the area. Due to these concerns, public safety requires these regulations to provide for the safety of life on the navigable waters.

Regulatory Evaluation

This temporary 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 temporary rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by this rule encompasses an area on the Columbia River near Howard Amon Park in Richland, WA not frequented by commercial navigation. The regulation is established for the benefit and safety of the recreational boating public and the event will pause in order to allow the ferry to pass through the area at its allotted times, any negative recreational boating impact is offset by the benefits of allowing the hydroplanes to race. This rule would be enforced from 7 a.m. to 7 p.m. Pacific Daylight Time each day on May 19 and 20, 2007. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Columbia River during the time mentioned under *Background and Purpose*. This Special local regulation will not have a significant economic impact on a substantial number of small entities due to its short duration and small area. The only vessels likely to be impacted will be recreational boaters, small passenger vessel operators, and a ferry that runs through the regulated area twice a day. The event is held for the benefit and entertainment of the recreational and small passenger vessel operators, and the event will pause in order to allow the ferry to pass through the area at its allotted times. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this temporary 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 offered to assist small entities in understanding the rule so that they can

better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–888–REG–888–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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 rule under that order and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D 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 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 Commandant Instruction M16475.1D, 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.

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 amends 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.

§ 100.T13–009 [Withdrawn].

■ 2. Withdraw temporary § 100.T13–009.

■ 3. Add temporary § 100.T13–010 to read as follows:

§ 100.T13–010 ULHRA Hydroplane Races Howard Amon Park, Richland, Washington.

(a) Regulated Area. The regulated area is defined as the waters of the Columbia River from bank to bank in the vicinity of Howard Amon Park on the Columbia River in Richland, Washington commencing at the Interstate 182 Bridge and continuing up river Northward 3.0 miles and terminating at the Columbia River Mile 339.

(b) Special Local Regulations. This event will take place from 7 a.m. PDT to approximately 7 p.m. PDT May 19 to 20, 2007, in the described waters of the Columbia River in Richland, Washington.

(1) No persons may enter or remain in the regulated area except for participants in the event, supporting personnel, vessels registered with the event organizer, and personnel or

vessels authorized by the Coast Guard Patrol Commander.

(2) The Coast Guard Patrol Commander is a commissioned, warrant, petty officer, or auxiliarist of the Coast Guard who has been designated by Commander, Coast Guard Sector Portland. A Coast Guard Auxiliarist, when so appointed by the COTP per 14 U.S.C 831, may act as the Patrol Commander. The Patrol Commander is empowered to control movement of vessels in the regulated area and adjoining waters during the hours these regulations are in effect.

(3) A succession of sharp, short signals by whistle, siren, or horn from vessels patrolling the area shall serve as a signal to stop. Vessels or persons signaled shall stop and shall comply with the orders of the patrol vessels. Failure to due so may result in the expulsion from the area, citation, for failure to comply or both.

(4) Any spectator vessel may anchor outside the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

Dated: May 4, 2007.

K.S. Cook,

Captain, U.S. Coast Guard, Acting Commander, 13th Coast Guard District.

[FR Doc. 07–2460 Filed 5–15–07; 9:58 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

[USCG–2007–28201]

RIN 1625–ZA13

Vessels Carrying Oil, Noxious Liquid Substances, Garbage, Municipal or Commercial Waste, and Ballast Water; Technical, Organizational and Conforming Amendment

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This rule makes a non-substantive change to Title 33 of the Code of Federal Regulations. The purpose of this rule is to make a conforming amendment and technical correction to a Coast Guard navigation and navigable water regulation. This rule will have no substantive effect on the regulated public.

DATES: This final rule is effective May 17, 2007.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2007–28201 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. Ray Davis, Coast Guard, telephone 202–372–1461. If you have questions on viewing the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under both 5 U.S.C. 553(b)(A) and (b)(B), the Coast Guard finds this rule is exempt from notice and comment rulemaking requirements because this change involves agency organization and practices, and good cause exists for not publishing an NPRM for the revision in the rule because it is a non-substantive change. This rule consists only of a technical and conforming amendment. The change will have no substantive effect on the public; therefore, it is unnecessary to publish an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

This rule, which becomes effective May 17, 2007, makes a technical correction to 33 CFR part 151. This rule does not create any substantive requirements.

Discussion of Rule

This rule corrects the authority citation in part 151 and amends 33 CFR § 151.2010. When the Coast Guard converted the voluntary ballast water management guidelines in 33 CFR part 151, Subpart D, into a mandatory ballast water management program (69 FR 44952, July 28, 2004), we inadvertently did not make changes to § 151.2010 to reflect several exemptions. Specifically, that crude oil tankers engaged in coastwise trade and Department of Defense and Coast Guard vessels were exempted from the mandatory ballast water management requirements in § 151.2035, which had previously been a voluntary program as stated by statutory language in the National Invasive Species Act of 1996 (NISA). We discussed this exemption and its reasoning in the preamble of the 2004 final rule, stating, ''NISA authorizes specific exemptions for crude oil tankers engaged in coastwise trade, and Department of Defense and Coast Guard vessels. Therefore, we do not currently have the authority to include these vessels in the applicability for the final rule.'' This statement made clear our intention to carry that exemption forward into the mandatory program.

With respect to the exemptions for vessels operating exclusively within one Captain of the Port (COTP) Zone, the language changed to include only exemptions for §§ 151.2040 and 151.2045, but not § 151.2035. This exemption is not taken from NISA. The Coast Guard established it as a discretionary exercise of its regulatory authority after notice and comment rulemaking. It would be inappropriate to expand the ballast water management requirements exemption beyond those previously granted by means of a technical amendment not subject to a notice and comment rulemaking. These vessels will continue following the requirements in § 151.2035. While this includes the requirements in § 151.2035(b), which calls for ballast water management for vessels operating outside the U.S. EEZ, vessels operating exclusively in a COTP Zone will not operate outside the U.S. EEZ and, therefore, compliance with those particular requirements is not mandatory. These vessels are reminded, however, that they must comply with § 151.2035(a), which calls for ballast water management inside of U.S. waters.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. As this rule involves internal agency practices and procedures and a non-substantive change, it will not impose any costs on the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities.

The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not require a general NPRM and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities and determined that it will not have an impact on small entities.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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 rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have 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, paragraphs (34)(a) and (b), of the Instruction from further environmental documentation because this rule involves editorial, procedural, and internal agency functions. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution penalties, Reporting and recordkeeping requirements, Water pollution control.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

■ 1. Revise the authority citation for part 151 to read as follows:

Authority: 33 U.S.C. 1321, 1903, 1908; 46 U.S.C. 6101; Pub. L. 104–227, 110 Stat. 304; E.O. 12777, 3 CFR 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 151.2010 to read as follows:

§ 151.2010 Which vessels are exempt from the mandatory requirements?

(a) Two types of vessels are exempt from the requirements in §§ 151.2035, 151.2040, and 151.2045:

(1) A crude oil tanker engaged in the coastwise trade.

(2) A Department of Defense or Coast Guard vessel subject to the requirements of section 1103 of the Act, or any vessel of the Armed Forces, as defined in the Federal Water Pollution Control Act (33 U.S.C. 1322(a)) that is subject to the ''Uniform National Discharge Standards for Vessels of the Armed Forces'' (33 U.S.C. 1322(n)).

(b) One type of vessel is exempt from the requirements in §§ 151.2040 and 151.2045:

(1) A vessel that operates exclusively within one Captain of the Port (COTP) Zone.

(2) [Reserved]

Dated: May 11, 2007.

Stefan G. Venckus,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. 07–2459 Filed 5–15–07; 9:58 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD08–06–023]

RIN 1625–AA11

Regulated Navigation Area; Atchafalaya River, Berwick Bay, Berwick Bay, LA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations pertaining to the Atchafalaya River, Berwick Bay, Berwick Bay, LA, navigation area. Coast Guard Vessel Traffic Service (VTS) Berwick Bay determined that the Southern Pacific Railroad (SPRR) Bridge visual displays were no longer necessary due to updated VTS technologies and procedures that actively inform towing vessels that the rules of 33 CFR 165.811 are in effect at the time of entry into the VTS. This action relieves both the owner of the SPRR Bridge and the Coast Guard from maintaining antiquated visual displays and related equipment.

DATES: This final rule is effective June 18, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD08–06–023] and are available for inspection or copying at U.S. Coast Guard District Eight, 500 Poydras Street, New Orleans, Louisiana, 70130–3396 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer Edgardo Estrada, Eighth Coast Guard District's Waterways Branch, at telephone 504–671–2326. Please cite [CGD08–06–023].

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 27, 2006, we published a notice of proposed rulemaking (NPRM) entitled ''Regulated Navigation Area; Atchafalaya River, Berwick Bay, Berwick Bay, LA'' in the **Federal Register** (71 FR 77657). We received no letters commenting on the proposed rule. No public meeting was requested and none was held.

Background and Purpose

BNSF Railway Company, the owner of the Southern Pacific Railroad (SPRR) Bridge, requested a change to the visual display requirements for the SPRR Bridge set forth in 33 CFR 165.811. In September 2005, the visual displays atop the SPRR Bridge were destroyed by Hurricane Rita and have not been restored. Prior to their destruction, the visual displays consisted of two vertically arranged red balls by day and two vertically arranged flashing white lights by night. The displays were maintained by the bridge owner and were activated upon direction by Coast Guard Vessel Traffic Service (VTS) Berwick Bay during high water periods as specified in 33 CFR 165.811. Prior to the current implementation of VTS Berwick Bay, the use of visual displays on the SPRR Bridge served as the primary means of advising towing vessels that the provisions of 33 CFR 165.811 were in effect, or were anticipated to be placed into effect, in order to reduce the risk of mishaps involving towing vessels and the local bridges crossing the waterway. The destruction of the displays by Hurricane Rita and the subsequent request by BNSF Railway Company for their discontinuance prompted discussion within the Coast Guard as to the necessity of the visual displays. Coast Guard VTS Berwick Bay concluded that the visual displays are antiquated and no longer serve as a primary means to advise towing vessels that the requirements of 33 CFR 165.811 are in effect. VTS Berwick Bay now directly advises towing vessels as to which navigation rules are in effect at the time of the vessel entry into the VTS regulated navigation area.

Regulatory Evaluation

This final 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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This amended rule eliminates existing visual display requirements from a list of notice requirements under 33 CFR 165.811(f) which have been superseded by improved procedures for notification. This amended rule neither imposes any additional costs to the public nor eliminates significant benefits.

Small Entities

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

This amended rule is neutral to all business entities as it merely changes the means of notification by which towing vessel operators within the regulated navigation area are provided notice that the provisions of 33 CFR 165.811 are or are anticipated to be in effect. Henceforth, all operators will be notified by VTS Berwick Bay rather than by visual displays. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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 rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will 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 rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this amended 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, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' is not required for this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

§ 165.811 [Amended]

■ 2. In § 165.811, remove paragraph (f)(4) and the note located at the end of the section.

Dated: May 2, 2007.

J.R. Whitehead,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. E7–9497 Filed 5–16–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFEs determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more

stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Mobile (FEMA Docket No.: B–7474).	Unincorporated areas of Mobile County (05–04–2236P).	September 21, 2006; September 28, 2006; *Press-Register*.	Mr. John Pafenbach, County Administrator, Mobile County, 205 Government Street, Mobile, AL 36644.	December 28, 2006	015008
Arizona:					
Maricopa (FEMA Docket No.: B–7474).	Unincorporated areas of Maricopa County (06–09–B067P).	September 14, 2006; September 21, 2006; *Arizona Business Gazette*.	The Honorable Don Stapley, Chairman, Maricopa County Board of Supervisors, Administration Building, 301 West Jefferson Street, Tenth Floor, Phoenix, AZ 85003.	December 21, 2006	040037
Pima (FEMA Docket No.: B–7712).	Town of Marana (06–09–BD84P).	November 9, 2006; November 16, 2006; *The Daily Territorial*.	The Honorable Ed Honea, Mayor, Town of Marana, Marana Municipal Complex, 11555 West Civic Center Drive, Marana, AZ 85653.	October 26, 2006	040118
Benton (FEMA Docket No.: B–7712).	City of Rogers (06–06–BA42P).	December 20, 2006; December 27, 2006; *Arkansas Hometown Gazette*.	The Honorable Steve Womack, Mayor, City of Rogers, 301 West Chestnut, Rogers, AR 72756.	March 28, 2007	050013
Crawford (FEMA Docket No.: B–7712).	City of Van Buren (06–06–B796P).	November 29, 2006; December 6, 2006; *Press Argus-Courier*.	The Honorable John Riggs, Mayor, City of Van Buren, 1003 Broadway, Van Buren, AR 72956.	March 7, 2007	050053
Crawford (FEMA Docket No.: B–7712).	Unincorporated areas of Crawford County (06–06–B796P).	November 29, 2006; December 6, 2006; *Press Argus-Courier*.	The Honorable Jerry H. Williams, Crawford County Judge, Crawford County Courthouse, 300 Main Street, Van Buren, AR 72956.	March 7, 2007	050428
Pulaski (FEMA Docket No.: B–7712).	City of Sherwood (06–06–B539P).	November 16, 2006; November 23, 2006; *The Sherwood Voice*.	The Honorable Bill Harmon, Mayor, City of Sherwood, 2199 East Kiehl Avenue, Sherwood, AR 72120.	February 22, 2007	050235
Saline (FEMA Docket No.: B–7712).	City of Benton (06–06–BC89P).	November 30, 2006; December 7, 2006; *The Benton Courier*.	The Honorable Rick Holland, Mayor, City of Benton, Benton Municipal Complex, 114 South East Street, Benton, AR 72015.	November 27, 2006	050192
Saline (FEMA Docket No.: B–7712).	Unincorporated areas of Saline County (06–06–BC89P).	November 30, 2006; December 7, 2006; *The Benton Courier*.	The Honorable Lanny Fite, County Judge, Saline County, 200 North Main Street, Room 117, Benton, AR 72015.	November 27, 2006	050191
Washington (FEMA Docket No.: B–7703).	City of Fayetteville 06–06–BA12P.	November 9, 2006; November 16, 2006; *Arkansas Democrat Gazette*.	The Honorable Dan Coody, Mayor, City of Fayetteville, 113 West Mountain, Fayetteville, AR 72701.	November 20, 2006	050216
California:					
Contra Costa (FEMA Docket No.: B–7703).	City of Oakley (06–09–BA94P).	November 16, 2006; November 23, 2006; *Contra Costa Times*.	The Honorable Brad Nix, Mayor, City of Oakley, 3231 Main Street, Oakley, CA 94561.	February 22, 2007	060766
Merced (FEMA Docket No.: B–7474).	City of Merced (06–09–B107P).	October 18, 2006; October 25, 2006; *Chowchilla News*.	The Honorable Ellie Wooton, Mayor, City of Merced, 678 West 18th Street, Merced, CA 95340.	January 25, 2007	060191
Merced (FEMA Docket No.: B–7474).	Unincorporated areas of Merced County (06–09–B107P).	October 18, 2006; October 25, 2006; *Chowchilla News*.	The Honorable Mike Nelson, Chairman, Merced County, Board of Commissioners, 2222 M Street, Second Floor, Merced, CA 95340.	January 25, 2007	060188
Nevada (FEMA Docket No.: B–7474).	Town of Truckee (06–09–B008P).	October 26, 2006; November 2, 2006; *Sierra Sun*.	The Honorable Beth Ingalls, Mayor, Town of Truckee, 10183 Truckee Airport Road, Truckee, CA 96161.	September 29, 2006	060762

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Sacramento (FEMA Docket No.: B–7474).	City of Citrus Heights (06–09–B062P).	October 19, 2006; October 26, 2006; *The Daily Recorder*.	The Honorable Bret Daniels, Mayor, City of Citrus Heights, 6237 Fountain Square Drive, Citrus Heights, CA 95621.	September 22, 2006	060765
Sacramento (FEMA Docket No.: B–7474).	City of Elk Grove (06–04–B040P).	September 14, 2006; September 21, 2006; *The Daily Recorder*.	The Honorable Richard Soares, Mayor, City of Elk Grove, 9400 Laguna Palms Way, Elk Grove, CA 95758.	August 25, 2006	060767
Sacramento (FEMA Docket No.: B–7703).	Unincorporated areas of Sacramento County (06–09–BD69P).	November 9, 2006; November 16, 2006; *The Daily Territorial*.	The Honorable Roberta Macglashan, Chair, Sacramento County, Board of Supervisors, 700 H Street, Suite 2450, Sacramento, CA 95814.	December 1, 2006	060262
San Diego (FEMA Docket No.: B–7474).	City of La Mesa (05–09–A362P).	September 21, 2006; September 28, 2006; *San Diego Transcript*.	The Honorable Art Madrid, Mayor, City of La Mesa, 8130 Allison Avenue, La Mesa, CA 92041.	September 5, 2006	060292
San Diego (FEMA Docket No.: B–7474).	City of San Diego (05–09–A362P).	September 21, 2006; September 28, 2006; *San Diego Transcript*.	The Honorable Jerry Sanders, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, CA 92101.	September 5, 2006	060295
San Diego (FEMA Docket No.: B–7712).	Unincorporated areas of San Diego County (06–09–BF75P).	December 21, 2006; December 28, 2006; *San Diego Transcript*.	The Honorable Bill Horn, Chairman, San Diego County, Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, CA 92101.	November 29, 2006	060284
San Diego (FEMA Docket No.: B–7474).	Unincorporated areas of San Diego County (07–09–0162X).	October 19, 2006; October 26, 2006; *The San Diego Transcript*.	The Honorable Bill Horn, Chairman, San Diego County, Board of Supervisors, 1600 Pacific Highway, San Diego, CA 92123.	February 16, 2007	060284
San Luis Obispo (FEMA Docket No.: B–7474).	City of San Luis Obispo (06–09–BA38P).	October 19, 2006; October 26, 2006; *The Tribune*.	The Honorable David F. Romero, Mayor, City of San Luis Obispo, City Hall, 990 Palm Street, San Luis Obispo, CA 93401.	January 25, 2007	060310
Santa Barbara (FEMA Docket No.: B–7474).	Unincorporated areas of Santa Barbara County (05–09–1158P).	September 21, 2006; September 28, 2006; *Santa Barbara News Press*.	The Honorable Salud Carbajal, Chairman, Santa Barbara County Board of Supervisors, 105 East Anapamu Street, Santa Barbara, CA 93101.	December 28, 2006	060331
Shasta (FEMA Docket No.: B–7474).	City of Redding (06–09–B348P).	September 21, 2006; September 28, 2006; *Redding Record Searchlight*.	The Honorable Ken Murray, Mayor, City of Redding, 777 Cypress Avenue, P.O. Box 496071, Redding, CA 96001.	August 31, 2006	060360
Colorado:					
Arapahoe (FEMA Docket No.: B–7474).	City of Cherry Hills Village (06–08–B375P).	October 12, 2006; October 19, 2006; *The Littleton Independent*.	The Honorable Mike Wozniak, Mayor, City of Cherry Hills Village, 2450 East Quincy Avenue, Cherry Hills Village, CO 80113.	September 19, 2006	080013
Boulder (FEMA Docket No.: B–7703).	Town of Lyons (06–08–B252P).	November 22, 2006; November 29, 2006; *The Daily Camera*.	The Honorable Tim Kyer, Mayor, Town of Lyons, P.O. Box 49, Lyons, CO 80540.	February 28, 2007	080029
Boulder (FEMA Docket No.: B–7703).	Unincorporated areas of Boulder County (06–08–B252P).	November 22, 2006; November 29, 2006; *The Daily Camera*.	The Honorable Ben Pearlman, Chairman, Boulder County Board of Commissioners, P.O. Box 471, Boulder, CO 80306.	February 28, 2007	080023
Boulder (FEMA Docket No.: B–7712).	City of Boulder (06–08–B289P).	December 20, 2006; December 27, 2006; *The Daily Camera*.	The Honorable Mark Ruzzin, Mayor, City of Boulder, P.O. Box 791, Boulder, CO 80306.	March 28, 2007	080024
Boulder (FEMA Docket No.: B–7712).	Unincorporated areas of Boulder County (06–08–B289P).	December 20, 2006; December 27, 2006; *The Daily Camera*.	The Honorable Ben Pearlman, Chairman, Boulder County Board of Commissioners, Boulder County Courthouse, P.O. Box 471, Boulder, CO 80306.	March 28, 2007	080023
Broomfield (FEMA Docket No.: B–7474).	City and County of Broomfield (06–08–B417P).	September 27, 2006; October 4, 2006; *The Broomfield Enterprise*.	The Honorable Karen Stuart, Mayor, City and County of Broomfield, One DesCombes Drive, Broomfield, CO 80020.	September 11, 2006	085073
Douglas (FEMA Docket No.: B–7474).	City of Lone Tree (06–08–B443P).	October 12, 2006; October 19, 2006; *The Douglas County News-Press*.	The Honorable Jack O'Boyle, Mayor, City of Lone Tree, 9777 South Yosemite Street, Suite 100, Lone Tree, CO 80124.	January 18, 2007	080319
Douglas (FEMA Docket No.: B–7474).	Unincorporated areas of Douglas County (06–08–B443P).	October 12, 2006; October 19, 2006; *The Douglas County News-Press*.	The Honorable Walter M. Maxwell, Chairman, Douglas County Board of Commissioners, 100 Third Street, Castle Rock, CO 80104.	January 18, 2007	080049
El Paso (FEMA Docket No.: B–7712).	Unincorporated areas of El Paso County (05–08–A578P).	November 22, 2006; November 29, 2006; *El Paso County Advertiser and News*.	The Honorable Jim Bensberg, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, CO 80903–2208.	October 30, 2006	080059
El Paso (FEMA Docket No.: B–7712).	Unincorporated areas of El Paso County (06–08–B137P).	November 22, 2006; November 29, 2006; *El Paso County Advertiser and News*.	The Honorable Sallie Clark, Chair, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, CO 80903.	December 13, 2006	080059
Jefferson (FEMA Docket No.: B–7474).	City of Arvada (06–08–B403P).	October 12, 2006; October 19, 2006; *The Golden Transcript*.	The Honorable Ken Fellman, Mayor, City of Arvada, 8101 Ralston Road, Arvada, CO 80002.	January 18, 2007	085072

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Jefferson (FEMA Docket No.: B–7474).	Unincorporated areas of Jefferson County (06–08–B422P).	September 21, 2006; September 28, 2006; *The Golden Transcript*.	The Honorable J. Kevin McCasky, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419–5550.	December 28, 2006	080087
Connecticut:					
Hartford (FEMA Docket No.: B–7712).	City of Hartford (07–01–0111P).	December 21, 2006; December 28, 2006; *The Hartford Courant*.	The Honorable Eddie A. Perez, Mayor, City of Hartford, 550 Main Street, Hartford, CT 06103.	December 6, 2006	095080
Delaware:					
New Castle (FEMA Docket No.: B–7712).	Unincorporated areas of New Castle County (06–03–B23P).	December 21, 2006; December 28, 2006; *The News Journal*.	The Honorable Chris Coons, New Castle County Executive, 87 Reads Way, New Castle, DE 19720.	March 29, 2007	105085
New Castle (FEMA Docket No.: B–7712).	Unincorporated areas of New Castle County (06–03–B714P).	December 1, 2006; December 8, 2006; *Newark Post*.	The Honorable Paul G. Clark, President, New Castle County Council, City/County Building, 800 North French Street, Eighth Floor, Wilmington, DE 19801.	March 9, 2007	105085
Sussex (FEMA Docket No.: B–7703).	Unincorporated areas of Sussex County (05–03–A587P).	November 29, 2006; December 6, 2006; *Delaware Wave*.	Mr. Robert L. Stickels, County Administrator, Sussex County, No. 2 The Circle, Georgetown, DE 19947.	March 7, 2007	100029
Florida:					
Clay (FEMA Docket No.: B–7712).	Unincorporated areas of Clay County (06–04–BQ02P).	November 9, 2006; November 16, 2006; *Clay Today*.	The Honorable William Wilkes, Circuit Court Judge, Clay County Courthouse, 825 North Orange Avenue, Green Cove Springs, FL 32043.	October 16, 2006	120064
Duval (FEMA Docket No.: B–7712).	City of Jacksonville (05–04–A005P).	December 11, 2006; December 18, 2006; *Jacksonville Daily Record*.	The Honorable Mr. John Peyton, Mayor, City of Jacksonville, City Hall at St. James, Fourth Floor, 117 West Duval Street, Jacksonville, FL 32202.	March 19, 2007	120077
Flagler (FEMA Docket No.: B–7712).	Unincorporated areas of Flagler County (06–04–BW09P).	December 21, 2006; December 28, 2006; *The News-Journal*.	The Honorable James Darby, Chairman, Board of Commissioners, Flagler County, P.O. Box 1132, Flagler Beach, FL 32136.	November 30, 2006	120085
Leon (FEMA Docket No.: B–7474).	City of Tallahassee (05–04–1773P).	September 21, 2006; September 28, 2006; *Tallahassee Democrat*.	The Honorable John Marks, Mayor, City of Tallahassee, 300 South Adams Street, Tallahassee, FL 32301.	December 28, 2006	120144
Leon (FEMA Docket No.: B–7712).	Unincorporated areas of Leon County (06–04–B039P).	December 21, 2006; December 28, 2006; *Tallahassee Democrat*.	The Honorable Parwez Alam, Administrator, Leon County, 301 South Monroe Street, Fifth floor, Tallahassee, FL 32301.	March 29, 2007	120143
Marion (FEMA Docket No.: B–7712).	Unincorporated areas of Marion County (06–04–BH17P).	November 30, 2006; December 7, 2007; *Star-Banner*.	The Honorable Jim Payton, Chairman, Marion County, Board of Commissioners, 601 Southeast 25th Avenue, Ocala, FL 34471.	October 30, 2006	120160
Miami-Dade (FEMA Docket No.: B–7712).	City of Miami (06–04–C312P).	November 30, 2006; December 7, 2006; *Miami New Times*.	The Honorable Manuel A. Diaz, Mayor, City of Miami, 3500 Pan American Drive, Miami, FL 33133.	October 30, 2006	120650
Monroe (FEMA Docket No.: B–7474).	Unincorporated areas of Monroe County (06–04–BI38P.	September 21, 2006; September 28, 2006; *Key West Citizen*.	The Honorable Dixie Spehar, Mayor, Monroe County, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	August 29, 2006	125129
Pinellas (FEMA Docket No.: B–7474).	City of Clearwater (06–04–B129X).	September 14, 2006; September 21, 2006; *St. Petersburg Times*.	The Honorable Frank Hibbard, Mayor, City of Clearwater, P.O. Box 4748, Clearwater, FL 33758.	December 21, 2006	125096
Pinellas (FEMA Docket No.: B–7712).	City of St. Petersburg (06–04–BS96P).	December 21, 2006; December 28, 2006; *St. Petersburg Times*.	The Honorable Rick Baker, 175 Fifth Street North, St. Petersburg, FL 33701.	March 29, 2007	125148
Polk (FEMA Docket No.: B–7474).	Unincorporated areas of Polk County (06–04–B694P).	November 2, 2006; November 9, 2006; *The Polk County Democrat*.	Mr. Michael Herr, County Manager, Polk County, P.O. Box 9005, Drawer BC01, Bartow, FL 33831–9005.	August 31, 2006	120261
Polk (FEMA Docket No.: B–7712).	Unincorporated areas of Polk County (06–04–BO60P).	November 16, 2006; November 23, 2006; *The Polk County Democrat*.	Mr. Michael Herr, County Manager, Polk County, P.O. Box 9005, Drawer BC01, Bartow, FL 33831.	February 22, 2007	120261
Polk (FEMA Docket No.: B–7703).	City of Winter Haven (07–04–0025X).	November 9, 2006; November 16 2006; *The Polk County Democrat*.	The Honorable Mike Easterling, Mayor, City of Winter Haven, 451 Third Street Northwest, Winter Haven, FL 33881.	October 19, 2006	120271
Sarasota (FEMA Docket No.: (B–7474).	City of Sarasota (06–04–BH18P).	September 26, 2006; October 3, 2006; *The Sarasota Herald-Tribune*.	The Honorable Fred Atkins, Mayor, City of Sarasota, 1565 First Street, Sarasota, FL 344236.	August 28, 2006	125150
Seminole (FEMA Docket No.: B–7474).	Unincorporated areas of Seminole County (06–04–BJ43P).	October 19, 2006; October 26, 2006; *Orlando Sentinel*.	The Honorable Carlton D. Henley, Chairman, Seminole County, Board of Commissioners, Seminole County Services, Building, 1101 East First Street, Sanford, FL 32771.	October 30, 2006	120289
St. Johns (FEMA Docket No.: B–7712).	Unincorporated areas of St. Johns County (06–04–BT86P).	November 9, 2006; November 16, 2006; *The St. Augustine Record*.	The Honorable James E. Bryant, Chairman, St. Johns County, Board of County Commissioners, 4020 Lewis Speedway, St. Augustine, FL 32084.	February 15, 2007	125147

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Columbia (FEMA Docket No.: B–7712).	Unincorporated areas of Columbia County (06–04–C011P).	December 6, 2006; December 13, 2006; *Columbia County News-Times*.	The Honorable Ron C. Cross, Chairman, Columbia County Commissioners, 908 Nerium Trail, Evans, GA 30809.	February 28, 2007	130059
Gwinnett (FEMA Docket No.: B–7712).	Unincorporated areas of Gwinnett County (05–04–2732P).	December 21, 2006; December 28, 2006; *Gwinnett Daily Post*.	The Honorable Charles E. Bannister, Chairman, Gwinnett County Board of Commissioners, 75 Langley Drive, Lawrenceville, GA 30045.	March 29, 2007	130322
Gwinnett (FEMA Docket No.: B–7712).	Unincorporated areas of Gwinnett County (06–04–C663P).	December 21, 2006; December 28, 2006; *Gwinnett Daily Post*.	The Honorable Charles Bannister, Chairman, Board of Commissioners, Gwinnett County, 75 Langley Drive, Lawrenceville, GA 30045.	November 30, 2006	130322
Peach (FEMA Docket No.: B–7703).	Unincorporated areas of Peach County (06–04–BM78P).	October 25, 2006; November 1, 2006; *The Leader Tribune*.	The Honorable James Khoury, Chairman, Peach County, Board of Commissioners, 205 West Church Street, Suite 204, Fort Valley, GA 31030.	January 25, 2007	130373
Hawaii:					
Hawaii (FEMA Docket No.: B–7474).	Unincorporated areas of Hawaii County (06–09–B247P).	September 14, 2006; September 21, 2006; *Hawaii Tribune-Herald*.	The Honorable Harry Kim, Mayor, County of Hawaii, 25 Aupuni Street, Room 215, Hilo, HI 96720.	December 21, 2006	155166
Hawaii (FEMA Docket No.: B–7474).	Unincorporated areas of Hawaii County (06–09–B685P).	October 5, 2006; October 12, 2006; *Hawaii Tribune-Herald*.	The Honorable Harry Kim, Mayor, County of Hawaii, 25 Aupuni Street, Room 215, Hilo, HI 96720.	January 11, 2007	155166
Illinois:					
De Kalb (FEMA Docket No.: B–7474).	Village of Kirkland (06–05–BF46P).	October 19, 2006; October 26, 2006; *Daily Chronicle*.	The Honorable Michael A Becker, Village President, Village of Kirkland, 511 West Main Street, Kirkland, IL 60146.	January 25, 2006	170186
De Kalb (FEMA Docket No.: B–7474).	Unincorporated areas of De Kalb County (06–05–BF46P).	October 19, 2006; October 26, 2006; *Daily Chronicle*.	Mr. Raymond R. Bockman, County Administrator, De Kalb County, 200 North Main Street, Sycamore, IL 60178.	January 25, 2007	170808
DuPage (FEMA Docket No.: B–7712).	City of Warrenville (06–05–B753P).	December 21, 2006; December 28, 2006; *Daily Herald*.	The Honorable David L. Brummel, Mayor, City of Warrenville, City Hall 28W701, Stafford Place, Warrenville, IL 60555.	November 22, 2006	170218
Kane (FEMA Docket No.: B–7474).	Village of Hampshire (06–05–BC30P).	September 21, 2006; September 28, 2006; *Elburn Herald*.	Mr. Jeffrey Magnussen, Village President, Village of Hampshire, Village Hall 234 South State St, P.O. Box 457, Hampshire, IL 60140.	December 28, 2006	170327
Kane (FEMA Docket No.: B–7474).	Village of Hampshire (06–05–BT15P).	October 12, 2006; October 19, 2006; *Elburn Herald*.	The Honorable Jeffrey Magnussen, Village President, Village of Hampshire, P.O. Box 457, Hampshire, IL 60140.	January 18, 2007	170327
Kane (FEMA Docket No.: B–7474).	Unincorporated areas of Kane County (06–05–BT15P).	October 12, 2006; October 19, 2006; *Elburn Herald*.	The Honorable Karen McConnaughay, Chairman, Kane County Board, 719 South Batavia Avenue, Building A, Geneva, IL 60134.	January 18, 2007	170896
Ogle (FEMA Docket No.: B–7712).	City of Rochelle (06–05–B086P).	November 9, 2006; November 16, 2006; *The Rochelle News-Leader*.	The Honorable Chaad Olson, Mayor, City of Rochelle, 420 North Sixth Street, Rochelle, IL 61068.	February 15, 2007	170352
St. Clair (FEMA Docket No.: B–7712).	City of Belleville (06–05–B005P).	November 30, 2006; December 7, 2006; *News-Democrat*.	The Honorable Mark Eckert, Mayor, City Of Belleville, 101 South Illinois Street, Belleville, IL 62220.	March 8, 2007	170618
St. Clair (FEMA Docket No.: B–7712).	Unincorporated areas of St. Clair County (06–05–B005P).	November 30, 2006; December 7, 2006; *News-Democrat*.	Mr. Mark Kern, Chairman, St. Clair County Board, St. Clair County Building, 10 Public Square, Belleville, IL 62220.	March 8, 2007	170616
Will (FEMA Docket No.: B–7474).	Village of Frankfort (05–05–A220P).	September 14, 2006; September 21, 2006; *Daily Southtown*.	The Honorable Raymond Rossi, Mayor, Village of Frankfort, 432 West Nebraska Street, Frankfort, IL 60423.	August 29, 2006	170701
Will (FEMA Docket No.: B–7712).	Village of Frankfort (06–05–BT88P).	November 30, 2006; December 7, 2006; *Daily Southtown*.	The Honorable Jim Holland, Mayor, Village of Frankfort, 432 West Nebraska Street, Frankfort, IL 60423.	October 31, 2006	170701
Will (FEMA Docket No.: B–7474).	City of Naperville (06–05–B639P).	October 19, 2006; October 26, 2006; *The Naperville Sun*.	The Honorable A. George Pradel, Mayor, City of Naperville, 400 South Eagle Street, Naperville, IL 60566.	January 18, 2007	170213
Will (FEMA Docket No.: B–7474).	Unincorporated areas of Will County (06–05–B639P).	October 19, 2006; October 26, 2006; *The Naperville Sun*.	The Honorable Lawrence M. Walsh, Will County Executive, 302 North Chicago Street, Joliet, IL 60432.	January 18, 2007	170695
Indiana:					
Hancock (FEMA Docket No.: B–7712).	City of Greenfield (06–05–B085P).	December 21, 2006; December 28, 2006; *Greenfield Daily Reporter*.	The Honorable Rodney Fleming, Mayor, City of Greenfield, Keith J. McClanon, Government Center, 10 South State Street, Greenfield, IN 46140.	January 2, 2007	180084
Hancock (FEMA Docket No.: B–7712).	Unincorporated areas of Hancock County (06–05–B085P).	December 21, 2006; December 28, 2006; *Greenfield Daily Reporter*.	Mr. Brian Kleiman, President, Board of Commissioners, Hancock County, 111 South American Legion Place, Greenfield, IN 46130.	March 29, 2007	180419

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Marion (FEMA Docket No.: B–7474).	City of Indianapolis (06–05–B545P).	October 19, 2006; October 26, 2006; *Indianapolis Star*.	The Honorable Bart Peterson, Mayor, City of Indianapolis, 2501 City-County, Building, 200 East Washington Street, Indianapolis, IN 46204.	October 25, 2006	180159
Marion (FEMA Docket No.: B–7474).	Town of Speedway (06–05–B545P).	October 19, 2006; October 26, 2006; *Indianapolis Star*.	Mr. Bruce Sherman, Town Manager, Town of Speedway, 1450 North Lynhurst Drive, Speedway, IN 46224.	October 25, 2006	180162
Kansas:					
Douglas (FEMA Docket No.: B–7474).	City of Lawrence (06–07–B014P).	September 21, 2006; September 28, 2006; *Lawrence Daily Journal-World*.	The Honorable Mike Amyx, Mayor, City of Lawrence, P.O. Box 708, Lawrence, KS 66044.	August 30, 2006	200090
Johnson (FEMA Docket No.: B–7712).	City of Olathe (06–07–B170P).	December 21, 2006; December 28, 2006; *The Johnson County Sun*.	The Honorable Michael Copeland, Mayor, City of Olathe, P.O. Box 768, Olathe, KS 66051–0768.	November 22, 2006	200173
Johnson (FEMA Docket No.: B–7712).	City of Overland Park (06–07–B170P).	December 21, 2006; December 28, 2006; *The Johnson County Sun*.	The Honorable Carl Gerlach, Mayor, City of Overland Park, 8500 Santa Fe Drive, Olathe, KS 66061.	November 22, 2006	200174
Sedgwick (FEMA Docket No.: B–7712).	City of Wichita (06–07–BB40P).	December 21, 2006; December 28, 2006; *The Wichita Eagle*.	The Honorable Carlos Mayans, Mayor, City of Wichita, City Hall, First Floor, 455 North Main Street, Wichita, KS 67202.	February 5, 2007	200238
Maine:					
Cumberland (FEMA Docket No.: B–7712).	Town of Windham (06–01–B562P).	November 9, 2006; November 16, 2006; *Portland Press Herald*.	The Honorable John MacKinnon, Chairman, Windham Town Council, 8 School Road, Windham, ME 04062.	October 30, 2006	230189
Cumberland (FEMA Docket No.: B–7474).	Town of Windham (06–01–B717P).	October 19, 2006; October 26, 2006; *Portland Press Herald*.	The Honorable John MacKinnon, Chairman, Windham Town Council, 8 School Road, Windham, ME 04062.	January 25, 2007	230189
Oxford (FEMA Docket No.: B–7712).	Town of Bethel (06–01–B021P).	November 30, 2006; December 7, 2006; *The Bethel Citizen*.	The Honorable Stanley R. Howe, Chairman, Town of Bethel, P.O. Box 1660, Bethel, ME 04217.	October 30, 2006	230088
Maryland:					
Allegany (FEMA Docket No.: B–7712).	Unincorporated areas of Allegany County (06–03–B234P).	November 30, 2006; December 7, 2006; *The Cumberland Times-News*.	The Honorable James J. Stakem, President, Allegany County, Board of Commissioners, Allegany County Office Complex, 701 Kelly Road, Fourth Floor, Cumberland, MD 21502–2803.	March 8, 2007	240001
Carroll (FEMA Docket No.: B–7712).	Unincorporated areas of Carroll County (05–03–A533P).	October 19, 2006; October 26, 2006; *Carroll County Times*.	The Honorable Julia W. Gouge, President, Carroll County, Board of Commissioners, Carroll County Office Building, 225 North Center Street, Westminster, MD 21157.	January 25, 2007	240015
Frederick (FEMA Docket No.: B–7703).	Unincorporated areas of Frederick County (06–03–B384P).	November 9, 2006; November 16, 2006; *The Frederick News-Post*.	The Honorable John L. Thompson, Jr., President, Frederick County Board of County Commissioners, Winchester Hall, 12 East Church Street, Frederick, MD 21701.	February 15, 2007	240027
Howard (FEMA Docket No.: B–7712).	Unincorporated areas of Howard County (05–03–A496P).	December 14, 2006; December 21, 2006; *Howard County Times*.	The Honorable James N. Robey, Howard County Executive, 3430 Courthouse Drive, Ellicott City, MD 21043.	November 16, 2006	240044
Washington (FEMA Docket No.: B–7474).	Town of Boonsboro (06–03–B016P).	October 5, 2006; October 12, 2006; *Hagerstown Herald-Mail*.	The Honorable Charles F. Kauffman, Jr., Mayor, Town of Boonsboro, 21 North Main Street, Boonsboro, MD 21713.	January 11, 2007	240071
Washington (FEMA Docket No.: B–7474).	Unincorporated areas of Washington County (06–03–B016P).	October 5, 2006; October 12, 2006; *Hagerstown Herald-Mail*.	Mr. Rodney Shoop, County Administrator, Washington County, 100 West Washington Street, Hagerstown, MD 21740.	January 11, 2007	240070
Massachusetts:					
Barnstable (FEMA Docket No.: B–7712).	Town of Bourne (06–01–B530P).	December 21, 2006; December 28, 2006; *Cape Cod Times*.	The Honorable Linda Zuern, Chair, Board of Selectmen, Town of Bourne, 24 Perry Avenue, Buzzards Bay, MA 02532.	November 30, 2006	255210
Barnstable (FEMA Docket No.: B–7474).	Town of Falmouth (06–01–B133P).	August 24, 2006; August 31, 2006; *Cape Cod Times*.	Mr. Robert L. Whritenour, Jr., Town Administrator, Town of Falmouth, 59 Town Hall Square, Falmouth, MA 02540.	August 8, 2006	255211
Essex (FEMA Docket No.: B–7712).	Town of Wenham (06–01–B791P).	November 9, 2006; November 16, 2006; *The Salem News*.	The Honorable Peter Hersee, Chairman, Wenham Board of Selectmen, 123 Main Street, Wenham, MA 01984.	February 15, 2007	250107
Michigan:					
Macomb and Marquette (FEMA Docket No.: B–7712).	Township of Macomb (06–05–BT19P).	December 22, 2006; December 29, 2006; *Macomb County Legal News*.	The Honorable John D. Brennan, Supervisor, Township of Macomb, 54111 Broughton Road, Macomb, MI 48042.	March 30, 2007	260445
Minnesota:					

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Hennepin (FEMA Docket No.: B–7474).	City of Plymouth (05–05–3454P).	August 24, 2006; August 31, 2006; *Minneapolis Star Tribune*.	The Honorable Judy Johnson, Mayor, City of Plymouth, 3400 Plymouth Boulevard, Plymouth, MN 55447.	July 28, 2006	270179
Olmsted (FEMA Docket No.: B–7712).	City of Rochester (06–05–BR73P).	November 30, 2006; December 7, 2006; *Post-Bulletin*.	The Honorable Ardell Brede, Mayor, City of Rochester, 201 Fourth Street Southeast, Room 281, Rochester, MN 55904.	October 30, 2006	275246
Mississippi:					
Rankin (FEMA Docket No.: B–7712).	City of Flowood (06–04–C397P).	December 20, 2006; December 27, 2006; *Rankin County News*.	The Honorable Gary Rhoads, Mayor, City of Flowood, P.O. Box 320069, Flowood, MS 39232–0069.	March 29, 2007	280289
Rankin (FEMA Docket No.: B–7712).	Unincorporated areas of Rankin County (06–04–C397P).	December 20, 2006; December 27, 2006; *Rankin County News*.	The Honorable Norman McLeod, Rankin County Administrator, 221 East Government Street, Suite A, Brandon, MS 39042.	March 29, 2007	280142
Missouri:					
Clay (FEMA Docket No.: B–7474).	Village of Claycomo (06–07–BD06P).	October 19, 2006; October 26, 2006; *The Sun-Tribune*.	Ms. Lois Anderson, Village Administrator, Village of Claycomo, 115 East 69 Highway, Claycomo, MO 64119.	September 29, 2006	290089
Clay (FEMA Docket No.: B–7474).	City of Liberty (06–07–BD06P).	October 19, 2006; October 26, 2006; *The Sun-Tribune*.	The Honorable Robert T. Steinkamp, Mayor, City of Liberty, 101 East Kansas Street, Liberty, MO 64068.	September 29, 2006	290096
Pemiscot (FEMA Docket No.: B–7712).	City of Caruthersville (06–07–B730P).	December 21, 2006; December 28, 2006; *Caruthersville-Hayti Democrat-Argus*.	The Honorable Diane Sayre, Mayor, City of Caruthersville, 200 West Third Street, Caruthersville, MO 63830.	March 29, 2007	290275
Pemiscot (FEMA Docket No.: B–7712).	Unincorporated areas of Pemiscot County (06–07–B730P).	December 21, 2006; December 28, 2006; *Caruthersville Hayti Democrat-Argus*.	The Honorable Charles Moss, Presiding Commissioner, Pemiscot County Commission, 610 Ward Avenue, Caruthersville, MO 63830.	March 29, 2007	290779
St. Charles (FEMA Docket No.: B–7712).	City of O'Fallon (06–07–B699P).	September 20, 2006; September 27, 2006; *St. Charles Journal*.	The Honorable Donna Morrow, Mayor, City of O'Fallon, City Hall, 100 North Main Street, O'Fallon, MO 63366.	December 27, 2006	290316
St. Charles (FEMA Docket No.: B–7712).	Unincorporated areas of St. Charles County (06–07–B699P).	September 20, 2006; September 27, 2006; *St. Charles Journal*.	The Honorable Joe Ortwerth, County Executive, St. Charles County Administration Building, 201 North Second Street, St. Charles, MO 63301.	December 27, 2006	290315
Warren (FEMA Docket No.: B–7703).	City of Wright City (06–07–B605P).	November 16, 2006; November 23, 2006; *Warren County Record*.	The Honorable Eileen Klocke, Mayor, City of Wright City, P.O. Box 436, Wright City, MO 63390.	February 22, 2007	290654
Warren (FEMA Docket No.: B–7703).	Unincorporated areas of Warren County (06–07–B605P).	November 16, 2006; November 23, 2006; *Warren County Record*.	The Honorable Fred Vahle, Presiding Commissioner, Warren County, Board of Commissioners, 104 West Main Street, Suite B, Warrenton, MO 63383.	February 22, 2007	290443
Nevada:					
Clark (FEMA Docket No.: B–7712).	Unincorporated areas of Clark County (06–09–B036P).	November 9, 2006; November 16, 2006; *Las Vegas Review-Journal*.	The Honorable Rory Reid, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89106.	October 31, 2006	320003
Clark (FEMA Docket No.: B–7712).	Unincorporated areas of Clark County (06–09–B275P).	November 9, 2006; November 16, 2006; *Las Vegas Review-Journal*.	The Honorable Rory Reid, Chair, Clark County Board, Of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89106.	February 15, 2007	320003
New Mexico:					
Bernalillo (FEMA Docket No.: B–7474).	City of Albuquerque (06–06–B638P).	October 12, 2006; October 19, 2006; *The Albuquerque Journal*.	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	September 20, 2006	350002
Sandoval (FEMA Docket No.: B–7712).	City of Rio Rancho (06–06–BI29P).	November 30, 2006; December 7, 2006; *The Santa Fe New Mexican*.	The Honorable Ken Jackson, Mayor, City of Rio Rancho, 3900 Southern Boulevard, Rio Rancho, NM 87124.	December 1, 2006	350146
Santa Fe (FEMA Docket No.: B–7474).	Unincorporated areas of Santa Fe County (06–06–B296P).	September 21, 2006; September 28, 2006; *The Santa Fe New Mexican*.	Mr. Gerald T.E. Gonzalez, County Manager, Santa Fe County, P.O. Box 276, Santa Fe, NM 87504.	August 29, 2006	350069
North Carolina:					
Beaufort (FEMA Docket No.: B–7474).	Unincorporated areas of Beaufort County (06–04–BP18P).	October 19, 2006; October 26, 2006; *Washington Daily News*.	Mr. Paul Spruill, County Manager, Beaufort County, P.O. Box 1027, Washington, NC 27889.	September 25, 2006	370013
Beaufort (FEMA Docket No.: B–7474).	City of Washington (06–04–BP18P).	October 19, 2006; October 26, 2006; *Washington Daily News*.	The Honorable Judy Jennette, Mayor, City of Washington, P.O. Box 1988, Washington, NC 27889.	September 25, 2006	370017
Durham (FEMA Docket No.: B–7712).	City of Durham (06–04–B004P).	November 9, 2006; November 16, 2006; *The Herald-Sun*.	The Honorable William V. "Bill" Bell, Mayor, City of Durham, 101 City Hall Plaza, Durham, NC 27701.	October 27, 2006	370086
Guilford (FEMA Docket No.: B–7474).	City of Greensboro (05–04–A010P).	July 20, 2006; July 27, 2006; *News & Record*.	The Honorable Keith Holliday, Mayor, City of Greensboro, P.O. Box 3136, Greensboro, NC 27402.	October 26, 2006	375351

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
North Dakota: Morton (FEMA Docket No.: B–7474).	City of Mandan (06–08–B460P).	September 21, 2006; September 28, 2006; *The Bismarck Tribune*.	The Honorable Ken LaMont, Mayor, City of Mandan, 205 Second Avenue, Northwest, Mandan, ND 58554.	August 29, 2006	380072
Ohio:					
Allen (FEMA Docket No.: B–7712).	City of Lima (05–05–0634P).	November 30, 2006; December 7, 2006; *The Lima News*.	The Honorable David J. Berger, Mayor, City of Lima, 50 Town Square, Lima, OH 45801.	March 8, 2007	390006
Allen (FEMA Docket No.: B–7712).	Unincorporated areas of Allen County (05–05–0634P).	November 30, 2006; December 7, 2006; *The Lima News*.	The Honorable Greg Sneary, President, Allen County, Board of Commissioners, 301 West North Street, Lima, OH 45801.	March 8, 2007	390758
Delaware (FEMA Docket No.: B–7474).	City of Powell (06–05–BJ86P).	October 19, 2006; October 26, 2006; *Delaware Gazette*.	The Honorable Don Grubbs, Mayor, City of Powell, 47 Hall Street, Powell, OH 43065.	January 25, 2007	390626
Fairfield (FEMA Docket No.: B–7474).	Unincorporated areas of Fairfield County (06–05–BA30P).	October 19, 2006; October 26, 2006; *Lancaster Eagle Gazette*.	The Honorable Jon Myers, County Commissioner, Board of Commissioners, Fairfield County, 210 East Main Street, Room 301, Lancaster, OH 43130.	January 25, 2007	390158
Franklin (FEMA Docket No.: B–7474).	City of Columbus (05–05–0944P).	September 21, 2006; September 28, 2006; *The Columbus Dispatch*.	The Honorable Michael B. Coleman, Mayor, City of Columbus, 90 West Broad Street, Columbus, OH 43215.	December 28, 2006	390170
Franklin (FEMA Docket No.: B–7474).	Unincorporated areas of Franklin County (05–05–0944P).	September 21, 2006; September 28, 2006; *The Columbus Dispatch*.	The Honorable Paula Brooks, President, Franklin County Board of Commissioners, 373 South High Street, Columbus, OH 43215.	December 28, 2006	390167
Lucas (FEMA Docket No.: B–7712).	City of Toledo (06–05–B078P).	December 1, 2006; December 7, 2006; *Toledo Legal News*.	The Honorable Carleton S. Finkbeiner, Mayor, City of Toledo, One Government Center, 640 Jackson, Suite 2200, Toledo, OH 43604.	October 30, 2006	395373
Lucas (FEMA Docket No.: B–7712).	City of Toledo (07–05–0330X).	December 21, 2006; December 28, 2006; *Toledo Legal News*.	The Honorable Carleton S. Finkbeiner, Mayor, City of Toledo, One Government Center, 640 Jackson, Suite 2200, Toledo, OH 43604.	November 29, 2006	395373
Lucas (FEMA Docket No.: B–7712).	Unincorporated areas of Lucas County (06–05–BW42P).	December 1, 2006; December 7, 2006; *Toledo Legal News*.	Ms.Tina Skeldon Wozniak, President, Lucas County Board of Commissioners, One Government Center, Suite 800, Toledo, OH 43604.	October 30, 2006	390359
Oklahoma:					
Cleveland (FEMA Docket No.: B–7474).	City of Moore (05–06–0578P).	October 19, 2006; October 26, 2006; *The Norman Transcript*.	The Honorable Glenn Lewis, Mayor, City of Moore, 301 North Broadway, Moore, OK 73160.	September 29, 2006	400044
Tulsa (FEMA Docket No.: B–7474).	City of Broken Arrow (06–06–-BE22P).	October 19, 2006; October 26, 2006; *Tulsa World*.	The Honorable Richard Carter, Mayor, City of Broken Arrow, P.O. Box 610, Broken Arrow, OK 74012.	January 25, 2007	400236
Oregon: Jackson (FEMA Docket No.: B–7474).	City of Jacksonville (06–10–B002P).	October 12, 2006; October 19, 2006; *Medford Mail Tribune*.	The Honorable James W. Lewis, Mayor, City of Jacksonville, P.O. Box 7, Jacksonville, OR 97530.	January 18, 2007	410095
Pennsylvania:					
Chester (FEMA Docket No.: B–7474).	Township of West Goshen (05–03–0848P).	September 21, 2006; September 28, 2006; *Daily Local News*.	The Honorable Edward G. Meakim, Jr., Chairman, West Goshen Township Board of Supervisors, 1025 Paoli Pike, West Chester, PA 19380–4699.	December 28, 2006	420293
Cumberland (FEMA Docket No.: B–7712).	Township of Lower Allen (06–03–B823P).	November 30, 2006; December 7, 2006; *The Sentinel*.	The Honorable John T. Titzel, President, Board of Commissioners, Township of Lower Allen, 1993 Hummel Avenue, Camp Hill, PA 17011.	March 8, 2007	421016
Cumberland (FEMA Docket No.: B–7712).	Township of Silver Spring (06–03–B462P).	December 21, 2006; December 28, 2006; *The Sentinel*.	The Honorable Christopher R. Latta, Chairman, Silver Spring Township Supervisors, 6475 Carlisle Pike, Mechanicsburg, PA 17055.	November 30, 2006	420370
Delaware (FEMA Docket No.: B–7474).	Borough of Collingsdale (05–03–A446P).	Novmeber 2, 2006; November 9, 2006; *Delaware County Daily Times*.	The Honorable Frank C. Kelly, Mayor, Borough of Collingdale, 800 MacDade Boulevard, Collingdale, PA 19023.	October 10, 2006	420408
Lehigh (FEMA Docket No.: B–7712).	City of Allentown (06–03–B617P).	December 1, 2006; December 8, 2006; *The Express-Times*.	The Honorable Ed Pawlowski, Mayor, City of Allentown, Office of the Mayor, 435 Hamilton Street, Allentown, PA 18101.	March 9, 2007	420585
York (FEMA Docket No.: B–7474).	Township of Penn (05–03–0718P).	October 12, 2006; October 19, 2006; *The York Dispatch*.	The Honorable Joseph A. Klunk, President, Penn Township Board of Commissioners, Penn Township Municipal Building, 20 Wayne Avenue, Hanover, PA 17331.	January 18, 2007	421025
Rhode Island: Providence (FEMA Docket No.: B–7712).	Town of North Smithfield (06–01–B167P).	November 30, 2006; December 7, 2006; *The Call*.	The Honorable David Lovett, Chairman, North Smithfield Town Council, 1 Main Street, North Smithfield, RI 02876.	October 10, 2006	440021
South Carolina:					

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Berkeley (FEMA Docket No.: B–7474).	Unincorporated areas of Berkeley County (06–04–BO05P).	October 25, 2006; November 1, 2006; *Berkeley Independent*.	The Honorable James H. Rozier, Jr., Supervisor and County Council Chairman, Berkeley County, 1003 Highway 52, Moncks Corner, SC 29461.	September 28, 2006	450029
Charleston (FEMA Docket No.: B–7712).	City of Charleston (06–04–BQ23P).	November 30, 2006; December 7, 2006; *The Post and Courier*.	The Honorable Joseph P. Riley, Jr., Mayor, City of Charleston, P.O. Box 652, Charleston, SC 29402.	October 27, 2006	455412
Charleston (FEMA Docket No.: B–7712).	City of Isle of Palms (07–04–0193P).	December 21, 2006; December 28, 2006; *The Post and Courier*.	Ms. Linda Lovvorn Tucker, City Administrator, City of Isle of Palms, Post Office Box 508, Isle of Palms, SC 29451.	November 30, 2006	455416
Greenville (FEMA Docket No.: B–7474).	Unincorporated areas of Greenville County (06–04–B141P).	September 22, 2006; September 28, 2006; *The Greenville News*.	The Honorable Butch Kirven, Chairman, Greenville County Council, Seven Ralph Hendricks Drive, Simpsonville, SC 29681.	December 28, 2006	450089
Horry (FEMA Docket No.: B–7712).	City of Myrtle Beach (05–04–2815P).	December 21, 2006; December 28, 2006; *Horry Independent*.	Mr. Thomas Leath, Manager, City of Myrtle Beach, P.O. Drawer 2468, Myrtle Beach, SC 29577.	November 17, 2006	450109
Horry (FEMA Docket No.: B–7712).	Unincorporated areas of Horry County (06–04–C114P).	November 22, 2006; November 30, 2006; *Horry Independent*.	Mr. Danny Knight, County Administrator, Horry County, P.O. Box 1236, Conway, SC 29528.	March 1, 2007	450104
Lexington (FEMA Docket No.: B–7474).	Unincorporated areas of Lexington County (06–04–BM33P).	October 5, 2006; October 12, 2006; *The Lexington County Chronicle*.	Ms. Katherine Doucett, County Administrator, Lexington County, 212 South Lake Drive, Lexington, SC 29072.	January 11, 2007	450129
Lexington (FEMA Docket No.: B–7474).	Unincorporated areas of Lexington County (06–04–BQ42P).	October 19, 2006; October 26, 2006; *The Lexington County Chronicle*.	Ms. Katherine Doucett, County Administrator, Lexington County, 212 South Lake Drive, Lexington, SC 29072.	January 25, 2007	450129
Richland (FEMA Docket No.: B–7712).	Unincorporated areas of Richland County (06–04–BP19P).	December 22, 2006; December 29, 2006; *The Columbia Star*.	The Honorable Anthony G. Mizzell, Chair, Richland County Council, 106 Wembley Street, Columbia, SC 29209.	March 30, 2007	450170
Richland (FEMA Docket No.: B–7474).	Unincorporated areas of Richland County (06–04–BT87P).	October 20, 2006; October 27, 2006; *The Columbia Star*.	The Honorable Anthony G. Mizzell, Chair, Richland County Council, 106 Wembley Street, Columbia, SC 29209.	September 25, 2006	450170
Richland (FEMA Docket No.: B–7712).	Unincorporated areas of Richland County (07–04–0179P).	December 22, 2006; December 29, 2006; *The Columbia Star*.	The Honorable Anthony Mizzell, Chairman, Richland County Council, P.O. Box 192, Columbia, SC 29202.	March 30, 2007	450170
South Dakota:					
Brown (FEMA Docket No.: B–7703).	City of Aberdeen (06–08–B272P).	November 2, 2006; November 9, 2006; *Aberdeen American News*.	The Honorable Mike Levsen, Mayor, City of Aberdeen, 123 South Lincoln, Aberdeen, SD 57401.	February 8, 2007	460007
Brown (FEMA Docket No.: B–7703).	Unincorporated areas of Brown County (06–08–B272P).	November 2, 2006; November 9, 2006; *Aberdeen American News*.	The Honorable Deb Knecht, Chairman, Brown County Board of Commissioners, 25 Market Street, Aberdeen, SD 57401.	February 8, 2007	460006
Pennington (FEMA Docket No.: B–7712).	City of Rapid City (06–08–B495P).	December 21, 2006; December 28, 2006; *Rapid City Journal*.	The Honorable Jim Shaw, Mayor, City of Rapid City, 300 Sixth Street, Rapid City, SD 57701.	March 29, 2007	465420
Pennington (FEMA Docket No.: B–7712).	Unincorporated areas of Pennington County (06–08–B495P).	December 21, 2006; December 28, 2006; *Rapid City Journal*.	The Honorable Kenneth Davis, Chairperson, Pennington County Board of Commissioners, 315 Saint Joseph Street, Rapid City, SD 57701.	March 29, 2007	460064
Tennessee:					
Hamilton (FEMA Docket No.: B–7703).	City of Chattanooga (05–04–3186P).	November 16, 2006; November 23, 2006; *Chattanooga Times Free Press*.	The Honorable Ron Littlefield, Mayor, City of Chattanooga, 1001 Lindsay Street, Chattanooga, TN 37402.	February 22, 2007	370072
Hamilton (FEMA Docket No.: B–7474).	City of Chattanooga (06–04–BV55P).	October 26, 2006; November 2, 2006; *Chattanooga Times Free Press*.	The Honorable Ron Littlefield, Mayor, City of Chattanooga, City Hall, Suite 100 101 East 11th Street, Chattanooga, TN 37402.	February 1, 2007	470072
Nashville and Davidson (FEMA Docket No.: B–7712).	Metropolitan Government of Nashville and Davidson County (07–04–0583P).	December 21, 2006; December 28, 2006; *Nashville Record*.	The Honorable Bill Purcell, Mayor, Metropolitan Government of Nashville and Davidson County, 107 Metropolitan Courthouse, Nashville, TN 37201.	November 30, 2006	470040
Williamson (FEMA Docket No.: B–7474).	City of Brentwood (06–04–C457P).	October 19, 2006; October 26, 2006; *The Tennessean*.	The Honorable Brian Joe Sweeney, Mayor, City of Brentwood, P.O. Box 788, Brentwood, TN 37024–0788.	January 25, 2007	470205
Williamson (FEMA Docket No.: B–7712).	Town of Nolensville (06–04–BX96P).	December 21, 2006; December 28, 2006; *Tennessean A.M. Section*.	The Honorable Tommy Dugger, Mayor, Town of Nolensville, 2260 Rolling Hills, Nolensville, TN 37135.	November 22, 2006	470425
Texas:					

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Bexar (FEMA Docket No.: B–7712).	City of Live Oak (04–06–A273P).	November 30, 2006; December 7, 200; *Daily Commercial Recorder*.	The Honorable Henry O. Edward, Jr., Mayor, City of Live Oak, 8001 Shin Oak Drive, Live Oak, TX 78233.	March 8, 2007	480043
Bexar (FEMA Docket No.: B–7712).	City of San Antonio (06–06–B191P).	November 30, 2006; December 7, 2006; *Daily Commercial Recorder*.	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966 San Antonio, TX 78283.	March 8, 2007	480045
Bexar (FEMA Docket No.: B–7712).	City of San Antonio (06–06–BC37P).	November 30, 2006; December 7, 2006; *Daily Commercial Recorder*.	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966 San Antonio, TX 78283.	March 8, 2007	480045
Bexar (FEMA Docket No.: B–7712).	City of San Antonio (06–06–BD54P).	November 22, 2006; November 30, 2006; *Daily Commercial Recorder*.	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966 San Antonio, TX 78283.	March 1, 2007	480045
Bexar (FEMA Docket No.: B–7712).	City of Shavano Park (06–06–BD54P).	November 22, 2006; November 30, 2006; *Daily Commercial Recorder*.	The Honorable Tommy Peyton, Mayor, City of Shavano Park, 900 Saddletree Court, San Antonio, TX 78231.	March 1, 2007	480047
Bexar (FEMA Docket No.: B–7712).	Unincorporated areas of Bexar County (04–06–A273P).	November 30, 2006; December 7, 2006; *Daily Commercial Recorder*.	The Honorable Nelson W. Wolff, County Judge, Bexar County Courthouse, 100 Dolorosa, Suite 1.20, San Antonio, TX 78205.	March 8, 2007	480035
Brazos (FEMA Docket No.: B–7474).	City of Bryan (05–06–0891P).	October 19, 2006; October 26, 2006; *The Eagle*.	The Honorable Ernie Wentrcek, Mayor, City of Bryan, 300 South Texas Avenue, Bryan, TX 77803.	January 25, 2007	480082
Brazos (FEMA Docket No.: B–7712).	City of College Station (06–06–B753P).	December 21, 2006; December 28, 2006; *The Eagle*.	The Honorable Ron Silvia, Mayor, City of College Station, 1101 Texas Avenue, College Station, TX 77840.	March 29, 2007	480083
Collin (FEMA Docket No.: B–7712).	City of Allen (06–06–B685P).	December 21, 2006; December 28, 2006; *The Allen American*.	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013.	March 29, 2007	480131
Collin (FEMA Docket No.: B–7474).	City of Princeton (06–06–B820P).	September 21, 2006; September 28, 2006; *The Princeton Herald*.	The Honorable Kathy Davis, Mayor, City of Princeton, P.O. Box 970, Princeton, TX 75407.	August 30, 2006	480757
Dallas (FEMA Docket No.: B–7712).	City of Grand Prairie (06–06–B413P).	December 21, 2006; December 28, 2006; *The Daily Commercial Record*.	The Honorable Charles England, Mayor, City of Grand Prairie, 317 College Street, Grand Prairie, TX 75050.	March 29, 2007	485472
Dallas (FEMA Docket No.: B–7474).	City of Grand Prairie (06–06–B658P).	September 21, 2006; September 28, 2006; *The Daily Commercial Record*.	The Honorable Charles England, Mayor, City of Grand Prairie, 317 College Street, Grand Prairie, TX 75050.	December 28, 2006	485472
Dallas (FEMA Docket No.: B–7703).	City of Hutchins (06–06–B194P).	November 22, 2006; November 29, 2006; *The Daily Commercial Record*.	The Honorable Artis Johnson, Mayor, City of Hutchins, P.O. Box 500, Hutchins, TX 75141.	February 28, 2007	480179
Dallas (FEMA Docket No.: B–7474).	City of Rowlett (06–06–B822P).	September 8, 2006; September 15, 2006; *Rowlett Lakeshore Times*.	The Honorable C. Shane Johnson, Mayor, City of Rowlett, P.O. Box 99, Rowlett, TX 75030–0099.	December 15, 2006	480185
Dallas (FEMA Docket No.: B–7703).	City of Wilmer (06–06–B194P).	November 22, 2006; November 29, 2006; *The Daily Commercial Record*.	The Honorable Linda Root, Mayor, City of Wilmer, 128 North Dallas Avenue, Wilmer, TX 75172.	February 28, 2007	480190
Denton (FEMA Docket No.: B–7474).	Town of Bartonville (06–06–B742P).	October 20, 2006; *October 26, 2006; Denton Record-Chronicle*.	The Honorable Ron Robertson, Mayor, Town of Bartonville, 1941 East Jeter Road, Bartonville, TX 76226.	September 28, 2006	481501
Denton (FEMA Docket No.: B–7474).	City of Denton (06–06–BD25P).	October 19, 2006; October 26, 2006; *Denton Record-Chronicle*.	The Honorable Perry McNeill, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	September 28, 2006	480194
Denton (FEMA Docket No.: B–7474).	City of The Colony (05–06–A219P).	October 20, 2006; October 26, 2006; *Denton Record-Chronicle*.	The Honorable John Dillard, Mayor, City of The Colony, 6800 Main Street, The Colony, TX 75056.	January 25, 2007	481581
Denton (FEMA Docket No.: B–7474).	City of Fort Worth (06–06–B018P).	September 21, 2006; September 28, 2006; *Northeast Tarrant Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	August 31, 2006	480596
Denton (FEMA Docket No.: B–7474).	Unincorporated areas of Denton County (06–06–BD25P).	October 19, 2006; October 26, 2006; *Denton Record-Chronicle*.	The Honorable Mary Horn, Denton County Judge, 110 West Hickory Street, Second Floor, Denton, TX 76201.	September 28, 2006	480774
El Paso (FEMA Docket No.: B–7703).	City of El Paso (06–06–B414P).	November 9, 2006; November 16, 2006; *El Paso Times*.	The Honorable John Cook, Mayor, City of El Paso, Two Civic Center Plaza, 10th Floor, El Paso, TX 79901.	February 15, 2007	480214
Ellis (FEMA Docket No.: B–7712).	City of Waxahachie (06–06–BF64P).	November 9, 2006; November 16, 2006; *Waxahachie Daily Light*.	The Honorable Jay Barksdale, Mayor, City of Waxahachie, P.O. Box 757, Waxahachie, TX 75165.	February 15, 2007	480211
Fort Bend (FEMA Docket No.: B–7474).	Fort Bend County LID No. 7 (06–06–B073P).	October 19, 2006; October 26, 2006; *Fort Bend Herald*.	Mr. Epifanio Salazar, P.E., Board President, Fort Bend County L.I.D. No. 7, c/o Schwartz, Page & Harding, L.L.P., 1300 Post Oak Boulevard, Suite 1400, Houston, TX 77027.	January 25, 2007	481594
Fort Bend (FEMA Docket No.: B–7474).	City of Sugar Land (06–06–B073P).	October 19, 2006; October 26, 2006; *Fort Bend Herald*.	The Honorable David G. Wallace, Mayor, City of Sugar Land, P.O. Box 110, Sugar Land, TX 77487.	January 25, 2007	480234
Fort Bend (FEMA Docket No.: B–7474).	Unincorporated areas of Fort Bend County (06–06–B073P).	October 19, 2006; October 26, 2006; *Fort Bend Herald*.	The Honorable Robert E. Hebert, PhD, Fort Bend County Judge, 301 Jackson Street, Suite 719, Richmond, TX 77469.	January 25, 2007	480228

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Harris (FEMA Docket No.: B–7712).	Unincorporated areas of Harris County (06–06–B392P).	November 30, 2006; December 7, 2006; *Houston Chronicle*.	The Honorable Robert Eckels, Harris County Judge, 1001 Preston, Suite 911, Houston, TX 77002.	March 7, 2007	480287
McClellan (FEMA Docket No.: B–7474).	City of Waco (06–06–B021P).	September 14, 2006; September 21, 2006; *Waco Tribune-Herald*.	The Honorable Virginia DuPuy, Mayor, City of Waco, P.O. Box 2570, Waco, TX 76702–2570.	December 21, 2006	480461
Montgomery (FEMA Docket No.: B–7712).	Unincorporated areas of Montgomery County (06–06–BE46P).	December 20, 2006; December 27, 2006; *Conroe Courier*.	The Honorable Alan B. Sadler, Montgomery County Judge, 301 North Thompson, Suite 210, Conroe, TX 77301.	March 28, 2007	480483
Rockwall (FEMA Docket No.: B–7474).	Unincorporated areas of Rockwall County (06–06–B819P).	September 20, 2006; September 27, 2006; *Royse City Herald-Banner*.	The Honorable Bill Bell, Rockwall County Judge, 101 East Rusk Street, Suite 202, Rockwall, TX 75087.	December 28, 2006	480543
Tarrant (FEMA Docket No.: B–7712).	City of Colleyville (06–06–BG05P).	December 21, 2006; December 28, 2006; *Fort Worth Star-Telegram*.	The Honorable David Kelly, Mayor, City of Colleyville, 100 Main Street, Colleyville, TX 76034.	March 29, 2007	480590
Tarrant (FEMA Docket No.: B–7712).	City of Fort Worth (06–06–B537P).	December 21, 2006; December 28, 2006; *Fort Worth Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	January 2, 2007	480596
Tarrant (FEMA Docket No.: B–7712).	City of Fort Worth (06–06–B717P).	November 9, 2006; November 16, 2006; *Fort Worth Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	February 15, 2007	480596
Tarrant (FEMA Docket No.: B–7474).	City of Fort Worth (06–06–BC39P).	September 14, 2006; September 21, 2006; *Northeast Tarrant Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	December 21, 2006	480596
Tarrant (FEMA Docket No.: B–7474).	City of Fort Worth (06–06–BE06P).	September 21, 2006; September 28, 2006; *Northeast Tarrant Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	December 28, 2006	480596
Tarrant (FEMA Docket No.: B–7712).	City of Fort Worth (06–06–BH46P).	December 21, 2006; December 28, 2006; *Fort Worth Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Forth Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	November 27, 2006	480596
Tarrant (FEMA Docket No.: B–7712).	City of Fort Worth (06–06–BK70P).	November 9, 2006; November 16, 2006; *Fort Worth Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	February 15, 2007	480596
Tarrant (FEMA Docket No.: B–7712).	City of Fort Worth (06–06–BK71P).	December 21, 2006; December 28, 2006; *Fort Worth Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	March 29, 2007	480596
Tarrant (FEMA Docket No.: B–7474).	City of North Richland Hills (06–06–B788P).	September 21, 2006; September 28, 2006; *Dallas Morning News*.	The Honorable Oscar Trevino, Mayor, City of North Richland Hills, P.O. Box 820609, North Richland Hills, TX 76182–0609.	August 30, 2006	480607
Utah:					
Grand (FEMA Docket No.: B–7712).	City of Moab (06–08–B290P).	November 30, 2006; December 7, 2006; *The Times-Independent*.	The Honorable David Sakrison, Mayor, City of Moab, 217 East Center Street, Moab, UT 84532.	March 8, 2007	490072
Grand (FEMA Docket No.: B–7712).	Unincorporated areas of Grand County (06–08–B290P).	November 30, 2006; December 7, 2006; *The Times-Independent*.	The Honorable Joette Langianese, Chair, Grand County Council, 125 East Center Street, Moab, UT 84532.	March 8, 2007	490232
Salt Lake (FEMA Docket No.: B–7712).	City of South Jordan (06–08–B511P).	December 21, 2006; December 28, 2006; *The Salt Lake Tribune*.	The Honorable William Kent Money, Mayor, City of South Jordan, 1600 West Towne Center Drive, South Jordan, UT 84095.	November 27, 2006	490107
Washington (FEMA Docket No.: B–7712).	City of St. George (05–08–0365P).	November 22, 2006; November 29, 2006; *St. George Spectrum*.	The Honorable Daniel D. McArthur, Mayor, City of St. George, 175 East 200 North, St. George, UT 84770.	February 28, 2007	490177
Washington (FEMA Docket No.: B–7712).	Unincorporated areas of Washington County (05–08–0365P).	November 22, 2006; November 29, 2006; *St. George Spectrum*.	The Honorable James J. Eardley, Chairman, Washington County Board of Commissioners, 197 East Tabernacle Street, St. George, UT 84770.	February 28, 2007	490224
Virgina:					
Fauquier (FEMA Docket No.: B–7474).	Unincorporated areas of Fauquier County (05–03–0241P).	September 13, 2006; September 20, 2006; *Fauquier Times*.	Mr. Paul McCulla, County Administrator, Fauquier County, 10 Hotel Street, Suite 204, Warrenton, VA 20186.	December 20, 2006	510055
Prince William (FEMA Docket No.: B–7474).	Town of Haymarket (05–03–A398P).	September 28, 2006; October 5, 2006; *Potomac News & Manassas Journal Messenger*.	The Honorable Pamela E. Stutz, Mayor, Town of Haymarket, P.O. Box 367, Haymarket, VA 20168.	January 4, 2007	510121

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Rockingham (FEMA Docket No.: B–7712).	Unincorporated areas of Rockingham County (07–03–0034P).	December 21, 2006; December 28, 2006; *Daily News-Record*.	Mr. Joseph S. Paxton, County Administrator, Rockingham County Administration Center, 20 East Gay Street, Harrisonburg, VA 22802.	March 29, 2007	510133
Washington: Pierce (FEMA Docket No.: B–7474).	Unincorporated areas of Pierce County (06–10–B193P).	September 21, 2006; September 28, 2006; *The News Tribune*.	The Honorable Shawn Bunney, Pierce County Council Chairman, 930 Tacoma Avenue South, County-City Building, Room 1046, Tacoma, WA 98402–2176.	August 30, 2006	530138
Wyoming:					
Laramie (FEMA Docket No.: B–7474).	City of Cheyenne (06–08–B409P).	September 21, 2006; September 28, 2006; *Wyoming Tribune-Eagle*.	The Honorable Jack R. Spiker, Mayor, City of Cheyenne, 2101 O'Neil Avenue, Room 310, Cheyenne, WY 82001.	August 29, 2006	560030
Laramie (FEMA Docket No.: B–7474).	Unincorporated areas of Laramie County (06–08–B409P).	September 21, 2006; September 28, 2006; *Wyoming Tribune-Eagle*.	The Honorable Diane Humphrey, Chairman, Laramie County, Board of Commissioners, 309 West 20th Street, Cheyenne, WY 82001.	August 29, 2006	560029

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: May 3, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 07–2384 Filed 5–16–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	Depth in feet above ground. * Elevation in feet (NGVD) +Elevation in feet (NAVD) Modified
City of Hamilton, Illinois Docket No.: FEMA–P–7917				
Illinois	City of Hamilton	Chaney Creek Tributary 1	Approximately 190 feet upstream of the confluence with Chaney Creek.	+532
			Approximately 1,155 feet upstream of Park Drive.	+605
		Cheny Creek Tributary	At the confluence with Chaney Creek Tributary 1.	+580
			Approximately 20 feet upstream of Hillcrest Drive.	+616
		Railroad Creek Tributary 1	Approximately 215 feet upstream of the confluence with Railroad Creek.	+558
			Approximately 30 feet upstream of Walnut Street.	+612
		Tributary 2	Approximately 345 feet upstream of the confluence with Railroad Creek.	+588
			Approximately 435 feet upstream of Broadway Street.	+645
		Tributary 3	Approximately 200 feet upstream of the confluence with Railroad Creek.	+575
			Approximately 60 feet upstream of South 19th Street.	+635
		Spring Creek	Approximately 460 feet upstream of the confluence with Chaney Creek.	+561
			Approximately 1,975 feet upstream of the confluence with Chaney Creek.	+611

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

City of Hamilton

Maps are available for inspection at the Community Map Repository, City of Hamilton, City Hall, 1010 Broadway, Hamilton, Illinois.

Hancock County, Illinois (Unincorporated Areas) Docket No.: FEMA–P–7917				
Illinois	Hancock County (Unincorporated Areas).	Chaney Creek Tributary 1	Approximately 70 feet upstream of the confluence with Chaney Creek.	*529
			Approximately 370 feet upstream of the confluence with Chaney Creek.	*536
		Railroad Creek Tributary 3	Approximately 2,970 feet upstream of the confluence with Railroad Creek.	*636
			Approximately 3,170 feet upstream of the confluence with Railroad Creek.	*636
		Spring Creek	Approximately 70 feet upstream of the confluence with Chaney Creek.	*536
			Approximately 460 feet upstream of the confluence with Chaney Creek.	*561

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Hancock County, UIllinois (Unincorporated Areas)

Maps are available for inspection at the Community Map Repository, Hancock County Courthouse, 500 Main Street, Carthage, Illinois.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Richmond County, North Carolina and Incorporated Areas Docket No.: FEMA–D–7686			
Baggetts Creek	At the confluence with Speeds Creek	+135	Richmond County (Unincorporated Areas).
	At U.S. Highway 1	+159	
Beaver Dam Creek (into Rocky Fork Creek).	At the confluence with Rocky Fork Creek	+238	Richmond County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Millstone Road (State Road 1487).	+315	
Beaverdam Branch	Approximately 50 feet upstream of the Railroad	+247	Richmond County (Unincorporated Areas).
	Approximately 860 feet upstream of Chalk Road	+269	City of Hamlet, City of Rockingham.
Beaverdam Creek (into Big Mountain Creek).	At the confluence with Big Mountain Creek	+341	Richmond County (Unincorporated Areas).
	Approximately 100 feet downstream of Capel Mill Road (State Road 1321).	+367	
Bells Creek	At the confluence with Rocky Fork Creek	+270	Richmond County (Unincorporated Areas).
	Approximately 1,200 feet upstream of Haywood Parker Road (State Road 1441).	+320	
Big Branch	At the confluence with Drowning Creek	+302	Richmond County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Drowning Creek.	+318	
Big Mountain Creek	At the confluence with Mountain Creek and Little Mountain Creek.	+246	Richmond County (Unincorporated Areas).
	Approximately 600 feet upstream of the confluence of Silver Creek.	+374	
Big Muddy Creek	At the Richmond/Scotland County boundary	+311	Richmond County (Unincorporated Areas), Town of Hoffman.
	Approximately 1,500 feet upstream of Blues Bridge Road	+397	
Black Branch	At the confluence with Solomans Creek	+214	Richmond County (Unincorporated Areas).
	Approximately 0.5 mile upstream of U.S. Highway 74	+256	
Bones Fork Creek	At the confluence with Hitchcock Creek	+256	Richmond County (Unincorporated Areas).
	Approximately 1,000 feet upstream of Millstone Road (State Road 1487).	+276	
Tributary 1	At the confluence with Bones Fork Creek	+267	Richmond County (Unincorporated Areas).
	Approximately 600 feet upstream of Millstone Road (State Road 1487).	+280	
Buffalo Creek	At the confluence with Little River	+201	Richmond County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Cartledge Creek Road (State Road 1005).	+262	
Tributary 1	At the confluence with Buffalo Creek	+224	Richmond County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Buffalo Creek.	+238	
Camp Branch	At the confluence with Gum Swamp Creek	+256	Richmond County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Cognac Road (State Road 1605).	+302	
Cartledge Creek	At the confluence with Pee Dee River	+152	Richmond County (Unincorporated Areas).
	Approximately 1,400 feet upstream of John Webb Road (State Road 1308).	+294	
Tributary 1	At the confluence with Cartledge Creek	+152	Richmond County (Unincorporated Areas).
	Approximately 2.0 miles upstream of the confluence with Cartledge Creek.	+219	
Tributary 2	At the confluence with Cartledge Creek	+168	Richmond County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 0.5 mile upstream of Dockery Road (State Road 1143).	+218	
Cheek Creek	At the confluence with Little River	+207	Richmond County (Unincorporated Areas).
	Approximately 1,800 feet upstream of the confluence with Little River.	+207	
Chock Creek	At the confluence with Hitchcock Creek	+239	Richmond County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Gray Woods Road	+279	
Tributary 1	At the confluence with Chock Creek	+247	Richmond County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence with Chock Creek.	+260	
Tributary 2	At the confluence with Chock Creek	+263	Richmond County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Fox Road (State Road 1606).	+301	
Colemans Creek	At the confluence with Mountain Creek	+193	Richmond County (Unincorporated Areas).
	Approximately 1.8 miles upstream of Grassy Island Road (State Road 1148).	+271	
Cox Pond	At the upstream side of the Railroad	+274	Richmond County (Unincorporated Areas), City of Hamlet.
	Approximately 150 feet downstream of McDonald Avenue	+296	
Crawford Branch	Approximately 1.2 miles downstream of Old Peggy Mill Road (State Road 1610).	+260	Richmond County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Old Peggy Mill Road (State Road 1610).	+302	
Crooked Creek	At County Line Road (State Road 1803)	+244	Richmond County (Unincorporated Areas).
	Approximately 700 feet downstream of Scholl Shankle Road (State Road 1805).	+268	
Drowning Creek	At the Richmond/Scotland/Hoke/Moore County boundaries	+268	Richmond County (Unincorporated Areas).
	At the Richmond/Montgomery/Moore County boundary	+368	
Gum Swamp Creek	At Gum Swamp Road (State Road 1609)	+255	Richmond County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Marston Road (State Road 1001).	+329	
Hitchcock Creek	At the confluence with Pee Dee River	+138	Richmond County (Unincorporated Areas), City of Rockingham.
	Approximately 0.6 mile upstream of the confluence of Indian Camp Lake.	+302	
Tributary 1	At the confluence with Hitchcock Creek	+186	Richmond County (Unincorporated Areas), City of Rockingham.
	Approximately 250 feet downstream of Richmond Road	+235	
Tributary 2	At the confluence with Hitchcock Creek	+195	Richmond County (Unincorporated Areas), City of Rockingham.
	Approximately 30 feet downstream of Richmond Road	+251	
Tributary 2A	At the confluence with Hitchcock Creek Tributary 2	+195	Richmond County (Unincorporated Areas), City of Rockingham.
	Approximately 0.5 mile upstream of the confluence of Hitchcock Creek Tributary 2.	+267	
Tributary 2B	At the confluence with Hitchcock Creek Tributary 2	+241	City of Rockingham.
	Approximately 50 feet downstream of Richmond Road	+249	
Tributary 3	At the confluence with Hitchcock Creek	+195	Richmond County (Unincorporated Areas), City of Rockingham.
	Approximately 1,100 feet upstream of Nicholson Road	+220	
Tributary 4	At the confluence with McKinney Lake/Hitchcock Creek	+283	Richmond County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with McKinney Lake/Hitchcock Creek.	+290	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Indian Camp Lake	At the confluence with Hitchcock Creek	+287	Richmond County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence with Hitchcock Creek.	+306	
Tributary 1	At the confluence with Indian Camp Lake	+296	Richmond County (Unincorporated Areas).
	Approximately 1.4 miles upstream of the confluence with Indian Camp Lake.	+349	
Jennies Branch	At the confluence with Hitchcock Creek	+159	Richmond County (Unincorporated Areas), City of Rockingham.
	Approximately 1,300 feet upstream of Patterson Street	+276	
Jobs Creek	At the confluence with Little Mountain Creek	+375	Richmond County (Unincorporated Areas).
	Approximately 0.5 mile upstream of U.S. Highway 220	+418	
Joes Creek	Approximately 1,700 feet upstream of the confluence with Joes Creek Tributary.	+224	Richmond County (Unincorporated Areas).
	Approximately 500 feet upstream of Old Laurinburg Road (State Road 1614).	+276	
Tributary	At the County Line Road (State Road 1802	+261	Richmond County (Unincorporated Areas).
	Approximately 1.0 mile upstream of County Line Road (State Road 1802.	+282	
Kinsman Lake	Approximately 1,000 feet upstream of the confluence with South Prong Falling Creek.	+260	Richmond County (Unincorporated Areas), City of Hamlet.
	Approximately 0.6 mile upstream of the confluence with South Prong Falling Creek.	+276	
Lightwood Knot Creek	Approximately 1,800 feet downstream of Ghio Road (State Road 1803).	+246	Richmond County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Ghio Road (State Road 1803).	+259	
Little Hamer Creek	At the confluence with Wolf Branch Creek and Unnamed Tributary of Wolf Branch Creek.	+238	Richmond County (Unincorporated Areas).
	At the Richmond/Montgomery County boundary	+241	
Little Mountain Creek	The confluence with Mountain Creek and Big Mountain Creek.	+246	Richmond County (Unincorporated Areas).
	Approximately 3.6 miles upstream of the confluence of Jobs Creek.	+486	
Little River	At the confluence with Pee Dee River	+200	Richmond County (Unincorporated Areas).
	Approximately 1,900 feet upstream of the confluence of Cheek Creek.	+207	
Marks Creek	At the North Carolina/South Carolina State boundary	+120	Richmond County (Unincorporated Areas), City of Hamlet.
	Approximately 2.3 miles upstream of Boyd Lake Road	+340	
Tributary 1	At the confluence with Marks Creek	+193	Richmond County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Marks Creek.	+210	
Tributary 2	At the confluence with Marks Creek	+212	Richmond County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Marks Creek.	+246	
Tributary 3	At the confluence with Marks Creek	+217	Richmond County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence with Marks Creek.	+257	
Tributary 4	At the confluence with Marks Creek	+221	Richmond County (Unincorporated Areas).
	Approximately 500 feet upstream of Homeplace Road (State Road 1995).	+247	
Tributary 5	At the confluence with Marks Creek	+225	Richmond County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Marks Creek.	+262	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Tributary 6	At the confluence with Marks Creek	+228	Richmond County (Unincorporated Areas).
	Approximately 0.4 mile upstream of NC Highway 177	+244	
Tributary 7	At the confluence with Marks Creek	+233	Richmond County (Unincorporated Areas), City of Hamlet.
	Approximately 0.4 mile upstream of U.S. Highway 74	+282	
Tributary 8	At the confluence with Marks Creek	+242	Richmond County (Unincorporated Areas).
	Approximately 1.5 miles upstream of the confluence with Marks Creek.	+263	
Tributary 9	At the confluence with Marks Creek	+294	Richmond County (Unincorporated Areas), City of Hamlet.
	Approximately 0.4 mile upstream of Raintree Road	+323	
Middle Prong Hamer Creek	At the confluence with Little River	+201	Richmond County (Unincorporated Areas).
	At the Richmond/Montgomery County boundary	+246	
Millstone Creek	At the confluence with Rocky Fork Creek/Millstone Lake	+311	Richmond County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Rocky Fork Creek/Millstone Lake.	+334	
Mountain Creek	At the confluence with Pee Dee River	+192	Richmond County (Unincorporated Areas).
	At the confluences of Big Mountain Creek and Little Mountain Creek.	+246	
Naked Creek (into Drowning Creek).	At the confluence with Drowning Creek	+313	Richmond County (Unincorporated Areas).
	At Research Farm Road (State Road 1527)	+458	
Naked Creek (into Pee Dee River).	At the confluence with Pee Dee River	+190	Richmond County (Unincorporated Areas).
	Approximately 1,100 feet upstream of Parson Lake Road (State Road 1145).	+267	
North Prong Falling Creek	Approximately 1,200 feet upstream of Long Drive	+222	Richmond County (Unincorporated Areas), City of Rockingham.
	Approximately 1.7 miles upstream of the confluence of North Prong Falling Creek Tributary 1.	+295	
Tributary 1	At the confluence with North Prong Falling Creek	+256	Richmond County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with North Prong Falling Creek.	+265	
Paradise Creek	At the confluence with Rocky Fork Creek	+351	Richmond County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Fire Tower Road (State Road 1455).	+369	
Pee Dee River	At the North Carolina/South Carolina State boundary	+110	Richmond County (Unincorporated Areas).
	At the Montgomery/Richmond County boundary	+220	
Rocky Fork Creek	At the confluence with Ledbetter Lake	+238	Richmond County (Unincorporated Areas).
	Approximately 1.3 miles upstream of O.G. Reynolds Road (State Road 1457).	+499	
Rocky Branch	At the confluence with Hitchcock Creek	+159	Richmond County (Unincorporated Areas), City of Rockingham.
	Approximately 0.4 mile upstream of Sandhill Road (State Road 1971).	+263	
Rocky Fork Creek Tributary 1	At the confluence with Rocky Fork Creek	+262	Richmond County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Rocky Fork Creek.	+288	
Silver Creek	At the confluence with Big Mountain Creek	+373	Richmond County (Unincorporated Areas).
	Approximately 0.6 mile upstream of County Line Road (State Road 1153).	+398	
Solomans Creek	At the confluence with Pee Dee River	+132	Richmond County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 900 feet upstream of Stokes Road (State Road 1992).	+259	
South Prong Cartledge Creek	At the confluence with Cartledge Creek	+228	Richmond County (Unincorporated Areas).
	Approximately 1,600 feet upstream of Sandy Ridge Church Road (State Road 1305).	+302	
South Prong Falling Creek	At the upstream side of the Richmond College Lake Dam	+276	Richmond County (Unincorporated Areas), City of Hamlet.
	Approximately 1,200 feet upstream of Wire Grass Road	+297	
Tributary 1	At the confluence with South Prong Falling Creek/Richmond College Lake.	+276	Richmond County (Unincorporated Areas), City of Hamlet.
	Approximately 1,800 feet upstream of the confluence with South Prong Falling Creek/Richmond College Lake.	+295	
Speeds Creek	At the confluence with Solomans Creek	+135	Richmond County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Sandhill Road (State Road 1971).	+176	
Treeces Branch	At the confluence with Cartledge Creek	+184	Richmond County (Unincorporated Areas).
	Approximately 780 feet upstream of Cartledge Creek Road (State Road 1005).	+242	
Unnamed Tributary to Wolf Branch Creek.	At the confluence with Wolf Branch Creek and Little Hamer Creek.	+238	Richmond County (Unincorporated Areas).
	At the Richmond/Montgomery County boundary	+245	
Watery Branch	At the confluence with Speeds Creek	+145	Richmond County (Unincorporated Areas).
	Approximately 1,900 feet upstream of the confluence with Speeds Creek.	+165	
White Creek Tributary	Approximately 1,000 feet downstream of Osborne Road (State Road 1803).	+198	Richmond County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Osborne Road (State Road 1803).	+207	
Wolf Branch Creek	At the confluence with Middle Prong Hamer Creek	+220	Richmond County (Unincorporated Areas).
	At the confluence of Little Hamer Creek and Unnamed Tributary of Wolf Branch Creek.	+238	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

City of Hamlet
Maps are available for inspection at the Hamlet City Hall, 201 Main Street, Hamlet, North Carolina.

City of Rockingham
Maps are available for inspection at the Rockingham City Hall, Planning Department, 514 Rockingham Road, Rockingham, North Carolina.

Town of Hoffman
Maps are available for inspection at the Hoffman Town Hall, 2176 Caddell Road, Hoffman, North Carolina.

Richmond County (Unincorporated Areas)
Maps are available for inspection at the Richmond County Planning Department, 221 South Hancock Street, Rockingham, North Carolina.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: May 3, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 07–2385 Filed 5–16–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 070510101–7101–01]

RIN 0648–AV57

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; a Temporary Rule

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

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: NMFS publishes a temporary rule to prohibit any vessel from participating in either the mothership, catcher-processor or shoreside delivery sector of the directed Pacific whiting (whiting) fishery off the West Coast in 2007 if it does not have a history of sector-specific participation in the whiting fishery between January 1, 1997, and January 1, 2007. This rule is intended to prevent serious conservation and management problems that could be caused by new entrants in 2007 and to maintain the status quo while the Pacific Fishery Management Council (Council) addresses the issue of increased effort in the whiting fishery through an amendment to the Pacific Groundfish Fishery Management Plan (FMP) for the long term.

DATES: The amendments in this rule are effective May 14, 2007 through November 13, 2007, except for amendments to §§ 660.333 and 660.335, which are effective May 14, 2007.

Comments must be received by June 18, 2007.

ADDRESSES: Comments on the management measures and the related environmental assessment (EA) may be sent to Frank Lockhart, Assistant Regional Administrator for Sustainable Fisheries, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, fax: 206–526–6376.

Comments may be submitted via e-mail at *Whiting.emergencyrule2007@noaa.gov* or at the Federal e-Rulemaking Portal: *http://www.Regulations.gov.*

Copies of the FONSI and its supporting EA and other documents cited in this document are available from Frank Lockhart at the address Assistant Regional Administrator for Sustainable Fisheries, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070. Information presented by the Council for this temporary rule is available for public review during business hours at the office of the Council at 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280. Copies of additional reports or testimony referenced in this document may also be obtained from the Council.

FOR FURTHER INFORMATION: Frank Lockhart (Northwest Region, NMFS), phone: 206–526–6142; fax: 206–526–6736) and e-mail: *Frank.Lockhart@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

The temporary rule also is accessible via the Internet at the Office of the **Federal Register's** Web site at *http://www.gpoaccess.gov/fr/index.html.* Background information and documents, including the EA, are available at the Council's Web site at *http://pcouncil.org.*

Background

The whiting fishery off the West Coast is managed under the Groundfish FMP prepared by the Council and approved by the Secretary of Commerce under the Magnuson-Stevens Act. The Council has adopted a formal process through which, every two years, it establishes allowable catches and associated fishery conservation and management measures for most of the groundfish fishery sectors for a biennial management cycle. The whiting fishery is managed somewhat differently because there is an annual stock assessment on which the Council bases an annual determination of the U.S. optimum yield (OY) and the sub-quotas of the U.S. OY. Beginning in 1997, the Council makes annual allocations of the U.S. OY available to each of three directed fishing sectors: Mothership, catcher-processor, and shoreside delivery. Further, the directed whiting fishery has a distinct seasonal structure, with the primary season start dates for each of the three commercial sectors being the same since 1997. The primary seasons for the non-tribal catcher/processor and mothership sectors begins May 15. The shoreside primary season in most of the Eureka statistical area (between 42° north latitude (N. lat.) and 40°30′ N. lat.) begins on April 1, and the fishery south of 40°30′ N. lat. begins April 15. The Pacific whiting shoreside fishery north of 42° N. lat. begins on June 15. No more than five percent of the shore-based sector allocation may be taken in the early season fishery off California before the primary season north of 42° N. lat. opens on June 15. This is intended to ensure an opportunity for all sectors of the shoreside industry to have fair opportunity to engage in the fishery when fish are available to them without excessive risk that any one area will receive disproportionately large opportunities. It also supports efforts to minimize bycatch of rockfish and salmon.

The current management regime with specific sector allocations and differences in area and sector season start dates was first implemented for the 1997 fishery (**Federal Register:** May 20, 1997 (Volume 62, Number 97)). At that time, the benefits of the sector allocations were to: Reduce the uncertainty of the amounts available for each sector, make the fishery easier to monitor, and eliminate the ''first-come-first-serve'' derby style incentives in the fishery associated with the ''no-action'' alternative as separate allocations encourage each sector to operate at a more leisurely and safe pace. By reducing the race for fish, separate sector allocations would provide greater incentives for vessels to move to other fishing grounds if necessary to lower bycatch levels, particularly of yellowtail rockfish and salmon. In addition, with separate allocations, each sector would have greater accountability and opportunity to minimize bycatch while providing each sector the flexibility of starting at different times without losing any competitive advantage. It also supported efforts to minimize bycatch of rockfish and salmon.

Since 1997, when sector specific allocations were made, the fishery has been fairly stable except for a few recent instances where additional rules had to be put in place to protect overfished species (2004) and endangered salmon (2005). As in many fisheries, when the fishery is stable, most of the participants know each other and have a shared interest in maintaining a stable situation. In this instance, cooperation includes a common interest in ensuring that bycatch is limited because excessive bycatch could close the fishery before the whiting quota is reached. Therefore, there is frequent sharing of information to ensure that

areas of high bycatch rates are known and avoided. This communication happens throughout the season but is especially crucial early in the season when the target species (whiting) and the sensitive bycatch species (overfished rockfish and salmon) are highly mobile. This communication allows fishing to be prosecuted in areas with high probability of large whiting catches with low bycatch. In turn, this has provided the directed whiting fishery with a long period to pursue the fishery and kept whiting vessels from engaging in other groundfish fishing sectors that were under severe economic stress. These are all benefits related to the enhanced communication among fishermen within a stable fishery.

In addition, keeping shoreside processing facilities open for longer periods also has helped maintain employment opportunities for many who otherwise would have been displaced by the severe cutbacks the Council had made in other groundfish fishery sectors to prevent overfishing and achieve rebuilding of overfished rockfish stocks. There is a further benefit to whiting fishers and processors, as the quality of the whiting is much better later in the season because the fish had regained weight lost during the spawning season. Finally, by shifting whiting fishing to later in the season, and through other industry voluntary actions and communications, the industry was able to reduce its likelihood of high bycatch of overfished rockfish and salmon.

In 2006, however, there was several shifts in fishery conditions that led to Council concern about the potential for major disruptions in the whiting fishery and related non-whiting groundfish fisheries. There was a significant increase in the ex-vessel price for whiting. This attracted several new vessels to the whiting shoreside fishery in 2006. Second, as rationalization of the Alaska pollock fishery was achieved, some vessels, including some American Fisheries Act-qualified vessels (AFA vessels), found they could engage in fishing for whiting off the West Coast in the spring and early summer and then shift to Alaska to take their shares of pollock later in the summer when Alaskan fishing conditions were more favorable. Among the new entries to the whiting fishery were several AFA vessels. The entry of new vessels to the whiting fishery resulted in achievement of the whiting harvest limits earlier in the year in 2006 than in 2005 and an earlier closure than anticipated of the shoreside sector, adversely affecting processors as well as fishers. The Council understood that there was the prospect of additional entry of AFA vessels in 2007, as well as perhaps additional other vessels in the groundfish fishery.

The Council originally considered the issue of limiting new vessel entry to the whiting fishery in September 2006. At that time, the Council recommended that NMFS implement an emergency rule to prevent new entry of certain, but not all, vessels into the whiting fishery for the 2007 season, as well as prohibit certain vessels that participated in the 2006 season. The Council stated its belief that the conservation problems that would arise from an accelerated ''race for fish'' if certain AFA vessels were allowed to remain in the fishery, or if additional AFA vessels were allowed to enter the fishery. The prospect of more participation was alarming to the Council, which was concerned that additional vessels would result in an accelerated ''race for fish,'' with increased harvest rates for whiting. Increased harvest rates, especially if the new vessels are of larger capacity or piloted by masters unfamiliar with the fishery, could lead to greater (and potentially disastrous) bycatch of overfished species of rockfish. In addition, the Council was advised by current whiting fishery participants that this accelerated race for fish would likely lead to higher levels of fishing earlier in the season by the at-sea portion (i.e., motherships and catcher/processors) of the fishery; such an occurrence could result in higher bycatch of endangered or threatened salmon as bycatch rates are documented to be higher in the spring. The Council concluded that serious conservation and management problems would result from this accelerated ''race for fish'' caused by new entry of AFA vessels to the fishery. The Council also noted a concern was that new entry of AFA vessels could result in early achievement of the U.S. directed harvest quotas, leaving West Coast-based vessels facing no fishing or very limited fishing while the AFA vessels could return to the rationalized pollock fisheries in which they had an interest. However, the Council proposal would have prohibited only certain AFA vessels from entry to the fishery for the fist time in 2007, and would have removed from the fishery only AFA vessels that had participated for the first time in 2006. The Council's recommendation would not have prevented additional non-AFA vessels from entering the fishery.

In a letter dated January 11, 2007, the Northwest Regional Administrator (RA), NMFS, notified the Council that he denied its request for an emergency rule. He noted that the Council's action was intended to address actual or potential harm to West Coast fishers from the AFA, but that the evidence they presented to indicate harm (i.e., an earlier closure of the whiting fishery in 2006 than in 2005) was due to new participation by both AFA vessels and non-AFA vessels. While acknowledging that new market conditions were likely to attract additional vessels, he pointed out that the proposed action would have denied new entry to a selected category of vessels (i.e., AFA vessels) but not all vessels. The RA noted that the guidelines for the use of emergency rules call for use of notice-and-comment procedures when there are controversial actions with serious economic effects, especially when the decision is largely related to allocation and not conservation. Further, the Council's remedy would not have fully addressed the valid conservation concerns raised by the Council. Therefore, the proposal, as with other allocation decisions, would more appropriately be handled through the Council's full rulemaking process even if there were valid conservation concerns.

The RA subsequently advised the Council on February 13, 2007, that if it were to submit a proposal that dealt more fully with the issue of conservation risks and management problems due to potential new entry of any new vessels into the directed whiting fishery, NMFS would review that proposal on its own merits. NMFS would continue to be concerned if the request based the proposed action on the AFA rather than on the Magnuson-Stevens Act.

The Council discussed the issue at its meeting March 9, 2007, including the history of the issue, its earlier action, NMFS' rejection and indication of a possible remedy, and alternatives available to the Council. There were four new pieces of information presented at the Council meeting that exacerbated their concern about an increased race for fish. First, the price for whiting continues to increase to unprecedented levels. Ex-vessel prices increased from $77 per ton in 2004 to $137 per ton in 2006—nearly doubling since 2004 and increasing by more than 22 percent in 2006 from the 2005 price. Industry projections for 2007 are that prices will continue to increase to more than $176 per ton. Second, the U.S. Optimum Yield (OY) for whiting in 2007 is 10 percent lower than the OY in 2006. Third, because of higher than projected rockfish bycatch rates, the Council took action in March 2007 that placed new and more severe constraints on non-whiting groundfish fishing. This reduces the fishing opportunities for

these non-whiting sectors. Fourth, the OY for Alaska pollock is reduced for 2007.

All of these recent and unanticipated changes in conditions increase the likelihood of an accelerated race for fish: The first by making entry more potentially lucrative for additional vessels; the second by constraining supply of whiting for harvest and leading to more pressure among vessels to quickly capture the limited whiting quota; and the third and fourth by increasing the relative attractiveness of whiting compared to other fishing opportunities. Faced with this new information, the Council adopted and submitted its new request that NMFS promulgate an emergency rule that would prohibit any vessel from operating in the mothership, catcher-processor, or shoreside delivery sector of the whiting fishery in 2007 if it did not have a history of sector-specific participation prior to January 1, 2007. The Council also committed to completing an amendment to its Groundfish FMP to resolve issues associated with AFA vessels for the long term, consistent with the Magnuson-Stevens Act, the AFA, and other applicable law. This could lead to an additional program under consideration of an individual fishermen's quota system as early as 2010.

NMFS agrees that if this rule is not implemented, an accelerated ''race for fish'' is likely to cause serious conservation and management problems, including excessive bycatch of overfished rockfish, excessive catch of endangered and threatened salmon, and severe disruption of other groundfish fishery sectors. This rule will help maintain stability in the whiting fishery and other groundfish fishing sectors in 2007 while the Council completes its FMP amendment to resolve groundfish and whiting fishing fleet capacity issues for the long term. This rule also provides that parties who invested in 2006 and early 2007 by purchasing groundfish trawl limited entry permits for aggregation and use on a single vessel in the whiting fishery in 2007 are exempted from the prohibition against subsequently disaggregating such permits. This will mitigate financial harm to such parties who invested in good faith without knowing that this emergency rule could be implemented. The rule also contains provisions to allow a person who transferred a permit to a ''prohibited'' vessel (a vessel not eligible to participate in the fishery) can reverse that action and return the permit to the previous vessel or transfer it to a vessel that is eligible. Normally, a permit can only be transferred once a year. This person was not aware of the prospect of an emergency rule when he transferred the permit. Fairness justifies this exception to the regulation.

For purposes of implementing the Council request, which is for control of entry on a sector-by-sector basis, NMFS is using 1997 as the base year. That is the first year in which the three sectors began being considered for separate sub-quotas and management controls. State landings data, observer records, and NORPAC industry reports will be the sole evidence to demonstrate eligibility based on historic sector-specific participation.

Public Comments and Issues

At the Council meeting, the Council took comment on the issue prior to taking action. There were numerous expressions of support for the action as well as some comments opposed to the action. In addition, the Northwest Region and the Council have received written comments since the Council action was taken. At the meeting, fishers who commented were divided; some opposed the action while most testifying before the Council supported it. While most of those testifying stated their belief that allowing new entrants would cause a conservation problem, there was some testimony that a problem would not occur. Some argued that leaving the fishery open to new entry could result in a high probability of intensive fishing early in the season leading to conservation problems (especially with respect to bycatch), while others argued that the catch limit on whiting provided assurance that there would not be any threat to whiting, and that the limits on bycatch provided protection to overfished rockfish. There was agreement that there is an allocation issue that the Council needs to resolve. Some urged the Council to address this for the longer term through Amendment 15 without an emergency rule, while others supported an emergency rule to allow the fishery to proceed as it has in recent years (i.e., in a stable manner) without new entry while the Council develops Amendment 15. A spokesperson for the recreational sector supported the emergency rule as it could reduce the risk of excessive bycatch of salmon and rockfish, which in turn would reduce the risk of further constraints on recreational fishing for groundfish. A West Coast processing industry member also spoke in favor of the emergency rule.

The West Coast state officials voting at the meeting all supported the emergency rule. The California state official made the motion for the emergency rule, expressing concern about the increased risk of excessive bycatch and noting restrictive actions the Council has taken toward other groundfish fishery sectors to prevent bycatch problems. NMFS believes it is likely that increased capacity in the whiting fishery could exacerbate such problems. It was noted that the whiting limit for 2007 is lower than in 2006, and thus there is a greater risk that new participation would lead to more intensive competition and problems. California also pointed out the risk of management problems if the whiting fishery were to close earlier than normal and whiting fishers were to place more pressure on other groundfish fishery sectors, thereby exacerbating problems in those sectors as well as coastal communities. Oregon's representative on the Council was strongly in favor of the emergency rule as the state was concerned that additional entry would result in intensive early fishing, with high risk of excessive rockfish and salmon bycatch. Further, an early closure of the fishery would have severe adverse impacts on coastal processors in Oregon and elsewhere. It is notable that Washington's representative had opposed the proposed emergency in September 2006 but was now convinced that 2007 presented different and unforeseen conditions. Washington noted that the Council's proposal would not force out any person who had participated in 2006. Washington supported action as reducing the risk of adverse impacts on rockfish (especially noting concern about canary rockfish) and salmon. The Washington representative also noted that this would be a one-year action; it will be incumbent on the Council to address the capacity issue for the long-term in a timely manner.

The Pacific Whiting Conservation Cooperative (Cooperative) recommended that the Council request the emergency rule. The Cooperative subsequently submitted written comments (see below).

A processor who has recently invested in shoreside facilities has written NMFS in favor of keeping the fishery open, which in this context means to not freeze new entry to the shoreside processing sector.

A company that invested in 2006 by purchasing limited entry permits and combining them on a single vessel with the intent of entering the fishery in 2007 objected to the emergency rule proposal. In this company's view, there is no ''emergency'' pursuant to NMFS' guidelines for the use of emergency authority, especially for the entry of additional processing capacity or a

catcher/processor vessel. They noted that NMFS disapproved the Council's September 2006 proposal, and the reasons for that disapproval would apply in this instance as well. They noted that the Council could have used its normal decision processes to establish additional measures to manage the whiting fishery and had chosen not to do so; in their view, nothing has changed so significantly as to warrant emergency regulations. They also noted that the permits acquired to allow their vessel to qualify under the limited entry program were from active vessels, so their prospective new entry would only replace existing capacity rather than add to the capacity of the fleet. Their letter identifies the specific analyses that they maintain would be needed to satisfy Magnuson-Stevens Act requirement for management regulations and asserts that such analyses would show that the ''best scientific information available'' does not support an emergency rule.

Subsequent Public Comments on the Emergency Rule Proposal

At the Council meeting, following the vote on the proposed emergency action, the NMFS representative invited written public comment on the prospective action while the Council prepared the actual submission for NMFS consideration, requesting that they be submitted within two weeks. NMFS wanted to be sure it had as complete an understanding as possible on the range of issues and concerns that various parties would have on this matter. During this period, the following comments were received:

The Pacific Whiting Conservation Cooperative wrote reiterating its support for emergency action. It noted that the voluntary industry arrangement that results in the slow pace of fishing early in the season and that includes collaboration and communication to avoid bycatch would likely end if there were new entry to the fishery. It indicated that there would be a ''race for fish'' leading to all the problems discussed by the Council when it agreed to request emergency action.

The State of Oregon submitted supplemental comments, reiterating its concerns about the risk of excessive bycatch of rockfish as well as the economic disruption to the West Coast whiting fishing fleet and to West Coast processors and their employees if there were early closure of the whiting fishery for any reason.

One party suggested that the emergency rule request be approved only with respect to the entry of new harvesting vessels. This would mean that additional mothership operations could enter the fishery in 2007. This party suggested that it would be beneficial to other whiting fishers to increase the number of potential buyers of fish.

Two sets of comments were received from representatives of the mothership sector. They favored the proposed action, with special emphasis on ensuring that eligibility for participation is on a sector-specific basis, and that eligibility in 2007 be based on sector-specific participation beginning in 1997.

Responses to Comments

Because the conservation concerns raised by the Council in 2006 still exist and because, unlike their 2006 request, the Council's proposed remedy fully addresses those concerns by encompassing all vessels that could potentially enter the whiting fishery absent this rule, NMFS believes that the available information demonstrates that emergency action is warranted. This conclusion is further supported by the new information received in late 2006 and early 2007. These conditions may pose an unacceptably high risk that there would be serious conservation and management problems if no action is taken. The Council has been responsive to NMFS' objections to the prior request for emergency action and has taken the broader action required to address the problem in the short term, and has committed to action to resolve the whiting fishery capacity issue in the long-term through an amendment to the Groundfish FMP. NMFS notes that the emergency rule would be in effect for at most one year, and that the rule contains provisions intended to minimize financial harm to those who may have invested to participate in the fishery in 2007 not knowing they would be precluded from utilizing the investment in the fishery. NMFS notes further the critical need to ensure that bycatch limits on overfished rockfish not be exceeded so that the stocks can rebuild in accordance with the approved rebuilding plans.

NMFS agrees with the Council that the risks of serious economic disruptions in the event of excessive catch of rockfish are very high if there were no control to stop entry into the whiting fishery at least for 2007. NMFS also agrees that the risk of loss of industry cooperation in the fishing year would pose serious risks of loss of control over bycatch. With respect to the potential to allow new mothership operations, NMFS concludes that this would not fully address the risks of an accelerated ''race for fish,'' with consequent risk of early fishing and in turn excessive bycatch. Again, the cooperation of industry is vital to ensuring a stable fishery with minimal bycatch. NMFS determined that applying the prohibition on new entry only to the catcher sectors would not address the problem; the entry of additional at-sea processors could also lead to an accelerated race for fish as more parties compete for the available sector allocation, with a higher likelihood of a breakdown in communication and cooperation leading to excessive risk of heavy early season fishing with high bycatch and fishery disruptions. NMFS agrees that the Council intended that eligibility be determined on a sector-specific basis, and has determined that 1997 should be used as the initial year for qualification of participation in the fishery on a sector-specific basis. This was the first year in which management of the domestic whiting fishery was managed on a sector-specific basis.

Evaluation of Emergency Rule Request Against Agency Guidelines

NMFS has considered the Council's request and the information on which the request is based. NMFS considered also the information in the Council's final environmental impact statement (FEIS) for its biennial harvest limits and conservation and management measures. This includes extensive information on the status of stocks and the economic status of the fisheries and the dependency of communities which are dependent on those fisheries. NMFS has evaluated the proposal against its guidelines for the use of emergency rules, published at 62 FR 44421 (August 21, 1997), which sets forth criteria that must be met to warrant emergency rules. Each of the criteria is discussed below.

1. The Situation Results From Recent, Unforeseen Events or Recently Discovered Circumstances

Two years ago, it could not have been foreseen that Pacific whiting would be a much more important component of the West Coast groundfish fisheries as well as a potential target of Alaska fishers. As noted earlier, in 2005 and 2006, ex-vessel prices for whiting increased dramatically, and the industry projection is that prices will continue to rise in 2007. The U.S. OY for whiting in 2007 is down 10 percent from the 2006 level, so the supply of whiting for the U.S. industry will lead to increased competition even without new entry. The Council acted in March 2007 to further restrict non-whiting fishing due to higher than anticipated rockfish bycatch rates; this puts new pressure on those other sectors and makes whiting relatively more attractive, and could

promote shifting of effort to whiting if no action were taken to prevent it. Finally, while the OY for Alaska pollock is reduced and rationalization of the Alaska pollock fishery allows many vessels that normally fish in Alaska to set their own schedules for catching a share of the harvest. The pollock fishery would be available later in the year, if desired; these vessels (many of which have or could obtain West Coast trawl limited entry permits) could choose to fish for Pacific whiting early in the year and, when the whiting quota is reached, shift operations to Alaska to fish for pollock. These vessels have the capability (i.e., equipment and gear) to fish for whiting with little or no added cost. Taken together, these new and unforeseen conditions support a high likelihood of new entry to the whiting fishery in 2007 if no action were taken. This would result in unacceptably high risk of conservation and management problems.

2. The Situation Presents Serious Conservation or Management Problems in the Fishery

As noted, the whiting stock is thoroughly monitored and assessed annually, and the results are generally accepted as presenting an accurate assessment of the stock. The U.S. and Canada have agreed to a Treaty for joint management of the stock and for sharing the harvestable surplus. Given the Council's relatively conservative harvest strategy for whiting, there is little reason for serious conservation concern about the current and future condition of the Pacific whiting stock.

However, it is also generally true that the more participants in a fishery managed under quotas, the greater the likelihood that conservation will become a concern, and especially in the case where the fishery is still subject to new entry. Quite simply, new entry encourages more intensive fishing as soon as a fishery is open as participants fear they will not catch a fair share of the available fish if they do not fish early. In turn there is greater pressure to fish hard with possibly less regard for minimizing waste or bycatch. This is especially true in the whiting fishery, in which industry cooperation has been a vital element in controlling the pace of the fishery and in sharing information so that participants would avoid areas of high bycatch and thus help each other extend the season as long as possible. As noted above, this cooperation would be less likely to continue if new entrants were allowed into the fishery without limit. A breakdown in cooperation and communication would be likely to result in an accelerated race for fish and the consequent unacceptably high risk of excessive bycatch and fishery disruptions. If fishing is conducted more intensely, there is likely to be less care to avoid bycatch and more likelihood of ''disaster'' tows with extremely high bycatch levels. This would be especially true if the new entrants were high capacity vessels with a need to fill up fast to cover costs, or if the vessel were captained by a person not familiar with the fishery and unable to adjust to high bycatch rates. This could lead to early closure of the whiting fishery if bycatch limits are reached; it is important to note that if a bycatch limit is reached, even if only by one sector, fishing by all sectors of the whiting fishery must cease. For perspective, in early June 2004 a vessel in the mothership sector had a single tow of fish estimated to contain 3.9 mt of canary, which is equal to 83 percent of the 2007 whiting fishery bycatch limit for non-tribal whiting fisheries. An accelerated race for fish could well result in closure of the whiting fishery before the annual quota of whiting is reached, resulting in serious loss of income and employment both to fishers and to processing facilities. Accelerated fishing for Pacific whiting in the spring is also likely to result in incidental catches of salmon in excess of the incidental take allowances under biological opinions issued under the ESA. Also, as pointed out above, the yield per fish is greater later in the season than earlier, so pressure to fish early is likely to result in less usable and less valuable product.

In summary, allowing new entry to the whiting fishery in 2007 is likely to result in serious conservation and management problems.

The situation can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

The benefit of immediate action is that it provides for greater stability in the 2007 Pacific whiting fishery while the Council completes action on the amendment to manage the fishery over the long term, possibly including conservation and management measures to deal with AFA impacts as well as the impacts of otherwise unlimited entry into the whiting fishery. The Council can use its established planning process and the Secretary can use notice and comment rulemaking procedures for implementing the long-term strategy and measures. There is little cost as only new entry would be prohibited; any vessels that participated prior between January 1, 1997, and December 31, 2006, inclusive, would be eligible to participate in 2007. It can be argued that the fishery is already overcapitalized, but at least there would not be further overcapacity due to additional new entry to the fishery for short-term gain at the expense of those with a long-standing interest in the fishery.

It is known that at least one party invested in 2006 by buying limited entry permits and aggregating them for application of a single permit on a single vessel intended to participate in the whiting fishery in 2007. There may be other such situations. The regulations for the limited entry permit program currently do not allow a permit established through aggregation of multiple permits to be subsequently disaggregated. However, to alleviate financial harm to any who in good faith made investments as described, the emergency rule provides for an exception from the prohibition against disaggregation of permits. The investor(s) may then be able to recapture at least a portion of the investment that might otherwise be lost. In addition, one party is known to have tried to register a permit for use on a ''prohibited'' vessel; the rule includes a provision allowing such parties to register their permits for alternate, eligible vessels in such cases.

As noted above, NMFS has established that 1997 is the initial year for which sector participation will be considered in determining eligibility for a particular sector of the whiting fishery in 2007. State landings data, Pacific Fishery Information Network (PacFIN) data, observer data, and NORPAC industry reports as appropriate to the sector, will be the sole evidence to demonstrate the sector-specific eligibility of vessels.

Classification

The Assistant Administrator finds good cause under 5 U.S.C. 553(b)(B) to waive the requirement for prior notice and opportunity for public comment, as such procedures are impracticable and contrary to the public interest.

The season for the primary West Coast Pacific whiting fishery opened April 15 south of 42° N. latitude (lat.) and opens May 15 south of 42° N. lat. The normal seasonal pattern of the fishery (and the pattern that the Council believes is necessary to prevent adverse impacts on fish stocks as well as on established fisheries) is to have relatively little fishing early in the season with expanded fishing later in the year, and with the fishery extending through the summer. This has been achieved in

recent years, at least in part, because of voluntary action by an industry group that has worked hard to ensure that the season will last well into the summer or fall as long as the whiting quota allows it. This allows less fishing when there are high bycatch rates for rockfish and salmon, and more fishing when bycatch rates are lower.

As noted above, there were several new pieces of information supporting the expectation of additional entry to the fleet in 2007. First, the price for whiting continues to increase to unprecedented levels, ex-vessel prices have increased from $77 per ton in 2004 to $137 per ton in 2006—nearly doubling since 2004, and increasing by over 22% compared to 2005. Industry projections for 2007 are that prices will continue to increase to over $176 per ton. Second, the U.S. Optimum Yield of whiting was reduced by 10% for the 2007 season compared to 2006. Third, because of higher than projected rockfish bycatch rates, the Council took action in March that placed more severe constraints on non-whiting groundfish fishing. Fourth, the quota for Alaskan pollock was reduced this year. All of these recent changes increase the chance of an accelerated race for fish: The first by making entry more lucrative for additional vessels, the second by constraining supply of whiting and leading to more pressure among vessels to quickly capture the more limited supply of whiting, and the third and fourth by increasing the relative attractiveness of entering the whiting fishery this year.

Without this emergency rule, new entry is likely early in the season; if this happens, the voluntary limitation of early season fishing will likely cease to be effective, resulting in more intensive early season fishing and higher bycatch levels. It also would likely result in early achievement either of a bycatch limit (causing early closure of the whiting fishery) or of the whiting catch quota (also causing early closure of the whiting fishery). Fishers from Alaska could return to Alaska; West Coast-based vessels would not have that alternative and would either be idled or would add to pressure in the severely constrained other sectors of the groundfish fishery. In the worst case, the whiting fishery would catch so much in excess of its rockfish bycatch limits that the Council would be forced to impose even more limits on the other groundfish fishery sectors to keep total bycatch within the total limits. The emergency rule maintains the status quo in the fishery at least through 2007, while the Council develops a long-term management program to achieve stability for the future. Providing opportunity for prior notice and public comments on the Council's requested action for 2007 would delay the rule to the extent that the benefits of the rule would be nullified and the protection of the resources intended by the rule would not be provided.

The proposed action will have beneficial effects on current participants in the Pacific whiting fishery and on participants in other groundfish fisheries. Without this action, it is fairly certain that there would be additional entry into the fishery, meaning greater competition for the available harvest (the U.S. whiting OY is reduced by 10% from the 2006 harvest level) and a greater likelihood of an ''accelerated race for fish.'' This would be expected to result in early closure of the directed whiting fishery, which in turn could lead to idle capacity (for those who do not have the ability to shift to other fisheries or other groundfish sectors) or excess capacity shifting to other groundfish fisheries. Such a shift would exacerbate the economic difficulty being experienced in those non-whiting sectors due to severe constraints on fishing levels and areas available for fishing. In one possible scenario, the no action alternative would result in rockfish bycatch limits for the groundfish fisheries being exceeded in the whiting fishery at levels that would require additional reductions in other groundfish fishing sectors targeting healthy groundfish stocks.

Therefore, NMFS has concluded it is impracticable and contrary to the public interest to provide an opportunity for prior notice and public comment under 5 U.S.C. 553(b)(B). For the same reasons as discussed above, the Assistant Administrator also finds that good cause exists under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness of this rule. As previously discussed, this rule is necessary to prevent the conservation and management problems that would arise from additional entry to the Pacific whiting fishery in 2007. Without this rule, there will be new entry, and current stability in the fishery, with low bycatch of rockfish and salmon, will likely dissolve. This would pose an unacceptable risk of excessive bycatch of overfished rockfish and of salmon as well as an unacceptable risk of severe management problems in the economically stressed groundfish fishery.

This temporary rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

An environmental assessment was prepared for this action under the National Environmental Policy Act and a Finding of No Significant Impact was signed on May 4, 2007.

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

List of Subjects in 50 CFR Part 660

Fisheries, Fishing.

Dated: May 11, 2007.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.306, paragraph(f)(6) is added to read as follows:

§ 660.306 Prohibitions.

* * * * *

(f) * * *

(6) Fish for or land whiting, or process whiting at sea, while participating in a specific sector (as defined at § 660.373(a)), from May 14, 2007 and through November 13, 2007 with a vessel that has no history of participation within that specific sector of the whiting fishery in the period after December 31, 1996, and prior to January 1, 2007, as specified in § 660.373(j).

■ 3. In § 660.333, paragraph (f) is added to read as follows:

§ 660.333 Limited entry fishery—eligibility and registration.

* * * * *

(f) *Limited entry permits indivisible.* Nothwithstanding paragraph (d), a trawl-endorsed limited entry permit that was created between December 31, 2006, and May 14, 2007 by aggregating multiple limited entry permits under § 660.335(b) may be disaggregated back into the initially combined component permits.

■ 4. In § 660.335, paragraph (f)(3) is added to read as follows:

§ 660.335 Limited entry permits—renewal, combination, stacking, change of permit ownership, and transfer.

* * * * *

(f) * * *

(3) Any transfer of a trawl-endorsed limited entry permit that occurred between December 31, 2006, and May 14, 2007 may be rescinded by the permit

owner without counting against that permit owner's once per calendar year restriction on frequency of permit transfers for the 2007 calendar year.

* * * * *

■ 5. In § 660.373, paragraph (j) is added to read as follows:

§ 660.373 Pacific whiting (whiting) fishery management.

* * * * *

(j) *2007 Pacific whiting fishery.* (1) In general, a person may fish for or land whiting or process whiting at sea in a sector of the whiting fishery (as defined at § 660.373(a)) between May 17, 2007 and November 13, 2007 only with a vessel that has history of participation in that sector of the whiting fishery in the period after December 31, 1996, and prior to January 1, 2007. Specifically:

(i) To harvest whiting in the shore-based sector between May 17, 2007 and November 13, 2007, a vessel must have harvested for delivery to a shore-based processor at least 4000 lbs (1.81 mt) of whiting in a single trip during the primary season (as defined at § 660.373(b)) in the period after December 31, 1996, and prior to January 1, 2007. State fish ticket data collected by the states and maintained by Pacific States Marine Fisheries Commission's Pacific Fishery Information System is the sole evidence to demonstrate participation in this sector.

(ii) To harvest whiting in the mothership sector between May 17, 2007 and November 13, 2007, a vessel must have harvested whiting for delivery to motherships in the period after December 31, 1996, and prior to January 1, 2007. Observer data collected by the Northwest Fisheries Science Center and by North Pacific Groundfish Observer Program as organized under the Alaska Fisheries Science Center's NORPAC database is the sole evidence to demonstrate participation in this sector.

(iii) To process whiting in the mothership sector between May 17, 2007 and November 13, 2007, a vessel must have processed at sea, but not harvested, whiting in the period after December 31, 1996, and prior to January 1, 2007. Observer data collected by the Northwest Fisheries Science Center and by North Pacific Groundfish Observer Program as organized under the Alaska Fisheries Science Center's NORPAC database is the sole evidence to demonstrate participation in this sector.

(iv) to harvest and process whiting in the catcher-processor sector between May 17, 2007 and November 13, 2007, a vessel must have harvested and processed whiting in the period after December 31, 1996, and prior to January 1, 2007. Observer data collected by Northwest Fisheries Science Center and by North Pacific Groundfish Observer Program as organized under the Alaska Fisheries Science Center's NORPAC database is the sole evidence to demonstrate participation in this sector.

(2) [Reserved]

[FR Doc. 07–2417 Filed 5–14–07; 8:58 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 72, No. 95
Thursday, May 17, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 26, 60, 63, 73, and 74

RIN 3150–AI06

Geologic Repository Operations Area Security and Material Control and Accounting Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Availability of preliminary draft rule language.

SUMMARY: The Nuclear Regulatory Commission (NRC) is making available preliminary draft rule language to amend its regulations to revise the security requirements and material control and accounting (MC&A) requirements for a geologic repository operations area (GROA). The goal of this rulemaking is to ensure effective security measures are in place for the protection of high-level radioactive waste given the post-September 11, 2001, threat environment. New requirements for specific training enhancements, improved access authorization, and enhancements to defensive strategies will be incorporated. The proposed rule will reinstate the alcohol and drug provisions of the fitness-for-duty provisions to a GROA. The proposed rule will also impose the fatigue portion of the fitness-for-duty requirements for the security personnel at a GROA. The proposed rule will establish general performance objectives and corresponding system capabilities for the GROA MC&A program, with a focus on strengthening, streamlining, and consolidating all MC&A regulations specific to a GROA. In addition, the proposed rule will require the emergency plan to address radiological emergencies. The availability of the preliminary draft rule language is intended to inform stakeholders of the current status of the NRC's activities, but the NRC is not soliciting formal public comments on the information at this time.

DATES: There will be an opportunity for public comment when the notice of proposed rulemaking is published in the **Federal Register**.

ADDRESSES: The preliminary draft rule language can be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Along with any publicly available documents related to this rulemaking, the draft information may be viewed electronically on public computers in the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Room O–1 F21, and 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.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8126, e-mail, *mlh1@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC is making a preliminary version of the draft proposed rule language available to inform stakeholders of the current status of this proposed rulemaking. This preliminary draft rule language may be subject to significant revisions during the rulemaking process. The NRC is not soliciting early public comments on this preliminary draft rule language. No stakeholder requests for a comment period will be granted at this stage in the rulemaking process. Stakeholders will have an opportunity to comment on the rule language when it is published as a proposed rule.

The NRC's preliminary draft rule language will be posted on the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* The NRC may post updates to the draft proposed rule language on the rulemaking Web site.

Dated at Rockville, Maryland, this 10th day of May, 2007.

For the Nuclear Regulatory Commission.

Patrice M. Bubar,

Deputy Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E7–9520 Filed 5–16–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27976; Directorate Identifier 2007–CE–042–AD]

RIN 2120–AA64

Airworthiness Directives; Cirrus Design Corporation Models SR20 and SR22 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 certain Cirrus Design Corporation (CDC) Models SR20 and SR22 airplanes. This proposed AD would require you to replace the pick-up collar support and nylon screws, of the Cirrus Airplane Parachute System (CAPS), with a new design pick-up collar support and custom tension screws. This proposed AD results from a CDC report of an in-flight CAPS activation where the parachute failed to successfully deploy. We are proposing this AD to correct pick-up collar support fasteners of the CAPS, which could result in the premature separation of the collar. This condition, if not corrected, could result in the parachute failing to successfully deploy (CAPS failure).

DATES: We must receive comments on this proposed AD by June 18, 2007.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building,

Room PL–401, Washington, DC 20590–0001.

- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instruction for submitting comments.

For service information identified in this proposed AD, contact Cirrus Design Corporation, 4515 Taylor Circle, Duluth, Minnesota 55811; telephone (218) 727–2737; internet address: *http://www.cirrusdesign.com.*

FOR FURTHER INFORMATION CONTACT: Wess Rouse, Aerospace Engineer, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: (847) 294–8113; fax: (847) 297–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2007–27976; Directorate Identifier 2007–CE–042–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this proposed AD.

Discussion

We have received a CDC report of an in-flight CAPS activation where the parachute failed to successfully deploy. A CDC airplane in Australia had an engine failure and was making an off airport landing. The pilot activated the CAPS, and evidence indicates that the parachute was not properly extracted from the airplane.

Testing indicates that the force of the CAPS rocket ignition and rocket blase may prematurely break the nylon pick up collar/support screws. When functioning properly the screws should not break until impacted by a flange at the rocket base. A prematurely separated collar/support may bind on the rocket as it slides down toward the flange at the base of the rocket. This may alter the direction of the rocket.

This condition, if not corrected, could result in the parachute failing to successfully deploy (CAPS failure).

Relevant Service Information

We have reviewed CDC's Alert Service Bulletin No. SB A2X–95–10 R2, Issued April 2, 2007, Revised: April 24, 2007.

The service information describes procedures for replacing the pick-up collar support of the CAPS with a new design pick-up collar support and replacing the nylon screws with custom aluminum tension screws.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would require you to do a replacement of the pick-up collar support and associated fastening screws of the CAPS.

Costs of Compliance

We estimate that this proposed AD would affect 2,677 airplanes in the U.S. registry.

We estimate the following costs to do the proposed replacement of the pick-up collar support of the CAPS:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 work-hours × $80 per hour = $160	$17	$177	$473,829

Note: CDC will provide warranty credit to the extent noted in Cirrus Alert Service Bulletin No. SB A2X–95–10 R2, Issued April 2, 2007, Revised: April 24, 2007.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this porposed AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA proposed 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:

Cirrus Design Corporation: Docket No. FAA–2007–27976; Directorate Identifier 2007–CE–042–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by June 18, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model SR20 airplanes, serial numbers (SN) 1005 through 1798, and Model SR22 airplanes, SN 0002 through 2437, that are certificated in any category.

Unsafe Condition

(d) This AD results from a Cirrus Design Corporation (CDC) report of an in-flight Cirrus Airplane Parachute System (CAPS) activation where the parachute failed to successfully deploy. We are issuing this AD to correct pick-up collar support fasteners of the CAPS, which could result in the premature separation of the collar. This condition, if not corrected, could result in the parachute failing to successfully deploy (CAPS failure).

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
Replace the pick-up collar support of the CAPS with the new design pick-up collar support and the two nylon collar support screws with new custom aluminum tension screws. One of the following must do the replacement: (1) A CDC trained and authorized parachute system technician who also holds an Airframe and Powerplant (A&P) mechanic license; or (2) a CDC trained and authorized parachute system technician who is supervised by an A&P mechanic.	Within the next 25 hours time-in-service (TIS), or within 60 days, whichever occurs first after the effective date of this AD.	Follow Cirrus Alert Service Bulletin No. SB A2X–95–10 R2, Issued April 2, 2007, Revised: April 24, 2007.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Chicago Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Wess Rouse, Aerospace Engineer, FAA, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: (847) 294–8113; fax: (847) 297–7834. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(g) To get copies of the service information referenced in this AD, contact Cirrus Design Corporation, 4515 Taylor Circle, Duluth, Minnesota 55811; telephone: (218) 727–2737; internet address: *www.cirrusdesign.com.* To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* The docket number is Docket No. FAA–2007–27976; Directorate Identifier 2007–CE–042–AD.

Issued in Kansas City, Missouri, on May 11, 2007.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 07–2438 Filed 5–16–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27974; Directorate Identifier 2007–CE–040–AD]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Model DA 40 and DA 40F 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:

A nose landing gear leg failed in area of the nose gear leg pivot axle. This airplane was mostly operated on grass runways and training operations. This failure was based on a fatigue crack developed in the pivot axle. Material inspections figured out that this cracks may also develop on other serial No. pending the type of operation.

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 June 18, 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:* Go to *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: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4145; 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–2007–27974; Directorate Identifier 2007–CE–040–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

Austro Control, which is the aviation authority for Austria, has issued AD No. A–2005–005, dated November 15, 2005 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> A nose landing gear leg failed in area of the nose gear leg pivot axle. This airplane was mostly operated on grass runways and training operations. This failure was based on a fatigue crack developed in the pivot axle. Material inspections figured out that this cracks may also develop on other serial No. pending the type of operation.

The MCAI requires repetitively inspecting the nose landing gear leg for cracks and replacing the nose landing gear leg if cracks are found.

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

Relevant Service Information

Diamond Aircraft Industries GmbH has issued Mandatory Service Bulletin No. MSB40–046/1, No. MSBD4–046/1, dated April 25, 2007. 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 476 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic 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 $38,080, or $80 per product.

In addition, we estimate that any necessary follow-on actions would take about 8 work-hours and require parts costing $1,715, for a cost of $2,355 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory 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:

Diamond Aircraft Industries GmbH: Docket No. FAA–2007–27974; Directorate Identifier 2007–CE–040–AD.

Comments Due Date

(a) We must receive comments by June 18, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplanes certificated in any category:

Model	Serial Nos.
DA 40	All serial numbers beginning with 40.006.
DA 40F ..	All serial numbers beginning with 40.F001.
	All serial numbers beginning with 40.FC001.

Subject

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

''A nose landing gear leg failed in area of the nose gear leg pivot axle. This airplane was mostly operated on grass runways and training operations. This failure was based on a fatigue crack developed in the pivot axle. Material inspections figured out that this crack may also develop on other serial No. pending the type of operation.''

The MCAI requires repetitively inspecting the nose landing gear leg for cracks and replacing the nose landing gear leg if cracks are found.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect the nose landing gear leg for cracks. Repetitively inspect thereafter at intervals not to exceed 200 hours TIS.

(2) Before further flight after any inspection in which cracks are found, replace the nose landing gear leg. After replacement, continue with the repetitive inspection requirement specified in paragraph (f)(1) of this AD.

(3) Do the actions required in paragraphs (f)(1) and (f)(2) of this AD following Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB40–046/1, No. MSBD4–046/1, dated April 25, 2007, and the applicable maintenance manual.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. *Send information to ATTN:* Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4145; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(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 Austro Control AD No. A–2005–005, dated November 15, 2005; and Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB40–046/1, No. MSBD4–046/1, dated April 25, 2007, for related information.

Issued in Kansas City, Missouri, on May 10, 2007.

Charles L. Smalley,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–9495 Filed 5–16–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 217, 241, 248, 250, 291, 298 and 374a

[Docket No. OST 2006–26053]

RIN 2139–AA11

Submitting Airline Data via the Internet

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Department of Transportation (DOT) is hosting a public meeting to discuss the submission of air carrier traffic, financial, and consumer reports via a secure internet connection. The public meeting was requested by the Air Transport Association. DOT staff will demonstrate e-filing procedures and be available to answer questions. During the meeting, the DOT will propose a pilot program for a limited number of air carriers to test the internet filing system prior to the system becoming operational. A cross section of major, national, regional, commuter and foreign air carriers will be invited to volunteer to participate in the pilot program.

DATES: The meeting will be held June 21, 2007, from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at the new DOT headquarters building at 1200 New Jersey Avenue, SE., Washington, DC 20590. The room number will be announced at a later date. Persons attending the public meeting must pass through the building security; therefore, we are requesting that you register for attendance by e-mailing or calling Ms. Sharon Herman at *Sharon.herman@dot.gov* or (202) 366–9059.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Research and Innovative Technology Administration, Bureau of Transportation Statistics (BTS), telephone number (202) 366–4387, fax number (202) 366–3383 or e-mail *bernard.stankus@dot.gov.*

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking (NPRM) was published on December 20, 2006 (71 FR 76226). You may review comments to the NPRM at *http://www.dms.dot.gov,* Docket 26053.

Background

Receiving and processing aviation data is an essential business process for the DOT. To increase efficiency and reduce costs of the filing process to both the air carriers and the government,

DOT has proposed that all aviation data collected by the BTS be transmitted via the internet (e-filing). To the maximum extent practicable, the proposed e-filing system will be user friendly. Automated, built-in data edits would alert filers of incomplete information, thus reducing filing errors and the need for corrective re-processing. E-filing is more secure than attaching files to e-mails. E-filing does not have the size limit constraints encountered by attachments to e-mail submissions. E-filing provides the submitters with immediate confirmation that the filing has been received by BTS. E-filing should eliminate the need for BTS to key punch hard copy records into its various data bases.

During this public meeting, DOT representatives will answer questions about the proposed system, the pilot program and gather additional public comments. A summary of the public meeting will be placed in the rulemaking docket.

Issued in Washington, DC, on May 8, 2007.

Donald W. Bright,

Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. E7–9210 Filed 5–16–07; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 234

Reporting Requirements for Aircraft Gate Returns

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Department of Transportation (DOT) is hosting a public meeting to discuss the reporting of on-time aviation data, specifically the reporting of gate-departure time when an aircraft returns to the gate after an initial gate departure, but before the wheels-off time, and the need to report gate-departure time when the flight is ultimately cancelled.

DATES: The meeting will be held June 20, 2007, from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at the new DOT headquarters building at 1200 New Jersey Avenue, SW., Washington, DC 20590. The room number will be announced at a later date. Persons attending the public meeting must pass through the building security; therefore, we are requesting that you register for attendance by e-mailing or calling Ms. Sharon Herman at *Sharon.herman@dot.gov* or (202) 366–9059.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Research and Innovative Technology Administration, Bureau of Transportation Statistics, telephone number (202) 366–4387, fax number (202) 366–3383 or e-mail *bernard.stankus@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

The long tarmac delays that occurred in late 2006 and early 2007 focused public attention on the DOT's Part 234 Airline Service Quality Performance Reports. In reviewing taxi-out times, it was brought to our attention that the air carriers were inconsistent in reporting gate-departure times when an aircraft returned to the gate. Some carriers were reporting the initial gate departure time while others were reporting the ''second'' gate departure time. There are advantages and disadvantages with both methods.

By reporting the first gate-departure time, the DOT knows the time interval from when the aircraft was ready to depart and when the aircraft actually departed the airport (wheels-off time). However, many times the air carrier is credited with an on-time departure, when in reality the aircraft returned to the gate only to depart well after the scheduled departure time. Also, the taxi-out time is miscalculated, as the time that the aircraft was parked at the gate awaiting re-boarding is counted in the taxi out time.

Reporting the second gate-departure time disguises inconveniences that the passengers endured by making it appear that they were on the aircraft for a much shorter duration before wheels-off time. Some have indicated that the taxi-out time for carriers reporting the second gate departure time is a more accurate assessment of taxi-out times.

During recent snowstorms in the northeast, many flights departed the boarding gates only to spend many hours on the tarmac being de-iced and waiting for improved weather conditions. When the weather deteriorated, flights were cancelled. Historically, carriers have not reported gate-departure times when the flight is later cancelled. During this public meeting, the Department will attempt to clarify the reporting requirements for aircraft that return to departure gates.

Issued in Washington, DC, on May 8, 2007.

Donald W. Bright,

Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. E7–9209 Filed 5–16–07; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, and 1918

[Docket No. OSHA–2007–0044]

RIN 1218–AC08

Updating OSHA Standards Based on National Consensus Standards; Personal Protective Equipment

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: OSHA is proposing to revise the personal protective equipment (PPE) sections of its general industry, shipyard employment, longshoring, and marine terminals standards regarding the use of eye and face protective devices, head protection, and foot protection. OSHA is proposing to replace the existing references to specific consensus standards with performance language requiring PPE to be constructed in accordance with good design standards. The proposed revision includes guidance for determining what is a good design standard. In addition, OSHA is proposing to add non-mandatory appendices that list standards that constitute good design standards as used in the requirement.

OSHA is also proposing to delete a paragraph in its ventilation standard that requires safety shoes to comply with a specific American National Standards Institute (ANSI) standard, and another paragraph in in its welding, cutting and brazing standard that requires filter lenses and plates in eye protective equipment to meet a test for transmission of radiant energy prescribed in another specific ANSI standard. In proposing to delete these paragraphs, OSHA intends for this safety equipment to comply with the applicable PPE design provisions in Subpart I of the general industry standards.

These proposed revisions are a continuation of OSHA's effort to update or remove references to specific consensus and industry standards

located throughout the Agency's standards.

DATES: Comments and requests for an informal public hearing must be submitted by the following dates:

- Hard copy: Your comments or hearing requests must be submitted (postmarked or sent) by July 16, 2007.
- Electronic transmission and facsimile: Your comments or hearing requests must be sent by July 16, 2007.

ADDRESSES: You may submit comments, requests for hearings and additional materials by any of the following methods:

Electronically: You may submit comments, requests for hearings, and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions on-line for making electronic submissions.

Fax: If your submissions, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger or courier service: You must submit three copies of your comments, requests for hearings and attachments to the OSHA Docket Office, Docket No. OSHA—2007—0044, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. 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 submissions must include the Agency name and the OSHA docket number for this rulemaking (OSHA Docket No. OSHA–2007–0044). Submissions, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.*

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the www.regulations.gov index, however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries contact Kevin Ropp, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999. For technical inquiries, contact Ted Twardowski, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2070 or fax: (202) 693–1663. Copies of this **Federal Register** notice are available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–1888. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Discussion of Changes
II. Legal Considerations
III. Preliminary Economic Analysis and Regulatory Flexibility Act Certification
IV. Paperwork Reduction Act
V. Federalism
VI. State-Plan States
VII. Unfunded Mandates Reform Act
VIII. Authority and Signature

I. Discussion of Changes

A. Introduction

As discussed in a previous **Federal Register** notice (69 FR 68283), OSHA is undertaking a series of projects to update its standards to reflect the latest versions of consensus and industry standards. These projects will include updating or revoking consensus and industry standards incorporated by reference, updating regulatory text of current OSHA rules that were adopted directly from the language of outdated consensus standards, and, where appropriate, replacing specific references to outdated consensus standards with performance-oriented requirements. This action is another step in OSHA's long-term effort to update or revoke references to specific consensus and industry standards.

OSHA is performing two main actions in this proposal. First, OSHA is proposing to revise the personal protective equipment (PPE) sections of its general industry, shipyard employment, longshoring, and marine terminals rules to require that PPE be constructed in accordance with good design standards. The proposed revision also provides guidance on what is a good design standard. In addition, OSHA is proposing to add non-mandatory appendices that list standards that constitute good design standards for purposes of the requirement. Second, OSHA is proposing to delete two paragraphs in § 1910.94 (Ventilation) and § 1910.252 (Welding, cutting and brazing) referencing specific versions of American National Standards Institute (ANSI) standards on foot protection and eye and face protective devices, respectively. OSHA discusses each action below.

B. Revisions to PPE Sections in General Industry, Shipyard Employment, Longshoring, and Marine Terminals Standards

(1) Background

Subpart I of OSHA's general industry standards contains design requirements for eye and face protective devices, head protection, and foot protection. See §§ 1910.133, 1910.135, 1910.136. OSHA has similar requirements in subpart I of part 1915 (Shipyard Employment), subpart E of part 1917 (Marine Terminals), and subpart J of part 1918 (Longshoring). These rules require, among other things, that this PPE comply with certain ANSI standards incorporated by reference, unless the employer demonstrates that a piece of equipment is as effective as equipment that complies with the incorporated ANSI standard. *See, e.g.*, § 1910.133(b)(1).[1] These design provisions are part of comprehensive requirements to ensure that employees use PPE that will protect them from hazards in the workplace.

All of the incorporated ANSI standards have been superseded by more current versions. Table I lists the ANSI standards that are incorporated by reference and the current versions of those standards for the PPE that are covered by this proposed rule.

[1] The general industry and shipyard employment standards expressly allow employers to use PPE that is as protective as PPE constructed in accordance with the incorporated standards. OSHA uses its de minimis policy to allow employers covered by the longshoring and marine terminals standards to use PPE that is as protective as PPE constructed in accordance with the incorporated standards. See OSHA Instruction CPL 2.103, Field Inspection Reference Manual Ch. III, C.2.g; Memorandum from Richard Fairfax, Director, Directorate of Enforcement Programs to Regional Administrators (June 19, 2006).

TABLE 1.—CURRENT OSHA PPE REQUIREMENTS

Subpart/section	PPE	Incorporated ANSI standard	Current version of ANSI standard
Subpart I/§ 1910.133 (Eye and Face Devices-General Industry).	§ 1910.133(b)(1) Protective eye and face devices purchased after July 5, 1994.	Z87.1–1989	ANSI Z87.1–2003.
	§ 1910.133(b)(2) Protective eye and face devices purchased before July 5, 1994.	Z87.1–1968	ANSI Z87.1–2003.
Subpart I/§ 1910.135 (Headwear-General Industry).	§ 1910.135(b)(1) Protective helmets purchased after July 5, 1994.	Z89.1–1986	ANSI Z89.1–2003.
	§ 1910.135(b)(2) Protective helmets purchased before July 5, 1994.	Z89.1–1969	ANSI Z89.1–2003.
Subpart I/§ 1910.136 (Footwear-General Industry).	§ 1910.136(b)(1) Protective footwear purchased after July 5, 1994.	Z41–1991	ASTM F–2412–05 &–2413–05 [2]
	§ 1910.136(b)(2) Protective footwear purchased before July 5, 1994.	Z41.1–1967	ASTM F–2412–05 &–2413–05
Subpart I/§ 1915.153 (Eye and Face Devices-Shipyard Employment).	§ 1915.153(b)(1) Protective eye and face devices purchased after May 20, 1982.	Z87.1–1989	ANSI Z87.1–2003.
	§ 1915.153(b)(2) Protective eye and face devices purchased before May 20, 1982.	Z87.1–1979	ANSI Z87.1–2003.
Subpart I/§ 1915.155 (Headwear-Shipyard Employment).	§ 1915.155(b)(1) Protective helmets purchased after August 22, 1996.	Z89.1–1986	ANSI Z89.1–2003.
	§ 1915.155(b)(2) Protective helmets purchased before August 22, 1996.	Z89.1–1969	ANSI Z89.1–2003.
Subpart I/§ 1915.156 (Footwear-Shipyard Employment).	§ 1915.156(b)(1) Protective footwear purchased after August 22, 1996.	Z41–1991	ASTM F–2412–05 &–2413–05
	§ 1915.156(b)(2) Protective footwear purchased before August 22, 1996.	Z41–1983	ASTM F–2412–05 &–2413–05
Subpart E/§ 1917.91 (Eye and Face Devices-Marine Terminals).	1917.91(a)(1) Protective eye and face devices	Z87.1–1989	ANSI Z87.1–2003.
Subpart E/1917.93 (Headwear-Marine Terminals).	§ 1917.93(b) Protective headwear	Z89.1–1986	ANSI Z89.1–2003.
Subpart E/§ 1917.94 (Footwear-Marine Terminals).	§ 1917.94(b) Protective footwear	Z41–1991	ASTM F–2412–05 &–2413–05
Subpart J/§ 1918.101 (Eye and Face Devices-Longshoring).	§ 1918.101(a) Protective eye and face devices	Z87.1–1989	ANSI Z87.1–2003.
Subpart J/§ 1918.103 (Headwear-Longshoring)	§ 1918.103(b) Protective headwear	Z89.1–1986	ANSI Z89.1–2003.
Subpart J/§ 1918.104 (Footwear-Longshoring)	§ 1918.104(b) Protective footwear	Z41–1991	ASTM F–2412–05 &–2413–05

As Table I indicates, the incorporated ANSI standards are all over a decade old and in some instances are two decades old. All of the ANSI standards have been updated, and in one instance, the ANSI Z41 standard for protective footwear, has been completely replaced. As the standards have been updated, manufacturers have switched to manufacturing PPE that is in accord with the updated standards. As a result, employers and employees have difficulty obtaining PPE manufactured in accordance with the incorporated standards. OSHA estimates the average life of these types of PPE to be about two to four years. OSHA Docket S–060, *Preliminary Regulatory Impact & Regulatory Flexibility Analysis of the Personal Protective Equipment Standard* Table IV–2 (U.S. Dep't of Labor, OSHA, Office of Regulatory Analysis, June 30, 1989). Accordingly, the difficulty is widespread and occurs on a regular basis.

In the past, OSHA has updated its PPE standards by revising them to incorporate more recent versions of the ANSI standards. 59 FR 16360 (Apr. 6, 1994). This temporarily alleviates the problem of trying to obtain PPE manufactured in accordance with an outdated version of an ANSI standard, but it ensures that the problem will arise again as the incorporated standards are superseded by future versions. Despite its best efforts, OSHA cannot propose and finalize its standards as frequently as the consensus standards development organizations (SDOs). Some consensus standards are updated every 3–5 years; OSHA simply does not have the resources to engage in full rulemaking at this frequency for all of its PPE standards.

OSHA has preliminarily concluded that incorporating specific versions of ANSI standards is not an effective approach for its PPE design requirements. Therefore, OSHA is proposing a performance-oriented approach: to replace references to specific ANSI standards with a requirement that PPE be constructed in accordance with good design standards. It also establishes additional guidance for employers as to what constitutes a good design standard.

2. The Provisions of the Proposal

The crux of the proposed revision is the requirement that the PPE be constructed in accordance with good design standards. Eye and face, head, and foot PPE are commonly worn in general industry, shipyard employment, longshoring, and marine terminals. The PPE must be strong enough to protect employees from the hazards they face in the workplace. It also must be constructed and tested in accordance with sound and accepted principles that will ensure the safety of employees.[3]

Generally, good design standards for these types of PPE are reflected in the relevant national consensus standards.

[2] ANSI's Z41 standard has been withdrawn and replaced by the cited ASTM International standards. ASTM International was formerly the American Society for Testing and Materials.

[3] An inherent part of any good design standard is a testing protocol for ensuring that the manufactured equipment will provide a specified level of protection. Accordingly, the requirement that the PPE be constructed in accordance with good design standards includes the requirement that the PPE be tested in accordance with a testing protocol that is designed to ensure that the PPE provides the level of protection the good design standard is intended to achieve.

OSHA has examined the standards for eye and face, head, and foot PPE issued by ANSI and ASTM International (ASTM) over the last 40 years. OSHA has found that these standards reflect the state of the art in terms of design safety that existed at the time they were issued.[4] Furthermore, each successive edition of these standards has improved the design features of the PPE. For example, a comparison between the 1989 and 2003 versions of the ANSI standard for protective eye and face equipment shows that ANSI has strengthened the impact resistance requirements of the standard. Similarly, the current ASTM International standard for footwear improves on prior ANSI standards for footwear by increasing protection against electrical hazards.

To develop their standards, these SDOs receive input from industry groups, employee representatives, government agencies, safety experts, and other affected parties. *See, e.g.*, ANSI Z89.1–2003, *American National Standard for Industrial Head Protection* Foreword. As a result, they develop standards that are generally recognized as providing an adequate level of safety, as shown by the widespread use of these standards by manufacturers even where OSHA standards specify an earlier version.

Congress recognized the importance of national consensus standards in the effort to protect employee safety and health. For the first two years following promulgation of the Occupational Safety and Health Act of 1970 (OSH Act), Congress authorized the adoption of national consensus standards as OSHA standards without notice and comment. 29 U.S.C. 655(a). For standards adopted using the notice-and-comment procedures of the OSH Act, relevant national consensus standards are the baseline for evaluating OSHA standards. *See* 29 U.S.C. 655(b)(8) (when a new standard differs from a national consensus standard, the Secretary must explain why the new standard will better effectuate purposes of the Act than the national consensus standard).

In light of this, OSHA believes that design standards that are formulated pursuant to the processes described above will generally constitute good design standards. OSHA's analysis of the PPE design standards over the last 40 years provides evidence of this. OSHA is thus including in the proposal a presumption that PPE complies with the good design requirement if it is constructed in accordance with a design standard that meets specified criteria consistent with the criteria for the development of national consensus standards.

The specific criteria of the proposal are drawn from the criteria nationally recognized testing laboratories must apply for determining if a standard is appropriate for evaluating the safety of equipment or materials. *See* § 1910.7(c). They also reflect the criteria of a national consensus standard as defined in the OSH Act and the way many SDOs operate. *See* 29 U.S.C. 652(9). The proposal is intended to codify the criteria that have been used successfully for developing design standards that ensure an adequate level of safety.

The first of these criteria ensures that the design standard incorporates safety concerns as part of the standard and that these safety concerns are related to the particular piece of PPE covered by the OSHA standard. The second ensures that the design standard provides guidelines for constructing the equipment and has achieved a minimum level of recognition by safety experts as providing an adequate level of safety. The third of these criteria is process-oriented; it ensures that knowledgeable and affected interests have an opportunity to provide input into the development of the standard, which advances the goal of ensuring that the design standard provides an adequate level of safety.

PPE constructed in accordance with the proposal's criteria for a good design standard is only presumptively compliant with the standard's general requirement that the PPE be constructed in accordance with good design standards. The presumption is primarily intended to reserve OSHA's authority to determine that a future national consensus standard for PPE design specifications will not provide an adequate level of protection and therefore will not meet the general good design requirement. OSHA believes that it will rarely, if ever, determine that a future national consensus standard related to PPE design specifications does not provide sufficient protection; nevertheless, OSHA's proposed approach provides for that possibility.

To further increase the notice employers have of their obligations under the proposed requirements, OSHA is also proposing to list in non-mandatory appendices the national consensus standards that OSHA has determined are good design standards as that concept is used in the proposal. OSHA is proposing to reference in the non-mandatory appendices the 1986 (headwear), 1989 (eye and face devices), and 1991 (footwear) versions of the national consensus standards incorporated in the existing standards for PPE, as well as the more recent versions of those national consensus standards. Specifically, OSHA proposes to list in the non-mandatory appendices the following standards: for protective eye and face devices, ANSI Z87.1–1989, ANSI Z87.1–1998, and ANSI Z87.1–2003; for protective headwear, ANSI Z89.1–1986, ANSI Z89.1–1997, and ANSI Z89.1–2003; and for protective footwear, ANSI Z41–1991, ANSI Z41–1999, and ASTM F–2412–05 and ASTM F–2413–05. As stated above, OSHA has carefully reviewed all of these standards and has found that they establish design criteria that provide adequate protection for employees.

OSHA has not, however, proposed to list ANSI standards from before 1986. OSHA's incorporation of earlier versions in its existing PPE design standards was limited to allowing the use of PPE that was purchased by a certain date that has long passed. For ten years or more, the existing standards have not permitted the use of PPE manufactured in accordance with those earlier versions if the PPE was purchased after those specified dates. In addition, for some time manufacturers have not been manufacturing PPE in accordance with those earlier versions. Given the limited useful life of PPE and the length of time that has passed since employers and employees have been able to use PPE manufactured in accordance with those earlier versions, OSHA believes that no PPE currently in use was constructed in accordance with those earlier standards. Accordingly, there is no need to list those earlier standards.

Employers are not required to ensure that the PPE is constructed in accordance with a listed national consensus standard. The fundamental requirement is that the PPE be constructed in accordance with good design standards. However, OSHA is proposing that once a national consensus standard is listed in the non-mandatory appendices, the presumption in the standard would be conclusive for enforcement purposes. Of course, OSHA's decision to list a national consensus standard in the non-mandatory appendices would not preclude OSHA from initiating appropriate procedures to revoke that listing. But until and unless OSHA revokes a listing through that procedure, employers will be assured that their use of PPE that was constructed in accordance with a listed national consensus standard meets the good design requirement. An employer's

[4] OSHA has placed copies of these national consensus standards in the docket for this rulemaking (OSHA—2007—0044).

reasonable reliance on a manufacturer's certification that the PPE was constructed in accordance with any of the listed national consensus standards satisfies the employer's obligation to ensure that the PPE was constructed in accordance with a good design standard.

OSHA also intends to update in the future the non-mandatory appendices to include any future national consensus standard it determines meets the requirements of the proposed rule. OSHA is committing itself to reviewing future national consensus standards for PPE design criteria as they are promulgated. Assuming the review confirms that a newly promulgated national consensus standard is a good design standard, OSHA will use the procedures it has developed for direct final rules to add the newly promulgated national consensus standard to the non-mandatory appendices. Those procedures involve OSHA publishing the direct final rule in the **Federal Register** along with an identical proposed rule. The direct final rule will go into effect unless OSHA receives a significant adverse comment within a specified period. If OSHA receives significant adverse comments, it will withdraw the direct final rule and treat the comments as responses to the proposed rule. When using the direct final rule procedures for updating the non-mandatory appendices for the PPE design standards, OSHA will consider as significant adverse comments only those comments that explain why the reviewed version does not provide equivalent or greater protection to employees. As stated, the addition of a new national consensus standard would not require employers to use PPE constructed in accordance with that standard; it would merely provide employers with an additional option for meeting the good design requirement. OSHA anticipates that additions to the non-mandatory appendices will occur rapidly and without controversy.

Finally, in switching from a specification provision to a performance oriented provision, OSHA is not intending to decrease employee protection. The references to the specific ANSI standards in OSHA's existing rules are the minimum design specifications for PPE used in the workplace and, as stated above, OSHA is listing them in the non-mandatory appendices. PPE meeting good design standards must at a minimum be constructed to provide protection equivalent to, or greater than, this minimum level of protection. OSHA is adding language in the regulatory text of the proposed rule that makes this clear.[5]

3. Effects of the Proposal

OSHA believes that requiring use of PPE that meets good design standards is appropriate and will increase employee safety and health by facilitating the use of state of-the-art PPE. It is appropriate to provide this type of flexibility because, as stated above, OSHA's experience has shown that overall safety increases with each update of national consensus standards.

OSHA standards should be written to facilitate the ability of employers to take advantage of safety advances developed by ANSI and similar organizations. Even when an updated national consensus standard merely maintains the status quo in terms of safety, ensuring that OSHA standards are written to facilitate the use of PPE constructed in accordance with those standards serves the interest of protecting employee safety. Once updated standards are promulgated, over time PPE constructed in accordance with those standards become increasingly more available and PPE constructed under the predecessor standards become increasingly unavailable. Those seeking to obtain PPE will therefore usually have an easier time finding PPE manufactured in accordance with a current version than PPE manufactured in accordance with an older version.

OSHA's current PPE design standards, however, impose obstacles to allowing employers and employees to obtain the benefit of better PPE manufactured under improved standards or newer equipment manufactured under updated standards that maintain the status quo. Under the current general industry and shipyard employment standards, to obtain these benefits employers must be able to demonstrate that the PPE manufactured in accordance with the updated versions are as protective as PPE manufactured in accordance with the referenced versions. Employers need to research the referenced national consensus standards, identify and analyze the updated versions, and make the determination as to whether PPE designed to meet the updated versions provide employees with protection equivalent to or greater than the protection they receive with PPE designed in accordance with the referenced versions.

The proposal reduces if not eliminates this burden. It will authorize the use of PPE that meets the current versions of the referenced standards, which as noted above OSHA has determined meet the good design requirement and which therefore will be listed in the non-mandatory appendices. Similarly, the proposal presumes that a future national consensus standard, as described in this proposal, will meet the good design requirement. The possibility that a future national consensus standard will not be a good design standard is remote, and employers will be able to rely on the presumption established by the proposal with a high degree of confidence.

In sum, by replacing the existing PPE provisions with performance requirements, the transition to the use of PPE built in accordance with updated standards will occur more certainly and rapidly than it occurs under the present OSHA standards. This will facilitate employer efforts to improve the safety and health of employees by providing state of the art PPE. In addition, the proposal does not add any compliance burdens on employers.

4. Alternatives

In developing the proposal, OSHA considered several alternatives. While some of these approaches had advantages, for the reasons stated below, OSHA has decided preliminarily not to adopt them.

First, OSHA considered proposing to update the PPE standards by incorporating the most current versions of the referenced national consensus standards. As discussed above, OSHA has done this in the past. However, this would provide only a short-term fix to the problem of references to outdated consensus standards. In OSHA's view, this approach would simply perpetuate the obstacles to using state-of-the art PPE that are contained in the current OSHA standards.

Second, OSHA considered replacing the references to specific design standards with performance-oriented language that would require the PPE to provide the level of protection that a conscientious safety expert would provide. In OSHA's view, the proposal is superior to this alternative because it provides greater notice to employers of their compliance obligations.

Finally, OSHA considered proposing specific performance-based criteria, such as a particular level of impact-resistance, that the various types of PPE would have to meet. The specific performance-based criteria of design standards, however, are generally tied to particular test methods, and employers are not in the best position to determine if the performance-based criteria have been met. Thus, in OSHA's view, the proposal is easier for employers to implement than a standard of this type.

[5] *See, e.g.*, Proposed § 1910.133(b)(2).

Moreover, OSHA believes that this alternative would tend to favor a particular design standard at the potential expense of discouraging adherence to future improved design standards.

5. Request for Comments

OSHA solicits comments on the proposal's combination of a general good design requirement and the presumption that PPE constructed in accordance with certain specific criteria complies with the good design requirement. More specifically, OSHA solicits comments on the following issues:

1. Does this approach provide employers with sufficient notice of their legal obligations while also providing sufficient flexibility to account for future developments in design standards for PPE?

2. Has OSHA accurately prescribed the criteria that will ensure that a standard meeting those criteria will at least presumptively be a good design standard? Are the criteria sufficiently clear for employers to determine whether certain PPE meets the good design requirement? In particular, can employers easily understand and apply the second criterion—that a particular design standard be recognized in the United States as providing specifications that result in an adequate level of safety? If not, what criterion should be used to determine whether a particular design standard is or is not recognized in the United States as providing specifications that result in an adequate level of safety?

3. Should the listing of a design standard in a Non-Mandatory Appendix be conclusive on whether PPE constructed in accordance with that standard meets the good design requirement?

4. Are there other publicly available design standards that are not included in the proposed non-mandatory appendices that would provide an adequate level of protection and therefore should be included in the appendices?

5. Are there other alternatives the Agency should consider that will provide sufficient notice to employers, appropriate protection for employees, and flexibility to account for future developments in design standards for PPE?

6. Are there PPE currently in use that were constructed in accordance with national consensus standards not included in the proposed appendices?

C. Deletions of Outdated References From Ventilation and Welding Standards

Section 1910.94(a)(5)(v)(a) of OSHA's ventilation standard requires that safety shoes comply with ANSI Z41.1–1967; § 1910.252(b)(2)(ii)(I) of OSHA's welding standard requires filter lenses and plates in protective eyewear to comply with the transmission test for radiant energy prescribed in ANSI Z87.1–1968. OSHA is proposing to delete these paragraphs. By doing so, OSHA intends for the safety shoes required by § 1910.94(a)(5)(v) to comply with revised section 1910.136(b) requiring footwear to meet good design standards. OSHA intends for filter lenses and plates in protective eyewear required by section 1910.252(b)(2) to comply with revised section 1910.133(b) requiring eye and face protective devices to meet good design standards. OSHA is not deleting the requirements in §§ 1910.94 and 1910.252 that specify when, and under what conditions, employees must use certain PPE; these requirements will remain in the affected standards.

OSHA believes that these deletions will not increase compliance burdens, including compliance costs. It is unlikely that employees are using safety shoes that are manufactured in accordance with ANSI Z41.1–1967. Instead, employees are presumably using shoes that were manufactured in accordance with the 1991 or 1999 version or its current replacement, ASTM F–2412–05 and 2413–05. Furthermore, OSHA believes that virtually all employees affected by the welding standard use eyewear that complies with ANSI Z87.1–1989, ANSI 87.1–1998, or ANSI Z87.1–2003, rather than eyewear manufactured in accordance with the 1968 transmission test for radiant energy required in the existing OSHA standard.

OSHA solicits comments on whether OSHA is correct that compliance burdens would not increase under the proposal. OSHA also solicits comments on whether OSHA should, rather than delete the paragraphs, replace them with cross references to §§ 1910.136(b) and 1910.133(b).

II. Legal Considerations

The purpose of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*, is to achieve to the extent possible safe and healthful working conditions for all employees. 29 U.S.C. 651(b). To achieve this goal Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. 654(b), 655(b). A safety or health standard is a standard which requires employers to maintain conditions or adopt practices that are reasonably necessary or appropriate to provide safe or healthful working conditions. 29 U.S.C. 652(8). A standard is reasonably necessary or appropriate within the meaning of section 652(8) if, among other things, a significant risk of material harm exists in the workplace and the proposed standard would substantially reduce or eliminate that workplace risk.

OSHA has already determined that requirements for PPE, including design requirements, are reasonably necessary or appropriate within the meaning of section 652(8). This proposed rule neither reduces employee protection nor alters an employer's obligations under the existing OSHA standard. Under the proposal, employers will be able to continue to use the same equipment they have been using to meet their compliance obligation under the existing standards' design criteria requirement. The proposal provides guidance on additional PPE employers can use to comply with the design criteria requirement by providing equivalent or greater protection. By facilitating but not mandating the transition to PPE constructed in accordance with updated versions of national consensus standards, employee protection will increase and compliance burdens on employers will stay the same or decrease. For these reasons, OSHA is not required in this action to determine significant risk or the extent to which the proposal would reduce that risk, as would typically be required by *Industrial Union Department, AFL-CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980).

III. Preliminary Economic Analysis and Regulatory Flexibility Act Certification

This action is not economically significant within the context of Executive Order 12866, or a major rule under the Unfunded Mandates Reform Act or Section 801 of the Small Business Regulatory Enforcement Fairness Act. The rulemaking would impose no additional costs on any private or public sector entity, and does not meet any of the criteria for an economically significant or major rule specified by the Executive Order or relevant statutes.

This action allows for increased flexibility in choosing the PPE used by employees. However, the rule does not require an employer to update or replace its PPE solely as a result of this rule, if the PPE currently in use meets the existing OSHA standard.

Furthermore, because the rule imposes no costs, OSHA certifies that it would not have a significant impact on a substantial number of small entities.

IV. Paperwork Reduction Act

This action does not impose new information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–30.

V. Federalism

OSHA has reviewed this proposed rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. Executive Order 13132 provides for preemption of State law only if there is a clear congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the OSH Act, 29 U.S.C. 667, expresses Congress' intent to preempt State laws where OSHA has promulgated occupational safety and health standards. Under the OSH Act, a State can avoid preemption on issues covered by Federal standards only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement (State-Plan State). 29 U.S.C. 667. Occupational safety and health standards developed by such State-Plan States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to these requirements, State-Plan States are free to develop and enforce under State law their own requirements for safety and health standards.

This proposed rule complies with Executive Order 13132. In States without OSHA-approved State Plans, this action limits State policy options in the same manner as all OSHA standards. In State-Plan States, this action does not significantly limit State policy options. As explained below, State-Plan States will not have to adopt the proposal, if it is promulgated as proposed.

VI. State Plan States

When Federal OSHA promulgates a new standard or more stringent amendment to an existing standard, the 26 States or U.S. Territories with their own OSHA-approved occupational safety and health plans must revise their standards to reflect the new standard or amendment, or show OSHA why there is no need for action, *e.g.*, because an existing State standard covering this area is already at least as effective as the new Federal standard or amendment. 29 CFR 1953.5(a). These 26 States and territories are: Alaska, Arizona, California, Connecticut (plan covers only State and local government employees), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New Jersey (plan covers only State and local government employees), New York (plan covers only State and local government employees), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands (plan covers only territorial and local government employees), Washington, and Wyoming.

OSHA does not consider the proposal as proposing a change that will trigger the requirements of § 1953.5(a). Accordingly, State-Plan States will not be required to adopt the proposal, if it is promulgated as proposed, or show why there is no need for action on their part. At the conclusion of the rulemaking proceedings, OSHA will advise State-Plan States if OSHA intends to require them to inform OSHA of what action, if any, they will take with regard to the matter covered by the proposal. *See* 29 CFR 1953.4(b)(7).

VII. Unfunded Mandates Reform Act

This proposed rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA). 2 U.S.C. 1501 *et seq.* For the purposes of the UMRA, the Agency certifies that this proposed rule does not impose any Federal mandate that may result in increased expenditures by State, local, or tribal governments, in the aggregate, or increased expenditures by the private sector, of more than $100 million in any year.

List of Subjects in 29 CFR Parts 1910, 1915, 1917, and 1918

Incorporation by reference, Occupational safety and health, Personal protective equipment.

VIII. Authority and Signature

This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 941 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 *et seq.*); 5 U.S.C. 553, Secretary of Labor's Order 5–2002, and 29 CFR part 1911.

Signed at Washington, DC this 10th day of May, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

Proposed Amendments to Standards

The Occupational Safety and Health Administration is proposing to amend parts 1910, 1915, 1917, and 1918 of Title 29 of the Code of Federal Regulations as set forth below.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart A—General

1. The authority citation for subpart A of part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 5–2002 (67 FR 65008), as applicable.

Section 1910.6 also issued under 5 U.S.C. § 553. Sections 1910.6, 1910.7, and 1910.8 also issued under 29 CFR part 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Pub. L. 106–113 (113 Stat. 1501A–222); and OMB Circular A–25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

§ 1910.6 [Amended]

2. In § 1910.6, paragraphs (e)(60), (e)(61), (e)(67), (e)(68), (e)(70), (e)(71) are removed. Paragraphs (e)(62) through (e)(66) are redesignated as paragraphs (e)(60) through (e)(64), respectively; paragraph (e)(69) is redesignated as paragraph (e)(65); and paragraph (e)(72) is redesignated as paragraph (e)(66).

Subpart G—Occupational Health and Environmental Control

3. The authority citation for subpart G of part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

Section 1910.94 also issued under 5 U.S.C. 553.

§ 1910.94 [Amended]

4. Section 1910.94 is amended by removing and reserving paragraph (a)(5)(v)(*a*).

Subpart I—Personal Protective Equipment

5. The authority citation for subpart I of part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 5–2002 (67 FR 65008), as applicable.

Sections 1910.132, 1910.134, and 1910.138 also issued under 29 CFR part 1911.

Sections 1910.133, 1910.135, and 1910.136 also issued under 29 CFR part 1911 and 5 U.S.C. 553.

6. Paragraph (b) of § 1910.133 is revised to read as follows:

§ 1910.133 Eye and face protection.

* * * * *

(b) *Criteria for protective eye and face devices.* (1) The employer shall ensure that the protective eye and face devices are constructed in accordance with good design standards. Equipment that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(i) The standard specifies the safety requirements for the particular equipment;

(ii) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(iii) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(2) Non-mandatory appendix C to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (b)(1) of this section. Protective eye and face devices that are constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (b)(1). Protective eye and face devices are not required to be constructed in accordance with one of the listed standards, but the protective eye and face devices must be constructed in accordance with good design standards. To meet this requirement, the protective eye and face device must provide protection equivalent to or greater than a protective eye and face device of the same type that is constructed in accordance with one of the listed national consensus standards.

7. Paragraph (b) of § 1910.135 is revised to read as follows:

§ 1910.135 Head protection.

* * * * *

(b) *Criteria for protective helmets.* (1) The employer shall ensure that the protective helmets are constructed in accordance with good design standards. A protective helmet that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(i) The standard specifies the safety requirements for the particular equipment;

(ii) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(iii) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(2) Non-mandatory appendix C to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (b)(1) of this section. Protective helmets that are constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (b)(1). Protective helmets are not required to be constructed in accordance with one of the listed standards, but the protective helmets must be constructed in accordance with good design standards. To meet this requirement, the protective helmet must provide protection equivalent to or greater than a protective helmet of the same type that is constructed in accordance with one of the listed national consensus standards.

8. Paragraph (b) of § 1910.136 is revised to read as follows:

§ 1910.136 Foot protection.

* * * * *

(b) *Criteria for protective footwear.* (1) The employer shall ensure that the protective footwear is constructed in accordance with good design standards. Protective footwear that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(i) The standard specifies the safety requirements for the particular equipment;

(ii) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(iii) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(2) Non-mandatory appendix C to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (b)(1) of this section. Protective footwear that is constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (b)(1). Protective footwear is not required to be constructed in accordance with one of the listed standards, but the protective footwear must be constructed in accordance with good design standards. To meet this requirement, the protective footwear must provide protection equivalent to or greater than protective footwear of the same type that is constructed in accordance with one of the listed national consensus standards.

9. Appendix C to Subpart I is added as follows:

Appendix C to Subpart I of Part 1910—Criteria for Personal Protective Equipment (Non-Mandatory)

This appendix lists equipment design standards that OSHA has determined are ''good design standards'' as that phrase is used in §§ 1910.133(b), 1910.135(b), and 1910.136(b).

1. *Good design standards for protective eye and face devices (1910.133(b))*

ANSI Z87.1–2003, ''American National Standard Practice for Occupational and Educational Eye and Face Protection''

ANSI Z87.1–1998, ''American National Standard Practice for Occupational and Educational Eye and Face Protection''

ANSI Z87.1–1989, ''American National Standard Practice for Occupational and Educational Eye and Face Protection''

2. *Good design standards for protective helmets (1910.135(b))*

ANSI Z89.1–2003, ''American National Standard for Personnel Protection—Protective Headwear for Industrial Workers-Requirements''

ANSI Z89.1–1997, ''American National Standard for Personnel Protection—Protective Headwear for Industrial Workers-Requirements''

ANSI Z89.1–1986, ''American National Standard for Personnel Protection—

Protective Headwear for Industrial Workers-Requirements''

3. *Good design standards for protective footwear (1910.136(b))*

ASTM F–2412–2005, ''Standard Test Methods for Foot Protection,'' and ASTM F–2413–2005, ''Specification for Performance Requirements for Protective Footwear.'' These two standards together constitute a good design standard.

ANSI Z41–1999, ''American National Standard for Personal Protection—Protective Footwear''

ANSI Z41–1991, ''American National Standard for Personal Protection—Protective Footwear''

Subpart Q—Welding, Cutting and Brazing

10. The authority citation for subpart Q of part 1910 is revised to read as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

Section 1910.252 also issued under 5 U.S.C. 553.

§ 1910.252 [Amended]

11. Section 1910.252 is amended by removing and reserving paragraph (b)(2)(ii)(I).

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

12. The authority citation for part 1915 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

Sections 1915.5, 1915.153, 1915.155, and 1915.156 also issued under 5 U.S.C. 553.

§ 1915.5 Incorporation by reference.

13. Section 1915.5 is amended by removing paragraphs (d)(1)(iv) through (d)(1)(ix).

14. Paragraph (b) of § 1915.153 is revised to read as follows:

§ 1915.153 Eye and face protection.

* * * * *

(b) *Criteria for protective eye and face devices.* (1) The employer shall ensure that the protective eye and face devices are constructed in accordance with good design standards. Equipment that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(i) The standard specifies the safety requirements for the particular equipment;

(ii) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(iii) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(2) Non-mandatory appendix C to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (b)(1) of this section. Protective eye and face devices that are constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (b)(1). Protective eye and face devices are not required to be constructed in accordance with one of the listed standards, but the protective eye and face devices must be constructed in accordance with good design standards. To meet this requirement, the protective eye and face device must provide protection equivalent to or greater than a protective eye and face device of the same type that is constructed in accordance with one of the listed national consensus standards.

15. Paragraph (b) of § 1915.155 is revised to read as follows:

§ 1915.155 Head protection.

* * * * *

(b) *Criteria for protective helmets.* (1) The employer shall ensure that the protective helmets are constructed in accordance with good design standards. A protective helmet that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(i) The standard specifies the safety requirements for the particular equipment;

(ii) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(iii) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(2) Non-mandatory appendix C to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (b)(1) of this section. Protective helmets that are constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (b)(1). Protective helmets are not required to be constructed in accordance with one of the listed standards, but the protective helmets must be constructed in accordance with good design standards. To meet this requirement, the protective helmet must provide protection equivalent to or greater than a protective helmet of the same type that is constructed in accordance with one of the listed national consensus standards.

16. Paragraph (b) of § 1915.156 is revised to read as follows:

§ 1915.156 Foot protection.

* * * * *

(b) *Criteria for protective footwear.* (1) The employer shall ensure that the protective footwear is constructed in accordance with good design standards. Protective footwear that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(i) The standard specifies the safety requirements for the particular equipment;

(ii) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(iii) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(2) Non-mandatory appendix C to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (b)(1) of this section. Protective footwear that is constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (b)(1). Protective footwear is not required to be constructed in accordance with one of the listed standards, but the protective footwear must be constructed in

accordance with good design standards. To meet this requirement, the protective footwear must provide protection equivalent to or greater than protective footwear of the same type that is constructed in accordance with one of the listed national consensus standards.

17. Appendix C to subpart I is added to read as follows:

Appendix C to Subpart I of Part 1915—Criteria for Personal Protective Equipment (Non-Mandatory)

This appendix lists equipment design standards that OSHA has determined are ''good design standards'' as that phrase is used in sections 1915.153(b), 1915.155(b), and 1915.156(b).

1. *Good design standards for protective eye and face devices (1915.153(b))*

ANSI Z87.1–2003, ''American National Standard Practice for Occupational and Educational Eye and Face Protection''

ANSI Z87.1–1998, ''American National Standard Practice for Occupational and Educational Eye and Face Protection''

ANSI Z87.1–1989, ''American National Standard Practice for Occupational and Educational Eye and Face Protection''

2. *Good design standards for protective helmets (1915.155(b))*

ANSI Z89.1–2003, ''American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements''

ANSI Z89.1–1997, ''American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements''

ANSI Z89.1–1986, ''American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements''

3. *Good design standards for protective footwear (1915.156(b))*

ASTM F–2412–2005, ''Standard Test Methods for Foot Protection,'' and ASTM F–2413–2005, ''Specification for Performance Requirements for Protective Footwear.'' These two standards together constitute a good design standard.

ANSI Z41–1999, ''American National Standard for Personal Protection—Protective Footwear''

ANSI Z41–1991, ''American National Standard for Personal Protection—Protective Footwear''

PART 1917—MARINE TERMINALS

18. The authority citation for part 1917 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 6–96 (62 FR 111), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

Sections 1917.3, 1917.28, 1917.91, 1917.93, 1917.94 also issued under 5 U.S.C. 553. Section 1917.29, also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

§ 1917.3 [Amended]

19. Section 1917.3 is amended by removing paragraphs (b)(4) through (b)(6) and redesignating paragraph (b)(7) as (b)(4).

20. Paragraph (a)(1) of § 1917.91 is revised to read as follows:

§ 1917.91 Eye and face protection.

(a)(1)(i) The employer shall ensure that each affected employee uses appropriate eye and/or face protection where there are exposures to eye and/or face hazards. Protective eye and face devices shall be constructed in accordance with good design standards. Equipment that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(A) The standard specifies the safety requirements for the particular equipment;

(B) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(C) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(ii) Non-mandatory appendix A to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (a)(1)(i) of this section. Protective eye and face devices that are constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (a)(1)(i). Protective eye and face devices are not required to be constructed in accordance with one of the listed standards, but the protective eye and face devices must be constructed in accordance with good design standards. To meet this requirement, the protective eye and face device must provide protection equivalent to or greater than a protective eye and face device of the same type that is constructed in accordance with one of the listed national consensus standards.

* * * * *

21. Paragraph (b) of § 1917.93 is revised to read as follows:

§ 1917.93 Head protection.

* * * * *

(b)(1) The employer shall ensure that the protective helmets are constructed in accordance with good design standards. Protective helmets that are constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(i) The standard specifies the safety requirements for the particular equipment;

(ii) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(iii) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(2) Non-mandatory appendix A to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (b)(1) of this section. Protective helmets that are constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (b)(1). Protective helmets are not required to be constructed in accordance with one of the listed standards, but the protective helmets must be constructed in accordance with good design standards. To meet this requirement, the protective helmet must provide protection equivalent to or greater than a protective helmet of the same type that is constructed in accordance with one of the listed national consensus standards.

* * * * *

22. Paragraph (b) of § 1917.94 is revised to read as follows:

§ 1917.94 Foot protection.

* * * * *

(b)(1) The employer shall ensure that the protective footwear is constructed in accordance with good design standards. Protective footwear that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(i) The standard specifies the safety requirements for the particular equipment;

(ii) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(iii) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(2) Non-mandatory appendix A to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (b)(1) of this section. Protective footwear that is constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (b)(1). Protective footwear is not required to be constructed in accordance with one of the listed standards, but the protective footwear must be constructed in accordance with good design standards. To meet this requirement, the protective footwear must provide protection equivalent to or greater than protective footwear of the same type that is constructed in accordance with one of the listed national consensus standards.

23. Appendix A to subpart E is added to read as follows:

Appendix A to Subpart E of Part 1917—Criteria for Personal Protective Equipment (Non-Mandatory)

This appendix lists equipment design standards that OSHA has determined are ''good design standards'' as that phrase is used in §§ 1917.91(a)(1), 1917.93(b), and 1917.94(b).

1. *Good design standards for protective eye and face devices (1917.91(a)(1))*

ANSI Z87.1–2003, ''American National Standard Practice for Occupational and Educational Eye and Face Protection''

ANSI Z87.1–1998, ''American National Standard Practice for Occupational and Educational Eye and Face Protection''

ANSI Z87.1–1989, ''American National Standard Practice for Occupational and Educational Eye and Face Protection''

2. *Good design standards for protective helmets (1917.93(b))*

ANSI Z89.1–2003, ''American National Standard for Personnel Protection—Protective Headwear for Industrial Workers-Requirements''

ANSI Z89.1–1997, ''American National Standard for Personnel Protection—Protective Headwear for Industrial Workers-Requirements''

ANSI Z89.1–1986, ''American National Standard for Personnel Protection—Protective Headwear for Industrial Workers-Requirements''

3. *Good design standards for protective footwear (1917.94(b))*

ASTM F–2412–2005, ''Standard Test Methods for Foot Protection,'' and ASTM F–2413–2005, ''Specification for Performance Requirements for Protective Footwear.'' These two standards together constitute a good design standard.

ANSI Z41–1999, ''American National Standard for Personal Protection—Protective Footwear''

ANSI Z41–1991, ''American National Standard for Personal Protection—Protective Footwear''

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

24. The authority citation for part 1918 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 6–96 (62 FR 111), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

Sections 1918.3, 1918.90, 1918.101, 1918.103, 1918.104 also issued under 5 U.S.C. 553.

Section 1918.100 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

§ 1918.3 [Amended]

25. Section 1918.3 is amended by removing paragraphs (b)(4) through (b)(6).

26. Paragraph (a)(1) of § 1918.101 is revised to read as follows:

§ 1918.101 Eye and face protection.

(a) * * *

(1)(i) Each affected employee uses appropriate eye and/or face protection where there are exposures to eye and/or face hazards. Protective eye and face devices shall be constructed in accordance with good design standards. Equipment that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(A) The standard specifies the safety requirements for the particular equipment;

(B) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(C) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(ii) Non-mandatory appendix A to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (a)(1)(i) of this section. Protective eye and face devices that are constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (a)(1)(i). Protective eye and face devices are not required to be constructed in accordance with one of the listed standards, but the protective eye and face devices must be constructed in accordance with good design standards. To meet this requirement, the protective eye and face device must provide protection equivalent to or greater than a protective eye and face device of the same type that is constructed in accordance with one of the listed national consensus standards.

* * * * *

27. Paragraph (b) of § 1918.103 is revised to read as follows:

§ 1918.103 Head protection.

* * * * *

(b)(1) The employer shall ensure that the protective helmets are constructed in accordance with good design standards. A protective helmet that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(i) The standard specifies the safety requirements for the particular equipment;

(ii) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(iii) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(2) Non-mandatory appendix A to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (b)(1) of this section. Protective helmets that are constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (b)(1). Protective helmets are not required to be constructed in accordance with one of the listed standards, but the protective helmets must be constructed in accordance with good design standards. To meet this requirement, the protective helmet must provide protection equivalent to or greater than a protective eye and face device of the same type

that is constructed in accordance with one of the listed national consensus standards.

* * * * *

28. Paragraph (b) of § 1918.104 is revised to read as follows:

§ 1918.104 Foot protection.

* * * * *

(b)(1) The employer shall ensure that the protective footwear is constructed in accordance with good design standards. Protective footwear that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(i) The standard specifies the safety requirements for the particular equipment;

(ii) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(iii) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(2) Non-mandatory appendix A to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (b)(1) of this section. Protective footwear that is constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (b)(1). Protective footwear is not required to be constructed in accordance with one of the listed standards, but the protective footwear must be constructed in accordance with good design standards. To meet this requirement, the protective footwear must provide protection equivalent to or greater than protective footwear of the same type that is constructed in accordance with one of the listed national consensus standards.

29. Appendix A to subpart J is added to read as follows:

Appendix A to Subpart J of Part 1918—Criteria for Personal Protective Equipment (Non-Mandatory)

This appendix lists equipment design standards that OSHA has determined are ''good design standards'' as that phrase is used in sections 1918.101(a)(1), 1918.103(b), and 1918.104(b).

1. *Good design standards for protective eye and face devices (1918.101(a)(1))*

ANSI Z87.1–2003, ''American National Standard Practice for Occupational and Educational Eye and Face Protection''

ANSI Z87.1–1998, ''American National Standard Practice for Occupational and Educational Eye and Face Protection''

ANSI Z87.1–1989, ''American National Standard Practice for Occupational and Educational Eye and Face Protection''

2. *Good design standards for protective helmets (1918.103(b))*

ANSI Z89.1–2003, ''American National Standard for Personnel Protection—Protective Headwear for Industrial Workers-Requirements''

ANSI Z89.1–1997, ''American National Standard for Personnel Protection—Protective Headwear for Industrial Workers-Requirements''

ANSI Z89.1–1986, ''American National Standard for Personnel Protection—Protective Headwear for Industrial Workers-Requirements''

3. *Good design standards for protective footwear (1918.104(b))*

ASTM F–2412–2005, ''Standard Test Methods for Foot Protection,'' and ASTM F–2413–2005, ''Specification for Performance Requirements for Protective Footwear.'' These two standards together constitute a good design standard.

ANSI Z41–1999, ''American National Standard for Personal Protection—Protective Footwear''

ANSI Z41–1991, ''American National Standard for Personal Protection—Protective Footwear''

[FR Doc. E7–9315 Filed 5–16–07; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–112–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia is re-submitting a proposed amendment to revise the West Virginia Code of State Regulations (CSR) concerning the hydrologic impacts of surface mining operations. The amendments are intended to repeal a definition of ''cumulative impact,'' and add a definition of ''material damage'' to the hydrologic balance outside the permit area. OSM had approved an earlier submittal of these same amendments on December 1, 2003 (68 FR 67035), but that approval was vacated and remanded by the United States District Court for the Southern District of West Virginia on September 30, 2005. The United States Court of Appeals for the Fourth Circuit affirmed the lower court's ruling on December 12, 2006. We are expressly seeking comment on whether the proposed amendments and the supporting arguments and explanations presented by the State are consistent with the Federal hydrologic protection requirements under SMCRA.

DATES: We will accept written comments on this amendment until 4 p.m. (local time), on June 18, 2007. If requested, we will hold a public hearing on the amendment on June 11, 2007. We will accept requests to speak at a hearing until 4:00 p.m. (local time), on June 1, 2007.

ADDRESSES: You may submit comments, identified by WV–112–FOR, by any of the following methods:

- *E-mail: chfo@osmre.gov*. Include WV–112–FOR in the subject line of the message;
- *Mail/Hand Delivery:* Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301; or
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Docket: You may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSM's Charleston Field Office listed below.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East,

Charleston, West Virginia 25301, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

West Virginia Department of Environmental Protection, 601 57th Street, SE., Charleston, WV 25304, Telephone: (304) 926–0490.

In addition, you may review a copy of the amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 604 Cheat Road, Suite 150, Morgantown, West Virginia 26508, Telephone: (304) 291–4004. (By Appointment Only)

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 313 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Background on the Previous Submittal of This Amendment
III. Description of the Proposed Amendment
IV. Public Comment Procedures
V. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Background on the Previous Submittal of this Amendment

In 2001, West Virginia House Bill 2663 was enacted as State law. House Bill 2663 deleted the definition of cumulative impact at CSR 38–2–2.39 and added a definition of material damage at CSR 38–2–3.22.e, a provision that concerns cumulative hydrologic impact assessments (CHIA) of surface coal mining and reclamation operations. By letter dated May 2, 2001, West Virginia submitted the proposed changes as an amendment to its permanent regulatory program (Administrative Record Number WV–1209). OSM approved the deletion of the definition of cumulative impact and the addition of the definition of material damage on December 1, 2003 (68 FR 67035) (Administrative Record Number WV–1379).

On January 30, 2004, the Ohio River Valley Environmental Coalition, Inc., Hominy Creek Preservation Association, Inc., and Citizens Coal Council filed a complaint and petition for judicial review in the United States District Court for the Southern District of West Virginia (Administrative Record Number WV–1382). On September 30, 2005, the United States District Court for the Southern District of West Virginia vacated OSM's decision of December 1, 2003, and remanded the matter to the Secretary for further proceedings consistent with the Court's decision (Administrative Record Number WV–1439).

In response to the Court's decision of September 30, 2005, OSM notified the State on November 1, 2005, that its definition of material damage was not approved and could not be implemented. OSM also stated that the deletion of the definition of cumulative impact was not approved and the State had to take action to add it back into the program. On November 22, 2005, the United States District Court for the Southern District of West Virginia amended its earlier decision (Administrative Record Number WV–1454). In its amended order, the Court directed the Secretary to instruct the State that it may not implement either the new language nor the deletion of language from the State's program, and that the State must enforce only the State program approved by OSM prior to the amendments. By letter dated January 5, 2006, OSM notified the State that the Court's amended judgment order makes it clear that the definition of ''cumulative impact'' at CSR 38–2–2.39 remains part of the approved West Virginia program and, as such, must be implemented by the State, and that the definition of ''material damage'' is not approved and can not be implemented.

On December 12, 2006, the U.S. Court of Appeals for the Fourth Circuit affirmed the District Court's ruling of September 30, 2005, to vacate and remand OSM's approval of West Virginia's amendments (Administrative Record Number WV–1479). The Fourth Circuit Court ruled that OSM failed to comply with the rulemaking procedures set forth in section 553 of the Administrative Procedure Act. The Court also stated that OSM's failure to properly analyze and explain its decision to approve the State's program amendment rendered that action arbitrary and capricious.

III. Description of the Proposed Amendment

By letter dated March 22, 2007 (Administrative Record Number WV–1485), the West Virginia Department of Environmental Protection (WVDEP) re-submitted an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). See Section II above, for the background on the previous submittal of this amendment. The amendment revises the West Virginia Code of State Regulations (CSR) concerning the potential hydrologic impacts of surface and underground mining operations. The amendment is intended to repeal a definition of ''cumulative impact,'' and add a definition of ''material damage'' to the hydrologic balance outside the permit area.

In its March 22, 2007, re-submittal letter, the State provided the following information in support of its proposed amendment: A description of the proposed amendment; a 13-page explanation of why it believes the amendment is no less stringent than SMCRA and no less effective than the Federal regulations; a copy of the State's Requirements Governing Water Quality Standards at 47 CSR 2; and a copy of the United States District Court for the Southern District of West Virginia decision *Ohio River Valley Environmental Coalition, Inc. (OVEC), et al.*, v. *Callaghan, et al., Civil Action No. 3:00–0058,* dated March 8, 2001. You may receive a copy of this information by contacting the person listed above under **FOR FURTHER INFORMATION CONTACT**.

It must be noted that WVDEP stated in its March 22, 2007, letter that it is resubmitting the program amendment pursuant to 30 CFR 732.17(h)(9). The Federal regulations at 30 CFR 732.17(h)(8) provide that if the Director disapproves an amendment, the State regulatory authority will have 30 days after publication of the Director's decision to resubmit a revised amendment request for consideration by the Director. The Federal regulations at 30 CFR 732.17(h)(9) specify the minimum public comment period to be

provided and the time period within which the Director should approve or disapprove an amendment resubmission. This program amendment does not qualify as a resubmission pursuant to 30 CFR 732.17(h)(8) and (9) because this amendment has been the subject of litigation and the time period provided at 30 CFR 732.17(h)(8) for resubmission has expired. Therefore, OSM will treat the amendment as a new request and initiate review procedures in accordance with 30 CFR 732.17(h).

West Virginia Proposes the Following Amendments

1. CSR 38–2–2.39 Definition of ''cumulative impact''

This definition is proposed for deletion from the West Virginia program, and provides as follows:

Cumulative impact means the hydrologic impact that results from the cumulation of flows from all coal mining sites to common channels or aquifers in a cumulative impact area. Individual mines within a given cumulative impact area may be in full compliance with effluent standards and all other regulatory requirements, but as a result of the co-mingling of their off-site flows, there is a cumulative impact. The Act does not prohibit cumulative impacts but does emphasize that they be minimized. When the magnitude of cumulative impact exceeds threshold limits or ranges as predetermined by the Division, they constitute material damage.

2. CSR 38–2–3.22.e Cumulative Hydrologic Impact Assessment (CHIA)

This provision is proposed to be amended by adding a definition of material damage to the existing language. The proposed definition of material damage provides as follows:

Material damage to the hydrologic balance outside the permit area[s] means any long term or permanent change in the hydrologic balance caused by surface mining operation(s) which has a significant adverse impact on the capability of the affected water resource(s) to support existing conditions and uses.

As amended, CSR 38–2–3.22.e would provide as follows:

The Director [Secretary] shall perform a separate CHIA for the cumulative impact area of each permit application. This evaluation shall be sufficient to determine whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. Material damage to the hydrologic balance outside the permit area[s] means any long term or permanent change in the hydrologic balance caused by surface mining operation(s) which has a significant adverse impact on the capability of the affected water resource(s) to support existing conditions and uses.

In support of the proposed amendments described above, the WVDEP provided a 13-page explanation that we have summarized below.

Application of the Material Damage Definition

In its submittal, the WVDEP stated that the new definition of material damage at CSR 38–2–3.22.e focuses on the impact of mining operation(s) on the ability of a water resource to ''support existing conditions and uses''. The principle use of the term ''material damage'' in the hydrologic context in SMCRA, is as a test for evaluating the potential hydrologic impacts of a permit application before the mining operation (and any potential enforcement) takes place. This new definition effectively requires the State to consider the water quality standards it has promulgated pursuant to section 303(a) of the Federal Clean Water Act as part of the material damage inquiry under the surface mining law. These water quality standards are codified in the State regulations at CSR 47–2–1 to –9.4. By definition at CSR 47–2–2.21, ''water quality standards'' means the ''combination of water uses to be protected and the water quality criteria to be maintained by these rules.'' The phrase used in this definition, ''water quality criteria'', is also a defined term at CSR 47–2–2.20, and its definition reiterates this direct link between protection of stream uses and application of water quality standards:

''Water quality criteria'' shall mean levels of parameters or stream conditions that are required to be maintained by these regulations [state water quality standards]. Criteria may be expressed as a constituent concentration, levels, or narrative statement, representing a quality of water that supports a designated use or uses.

The WVDEP stated that CSR 47–2–6 establishes various categories of uses for the water resources of the State. For protection of each of these categories of use, Appendix E, Table 1 of the water quality standards rules establishes a specific set of water quality criteria (see CSR 47–2–8.1). These sets of criteria include numeric limits for various pollutant parameters that are intended to protect the category of use to which they apply. Most, if not all, of these State numeric limits are based on scientific studies conducted by or for the U.S. Environmental Protection Agency for the purpose of providing technical guidance to state regulators as to the limits that must be placed on the concentrations of various pollutants in order to provide protection for each category of stream use.

The WVDEP stated that to assure that mining will not result in a long term or permanent change in the hydrologic balance which has a significant adverse impact on the capability of a receiving stream to support its uses, a proposed mining operation must be designed so as to consistently comply with the water quality standards for these uses. If upon review of a permit application and assessment of the probable cumulative impact of all anticipated mining in the cumulative impact area on the hydrologic balance, the WVDEP is able to determine that the proposed operation has been designed so as to consistently comply with the water quality standards that protect the uses of the water into which discharges from the operation will flow, the WVDEP will make a finding that the proposed operation has been designed so as to prevent material damage to the hydrologic balance outside the permit area.

Consistent with the concept that mining operations must be designed to prevent material damage, isolated or random exceedences of water quality standards by a slight margin which do not affect the capability of the affected water resource to support its uses will not be regarded as ''material'' damage.

In making the material damage finding upon a proposed operation's capability, as designed, to consistently comply with water quality standards, the WVDEP does not intend to create the impression that it will consider every pollutant for which a water quality standard has been promulgated. Water quality standards have been promulgated for a wide variety of parameters, many of which have no potential to be in the effluent from a mining operation. Instead, the agency's consideration will be limited to standards for those parameters which, based on its experience with other mining operations in the area and the geochemical data which the provisions at CSR 38–2–3.23 require to be included in the application, have the potential to have an impact on water quality if the application is granted.

Comparison of the Material Damage and Cumulative Impact Definitions

The WVDEP stated that for the most part, there is very little difference between the definition of ''cumulative impact'' that is proposed to be deleted, which included a definition of material damage, and the material damage definition that is proposed to be added. The cumulative impact definition at CSR 38–2–2.39 provides that material damage occurs when ''the magnitude of cumulative impact exceeds threshold limits or ranges as predetermined by the [WVDEP]''.

The agency's guidance to its permit reviewers stated that water quality standards should be used as material damage limits under this definition. As with the material damage definition at CSR 38–2–3.22.e that is being proposed, isolated or random exceedences of water quality standards by a slight margin which did not affect the capability of the affected water resource to support its uses were not regarded as ''material'' damage under the cumulative impact definition. Accordingly, regardless of whether a permit reviewer made a material damage finding based on application of threshold limits or ranges under the old cumulative impact definition or makes such a finding based on whether there will be a significant adverse impact on the capability of the affected water resource to support its uses under the new material damage definition, the real focus under both definitions is on the question of whether water quality standards will be met consistently so stream uses are protected.

The WVDEP stated that there are three distinctions between the old cumulative impact definition and the new material damage definition. First, by requiring the material damage finding to be made upon the capability of the stream to support its uses, the new definition clearly requires the material damage inquiry to be made by reference to the State's water quality standards that have been promulgated to protect these uses. On its face, the old cumulative impact definition only required this finding to be based on threshold limits or ranges. Outside the agency's guidance, which lacked the binding effect of a regulation, there was no requirement that any particular set of ''limits or ranges'' be used. Accordingly, individual permit reviewers may have believed that they had discretion to arbitrarily make up their own criteria on a case by case basis. Where such criteria varied from water quality standards, there was potential for conflict with the Clean Water Act in violation of 30 U.S.C. 1292(a)(3) of SMCRA. By requiring the finding to be made upon the capability of a stream to support its uses, which requires this judgment to be based on the ability of the operation to comply with water quality standards, the potential for both arbitrarily established limits and conflict with the Clean Water Act is eliminated. Therefore, the new definition is more objective.

Second, the WVDEP stated that the old definition could be read to mean that a single, minor exceedence of threshold limits or ranges which did not result in any perceptible damage constitutes material damage. For example, if the iron level in a trout stream is measured at 0.52 mg/l at any single point in time, which exceeds the water quality standard of 0.50 mg/l for the iron concentration in trout streams, some would argue that the stream has been materially damaged, even in the absence of any evidence that this single exceedence has contributed to impairment of any aspect of the trout's life cycle or the supporting ecology. The new definition makes it clear that single or random, minor exceedences which do not affect the capability of a water resource to support its uses do not constitute ''material'' damage. By equating ''material'' damage with a ''significant'' adverse impact on the capability of the affected water resource to support its uses, the new definition is truer to the plain meaning of ''material damage'' as used in the statute.

Third, the WVDEP stated that the old definition, which is proposed to be deleted, focuses only on whether ''cumulative impacts'' exceed the threshold limits or ranges, to the exclusion of consideration of other individual hydrologic impacts of the proposed operation. This exclusive focus may not be consistent with 30 CFR sections 780.21(g) and 784.14(f) which require the material damage finding to be based on a determination of ''whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area''. Under the new definition, this potential shortcoming is eliminated. The new material damage definition provides for consideration of the design of the proposed operation as well as cumulative impacts through its focus on whether there has been a ''change in the hydrologic balance caused by surface mining operation(s)''.

The WVDEP concluded that the State's proposed material damage definition is consistent with the plain meaning of the term as it is used in SMCRA, its use in the context of hydrologic protection in SMCRA, the meaning it is given in other contexts in SMCRA, as well as the overall focus of SMCRA. By focusing on the protection of stream uses, based on whether a proposed mining operation has been designed to consistently comply with water quality standards that have been promulgated to protect such uses, based upon scientific study, the material damage definition provides a seamless interface between the State's clean water regulatory program and regulation of impacts from mining on the hydrologic balance under the surface mining regulatory program. In the opinion of the State, these amendments render the State program more consistent with SMCRA rather than less so.

IV. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether these amendments and the supporting arguments and explanations presented by the State satisfy the applicable program approval criteria of 30 CFR 732.15. If we approve these revisions, they will become part of the West Virginia program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Charleston Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an E-mail or Word file avoiding the use of special characters and any form of encryption. Please also include Attn: SATS NO. WV–112–FOR and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field office at (304) 347–7158.

Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on June 1, 2007. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We

will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

V. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various

laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 19, 2007.

Michael K. Robinson,

Acting Regional Director, Appalachian Region.

[FR Doc. E7–9506 Filed 5–16–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–0027; FRL–8316–3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Electric Generating Unit Multi-Pollutant Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision pertains to establishing limits on the emissions of nitrogen oxides (NO_X) and sulfur dioxide (SO_2) from Delaware's large electric generation units (EGUs). This action is being taken under the Clean Air Act (CAA or the Act).

DATES: Written comments must be received on or before June 18, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0027 by one of the following methods:

A. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail: miller.linda@epa.gov*.

C. *Mail:* EPA–R03–OAR–2007–0027, Linda Miller, Acting Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2007–0027. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://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 *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19901.

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

SUPPLEMENTARY INFORMATION: On November 16, 2006, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a revision to its State Implementation Plan (SIP) for Regulation No. 1146—Electric Generating Unit Multi-Pollutant Regulation.

I. Background

Regulation No. 1146 establishes NO_X, SO_2 and mercury emissions limits to achieve reductions of those pollutants from Delaware's large EGUs of coal-fired and residual oil-fired EGUs with a nameplate capacity rating of 25 megawatts (MW) or greater generating capacity. Only the NO_X and SO_2 sections of this regulation will be discussed in this rulemaking. The mercury sections of this regulation will be discussed in a separate rulemaking.

Regulation No. 1146 will help Delaware attain and maintain the national ambient air quality standards (NAAQS) for ozone and particulate matter ($PM_{2.5}$) and will assist Delaware in achieving the emissions reductions needed to support Delaware's 8-hour ozone reasonable further progress plan (RFP). This multi-pollutant regulation will not replace the Federal Clean Air Interstate Rule (CAIR) requirements and does not relieve affected sources from participating in and complying with all CAIR cap-and-trade program requirements.

II. Summary of SIP Revision

Regulation No. 1146 applies to coal-fired and residual oil-fired EGUs located in Delaware with a nameplate capacity rating of 25 MW or greater. The large EGUs subject to Regulation No. 1146 are Conective Delmarva Generating, Inc.'s Edge Moor Generating Station Units 3, 4 and 5 located in New Castle County; the City of Dover's McKee Run Generating Station Unit 3 located in Kent County; and NRG Energy, Inc.'s Indian River Generating Station Units 1, 2, 3 and 4 located in Sussex County.

Regulation No. 1146 also contains definitions; emissions limitations for NO_X and SO_2; recordkeeping and reporting; compliance plan; and annual mass emission limits for NO_X and SO_2.

A. Emissions Limitations

1. NO_X

Regulation No. 1146 includes short term NO_X emission rate limits and will be implemented in a phased manner. For Phase I, May 1, 2009 through December 31, 2011, the short term NO_X emission rate limit is 0.15 lb/MMBTU of heat input on a rolling 24-hour average basis. For Phase II, January 1, 2012 and beyond, the short term NO_X emission rate limit is 0.125 lb/MMBTU of heat input on a rolling 24-hour average basis.

A unit subject to this regulation shall not emit annual NO_X mass emissions that exceed the values shown in Table I on or after January 1, 2009.

TABLE I.—ANNUAL NO_X MASS EMISSIONS LIMITS

Unit	Control period NO_X mass emissions limit (tons)
Edge Moor 3	773
Edge Moor 4	1339
Edge Moor 5	1348
Indian River 1	601
Indian River 2	628
Indian River 3	977
Indian River 4	2032
McKee Run 3	244

2. SO_2

Regulation No. 1146 includes short term SO_2 emission rate limits and will also be implemented in a phased manner. For Phase I, May 1, 2009 through December 31, 2011, the short term SO_2 emission rate limit is 0.37 lb/MMBTU of heat input on a rolling 24-hour average basis. For Phase II, January 1, 2012 and beyond, the short term SO_2 emission rate limit is 0.26 lb/MMBTU of heat input on a rolling 24-hour average basis.

A unit subject to this regulation shall not emit annual SO_2 mass emissions that exceed the values shown in Table II on or after January 1, 2009.

TABLE II.—ANNUAL SO_2 MASS EMISSIONS LIMITS

Unit	Control period SO_2 mass emissions limit (tons)
Edge Moor 3	1391
Edge Moor 4	2410
Edge Moor 5	2427
Indian River 1	1082
Indian River 2	1130
Indian River 3	1759
Indian River 4	3657
McKee Run 3	439

B. Compliance Demonstration

NO_X and SO_2 emissions from multiple units subject to Regulation No. 1146 at a common facility may be averaged on a heat input basis to demonstrate compliance.

Regulation No. 1146 requires compliance demonstration with the emissions limitations for NO_X and SO_2 through the use of EPA and DNREC approved continuous emissions monitoring systems (CEMS). Regulation No. 1146 also requires that these CEMS must be installed, certified, calibrated, operated, and maintained in accordance with EPA requirements. For NO_X and SO_2 emissions, Regulation No. 1146 specifies that CEMS must comply with all 40 CFR part 75; including monitoring, recordkeeping, quality assurance/quality control (QA/QC), and reporting requirements. These are the same requirements that are necessary for compliance with EPA's CAIR program, for which each of the units subject to this regulation are also subject.

C. Compliance Plan

Regulation No. 1146 requires a submission of a compliance plan from the owner or operator of a unit subject to this regulation to DNREC on or before July 1, 2007.

D. Recordkeeping and Reporting

Regulation No. 1146 requires compliance with all applicable recordkeeping and reporting requirements of 40 CFR part 75. Owner or operator of a unit subject to this regulation shall maintain for a period of at least 5 years, copies of all measurements, tests, reports and other information required by 40 CFR part 75. This information shall be provided to DNREC upon request at anytime.

III. Proposed Action

EPA is proposing to approve the Delaware SIP revision for Regulation No. 1146—Electric Generating Unit Multi-Pollutant Regulation submitted on November 16, 2006 pertaining to NO_X and SO_2. This regulation will result in the reduction of NO_X and SO_2 emissions from the affected sources. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This proposed rule pertaining to Delaware's Electric Generating Unit Multi-Pollutant Regulation, does not

impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

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

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

Dated: May 10, 2007.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. E7–9519 Filed 5–16–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2007–0259; FRL–8315–3]

Water Quality Standards for Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing water quality standards that would establish methods to implement Puerto Rico's existing antidegradation policy for waters in the Commonwealth of Puerto Rico.

DATES: Comments must be received on or before June 18, 2007.

EPA will hold a public hearing on this proposed rule on Monday June 4, 2007, from 2 p.m. to 5 p.m. and from 7 p.m. to 9 p.m. The public hearing will occur at the Universidad Metropolitana (UMET) Theatre, Ave. Ana G. Mendez, Km 0.3, Cupey, Puerto Rico 00928. If you need special accommodations at this meeting, including wheelchair access or sign language interpreter, you should contact Yasmin Laguer at 787–997–5848 at least 10 business days prior to the meeting so that we can make appropriate arrangements.

ADDRESSES: Submit your comments, identified by Docket Id. No. [EPA–HQ–OW–2007–0259], by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ow-docket@epa.gov.*
- *Mail to either:* Water Docket, USEPA, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460 or Docket Manager, Proposed Water Quality Standards for Puerto Rico, U.S. EPA Region 2, 290 Broadway, New York, New York 10007, Attention Docket ID No. OW–2007–0259.
- *Hand Delivery:* EPA Docket Center, EPA West Room 3334, 1301 Constitution Ave., NW., Washington, DC, 20004 or Docket Manager, Proposed Water Quality Standards for Puerto Rico, U.S. EPA Region 2, 290 Broadway, New York, New York 10007, Attention Docket ID No. OW–2007–0259. 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–OW–2007–0259. 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* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at two Docket Facilities. The OW Docket Center is open from 8:30 a.m. until 4:30 p.m, Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–2426 and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. Publicly available docket materials are also available in hard copy at U.S. EPA Region 2, 290 Broadway, 24th Floor, New York, New York 10007. This location is open from 8:30 a.m. until 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number is (212) 637–3807. Publicly available docket materials will be viewable electronically at the Caribbean Environmental Protection Division, U.S. EPA Region 2, 1492 Ponce De Leon Avenue, Suite 417, Centro Europa Building, San Juan, Puerto Rico 00907. This facility is open from 9 a.m. to 3:30 p.m., Monday through Friday, excluding legal holidays. The telephone number is (787) 977–5848.

FOR FURTHER INFORMATION CONTACT: Wayne Jackson, U.S. EPA Region 2, Division of Environmental Planning and Protection, 290 Broadway, New York, New York 10007 (telephone: 212–637–3807 or e-mail: *jackson.wayne@epa.gov*) or Danielle Fuligni, U.S. EPA Headquarters, Office of Science and Technology, 1200 Pennsylvania Avenue, NW., Mail Code 4305T, Washington, DC 20460 (telephone: 202–566–0793 or e-mail: *fuligni.danielle@epa.gov*).

SUPPLEMENTARY INFORMATION: This section is organized as follows:

Table of Contents

I. General Information
  A. What Entities May be Affected by This Action?
  B. What Should I Consider as I Prepare my Comments for EPA?
II. Background
  A. What Are the Applicable Federal Statutory and Regulatory Requirements?
  B. Why Is EPA Proposing Federal Antidegradation Implementation Methods for the Commonwealth of Puerto Rico?
III. This Proposed Rule
  A. What Are the Proposed Antidegradation Implementation Methods to Protect Puerto Rico's High Quality Waters?
  B. How Will Puerto Rico Implement the Proposed Antidegradation Implementation Methods?
  C. What Are the Cost Implications of the Proposed Rule?
  D. Request for Comment
IV. Statutory and Executive Order Reviews

A. Executive Order 12866 (Regulatory Planning and Review)
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132 (Federalism)
F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)
G. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)
H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution or Use)
I. National Technology Transfer and Advancement Act of 1995
J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)
K. Endangered Species Act

I. General Information

A. What Entities May Be Affected by This Action?

Citizens concerned with water quality in Puerto Rico may be interested in this rulemaking. Today's proposal, if made final, will establish Federal antidegradation implementation methods by regulation for waters in the Commonwealth of Puerto Rico (hereafter, ''the Commonwealth'' or ''Puerto Rico''). Entities discharging pollutants to the surface waters of Puerto Rico could be indirectly affected by this rulemaking since water quality standards are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits, CWA section 404 dredge and fill permits, and other activities requiring CWA section 401 certification. Categories and entities that may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to surface waters in Puerto Rico.
Municipalities	Discharges from publicly-owned facilities such as publicly owned treatment works and water filtration facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES-regulated entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by this action, you should carefully examine today's proposed rule. If you have questions regarding the applicability of this action to the particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments for EPA?

i. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

ii. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Are the Applicable Federal Statutory and Regulatory Requirements?

Section 303 (33 U.S.C. 1313) of the Clean Water Act (CWA or ''the Act'') directs States, Territories, and authorized Tribes (hereafter referred to as ''States''), with oversight by EPA, to adopt water quality standards to protect the public health and welfare, enhance the quality of water and serve the purposes of the CWA. Under section 303, States are required to develop water quality standards for navigable waters of the United States within the State. Section 303(c) and EPA's implementing regulations at 40 CFR part 131 require State and Tribal water quality standards to include the designated use or uses to be made of the water, the water quality criteria necessary to protect those uses and an antidegradation policy. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. The results of this triennial review must be submitted to EPA, and EPA must approve or disapprove any new or revised standards.

Section 303(c) of the CWA authorizes the EPA Administrator to promulgate water quality standards to supersede State standards that EPA has disapproved or in any case where the Administrator determines that a new or revised standard is needed to meet the CWA's requirements. In a February 14, 2007, Opinion and Order from the United States District Court for the District of Puerto Rico in the case of *CORALations and the American Littoral Society* v. *United States Environmental Protection Agency, et al.* (No. 02–1266 (JP) (D. Puerto Rico)), the Court ordered EPA to ''prepare and publish new or revised water quality standards identifying antidegradation methods for Puerto Rico within 60 days'' (April 17, 2007). The Court has since granted EPA's motion for an additional 30 days. EPA is, therefore, proposing Federal water quality standards for these waters in Puerto Rico.

As one of the minimum elements that must be included in a State's water quality standards, antidegradation is an important tool for States and authorized Tribes to use in meeting the CWA's requirement that water quality standards protect public health or welfare, enhance the quality of water and meet the objective of the CWA to restore and maintain the chemical, physical and biological integrity of the

nation's waters. Antidegradation requirements help ensure that any degradation in water quality is subject to review and approval by the State even in cases where the existing water quality far exceeds the water quality criteria and designated use applicable to individual waters.

EPA's regulation at 40 CFR 131.12 requires that States and authorized Tribes adopt antidegradation policies and identify implementation methods to provide three levels or tiers of water quality protection. The first level of protection at 40 CFR 131.12(a)(1), also known as Tier 1 of antidegradation, requires the maintenance and protection of existing instream water uses and the level of water quality necessary to protect those existing uses. Protection of existing uses is the floor of water quality protection afforded to all waters of the United States. Existing uses are ''* * * those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.'' (40 CFR 131.3(e))

The second level of protection, or Tier 2 of antidegradation, is for high quality waters. High quality waters are defined in 40 CFR 131.12(a)(2) as waters where the quality of the waters is better than the levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. This water quality is to be maintained and protected unless the State or authorized Tribe finds, after public participation and intergovernmental review, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing lower water quality, the State or authorized Tribe must assure water quality adequate to protect existing uses. Further, the State or authorized Tribe must ensure that all applicable statutory and regulatory requirements are achieved for all new and existing point sources and all cost-effective and reasonable best management practices are achieved for nonpoint source control.

Finally, the third and highest level of antidegradation protection, or Tier 3, is for outstanding national resource waters (ONRWs). If a State or authorized Tribe determines that the characteristics of a water body constitute an outstanding national resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, and designates a water body as such, then that water quality must be maintained and protected (see 40 CFR 131.12(a)(3)).

In addition to requiring States and authorized Tribes to adopt an antidegradation policy, 40 CFR 131.12 requires States to identify methods for implementing such a policy. Such methods are not required to be contained in the State's regulation, but because they inform EPA's judgment regarding whether the State's antidegradation policy is consistent with the Federal regulations at 40 CFR 131.12, they are subject to EPA review. Where the State chooses to make such methods part of its water quality standards regulations, section 303(c)(3) of the CWA and EPA's implementing regulations require them to be submitted to EPA for review and approval. When a State or authorized Tribe chooses to develop such methods as guidance or outside of regulation, EPA reviews the methods in the context of determining whether the State's antidegradation policy as interpreted and implemented through the methods, is consistent with 40 CFR 131.12.

EPA's regulations at 40 CFR 131.12 provide a great deal of discretion to States regarding the amount of specificity required in a State's antidegradation implementation methods. The regulations do not specify minimum elements for such methods, but do require that such methods not undermine the intent of the antidegradation policy. *See* Advanced Notice of Proposed Rulemaking, 63 FR 36742, 36781, July 7, 1998.

B. Why Is EPA Proposing Federal Antidegradation Implementation Methods for the Commonwealth of Puerto Rico?

Puerto Rico has an existing EPA-approved antidegradation policy, which was adopted on October 27, 1990 and approved by EPA on March 28, 2002. This antidegradation policy mirrors that of the federal regulation. The policy states the following:

> It is the policy of the Government of Puerto Rico to conserve and protect the existing uses of the Waters of Puerto Rico. The water quality necessary to protect the existing uses, including threatened and endangered species shall be maintained and protected.
>
> In those water bodies where the quality exceeds levels necessary to support propagation of fish, shellfish, wildlife, desirable species including threatened or endangered species and recreation in and on the water, that quality shall be maintained and protected. A lower water quality may be allowed when the EQB finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Board's Continuing Planning Process that allowing lower water quality is necessary to accommodate important economic or social development in the area where the waters are located. In allowing such lower water quality, the Board shall require a water quality level adequate to protect existing uses fully. Further, the Board will require that:
>
> (1) The highest statutory and regulatory requirements for all new and/or existing point sources be achieved and
>
> (2) All cost-effective and reasonable best management practices for non-point source control be implemented.
>
> Where high quality waters constitute an outstanding national resource, such as waters of El Yunque National Forest and State parks, wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.
>
> Where potential water quality impairment is associated with a thermal discharge, this thermal discharge must comply with Section 316 of the Clean Water Act as amended.

The Environmental Quality Board of the Commonwealth of Puerto Rico (EQB or Board) first adopted an antidegradation policy in its water quality standards regulation in June 1973. EQB is responsible, in part, for developing and recommending to the Governor public policy to encourage and promote the improvement of environmental quality so as to meet the conservation, social, economic, health and other requirements and goals of the Commonwealth. One of the specific functions of EQB is to develop and adopt water quality standards, which are intended to ''enhance, maintain and preserve the quality of the waters of Puerto Rico compatible with the social and economic needs of Puerto Rico.'' This antidegradation policy was approved by EPA on November 15, 1973. Puerto Rico's antidegradation policy statement remained unchanged until 1990. In August 1990, the Commonwealth of Puerto Rico adopted revisions to the Puerto Rico Water Quality Standards Regulation (PRWQSR). These were sent to EPA Region 2 on September 21, 1990, with the caveat from the Chairman of the EQB that the transmittal may not be the final submittal, since EQB was going to hold additional public hearings on November 1, 1990 regarding certain aspects of the revisions. Because of this caveat, and because the requisite certification from the Commonwealth's Secretary of Justice was not submitted with the revisions as required by 40 CFR 131.6(e), EPA did not act on these revisions immediately.

From 1991 to 1993, EPA Region 2 worked with EQB on a series of subsequent draft revisions to the PRWQSR. These drafts were never adopted by Puerto Rico.

The requisite certification from the Commonwealth's Secretary of Justice was ultimately submitted to EPA on February 25, 2002. Upon receipt of this certification EPA took final action on all new and revised provisions of the 1990 PRWQSR on March 28, 2002. These revisions included the above-referenced revisions to the Puerto Rico antidegradation policy.

Prior to October 2001, Puerto Rico had antidegradation implementation methods set forth in a document known as its Continuing Planning Process (CPP). In the fall of 2001, EPA commenced work with the Puerto Rico EQB to enhance their antidegradation implementation methods. EQB submitted its first reasonably complete draft of its consolidation of antidegradation implementation methods on September 3, 2003.

On February 20, 2002, CORALations, American Littoral Society, and the American Canoe Association filed a complaint in the U.S. District Court for the District of Puerto Rico. In this action, the plaintiffs alleged, among other things, that a September 4, 1992 letter from a EPA Region 2 Division Director to the EQB had triggered a mandatory duty under section 303(c)(4) of the CWA for EPA to prepare and propose regulations for Puerto Rico setting forth a revised water quality standard for antidegradation implementation methods.

In October and December 2003, EQB submitted two revised drafts of its consolidation of antidegradation implementation methods. The December 2003 draft was submitted under cover of a letter dated December 16, 2003 from Ruben Gonzalez Delgado, Director of EQB's Water Quality Area, to Walter Mugdan, Director of the EPA Region 2's Division of Environmental Planning and Protection. This letter stated that it was EQB's intent to promulgate this consolidation as part of the PRWQSR in order to consolidate EQB's existing antidegradation implementation methods ''either explicitly or by reference, into one document so that it is readily accessible to the public and the regulated community.''

On June 17, 2004, EQB submitted to EPA its final revised consolidation document. This consolidation document, however, was not adopted as a regulation. In a letter dated July 9, 2004, from Mr. Mugdan to EQB's President, Esteban Mujica Cotto, EPA stated that these methods meet the requirements of the Clean Water Act and 40 CFR 131.12(a).

On February 14, 2007, the U.S. District Court of Puerto Rico issued an opinion ruling that EPA had failed to execute a mandatory duty to propose antidegradation implementation methods for Puerto Rico and ordered EPA to prepare and publish new or revised water quality standards identifying antidegradation implementation methods for Puerto Rico within 60 days. The court has since granted a 30-day extension.

III. This Proposed Rule

EPA is proposing federal water quality standards identifying methods for implementing Puerto Rico's antidegradation policy. Consistent with section 303(c)(4) of the CWA, if during the Federal rulemaking process, Puerto Rico incorporates into Commonwealth regulation its own antidegradation implementation methods and EPA approves Puerto Rico's action, EPA would not finalize this proposal. In addition, if Puerto Rico incorporates into Commonwealth regulation its own antidegradation implementation methods following publication of a final Federal rule, EPA would withdraw its rule.

A. What Are the Proposed Antidegradation Implementation Methods To Protect Puerto Rico's High Quality Waters?

These proposed antidegradation implementation methods are the same as the implementation methods Puerto Rico provided to EPA in 2004. EPA reviewed those and on July 9, 2004, sent a letter from Walter Mugdan, Director of EPA Region 2's Division of Environmental Planning and Protection Division to Esteban Mujica Cotto, President of Puerto Rico's Environmental Quality Board stating that these methods meet the requirements of 40 CFR 131.12(a). (It should be noted that subsequent to the issuance of EPA's July 9, 2004 letter, EQB incorporated some non-substantive updates to its consolidation of implementation methods. The purpose of these updates is to reflect the fact that the Puerto Rico Environmental Public Policy Act (12 LPRA 8001 *et seq.*), which is one of the referenced documents in the consolidation document, was amended and re-issued on September 22, 2004. The June 17, 2004 version of the consolidation document had referenced the previously applicable version of the Puerto Rico Environmental Public Policy Act. The proposed methods reflect this update).

Consistent with Puerto Rico's antidegradation implementation methods, the proposed methods provide that all point sources would be subject to antidegradation review. The CWA and EPA's regulations leave to the States and authorized Tribes the decision whether to regulate nonpoint sources by requiring that they undergo antidegradation review. *American Wildlands* v. *Browner*, 260 F.3d 1192, 1198 (10th Cir. 2001). To date, Puerto Rico has not chosen to subject nonpoint sources to antidegradation review. As a result, EPA is not proposing to apply Puerto Rico's methods to sources other than point sources.

In addition, as envisioned by Puerto Rico, the proposed methods provide that the antidegradation review would occur as part of Puerto Rico's CWA section 401 certification process. EPA issues all of the National Pollutant Discharge Elimination System (NPDES) permits under CWA section 402 for the Commonwealth of Puerto Rico. As part of this process, Puerto Rico must certify under CWA section 401 that those permits comply with Puerto Rico's water quality requirements. Conducting the antidegradation review process during this certification is a logical time for this review to occur, since this is the time when EQB conducts its formal analysis to determine, in part, if a proposed action will comply with all aspects of the Puerto Rico Water Quality Standards Regulation (PRWQSR).

To implement Tier 1, it is important to explain what is meant by the term ''existing in-stream water use'' (40 CFR 131.12 (a)(1)) and explain how the level of water quality will be identified that is required to allow an existing use to continue to occur. Section 131.3 of the federal regulations defines existing uses as ''those uses actually attained in the water body on or after November 28, 1975 * * * ''. The proposed methods provide that where there are concentrations or levels of a particular pollutant that have caused a waterbody to be listed as impaired under section 303(d) of the CWA, no additional degradation may occur in the waterbody. Puerto Rico's methods provide that this would be assured through water quality-based effluent limits meeting water quality criteria ''end-of-pipe''. EPA believes this approach will protect the quality of water in the waterbody from further degradation, which will lead to the protection of the existing uses.

EPA has articulated that states may take one of two approaches in identifying their high quality waters, also known as Tier 2 of antidegradation: a parameter-by-parameter approach or a waterbody-by-waterbody approach. Under the parameter-by-parameter approach, States and authorized Tribes determine whether water quality is better than the applicable criteria for a

specific parameter or pollutant that would be affected by a new discharge or an increase in an existing discharge of the pollutant. The water body-by-water body approach weighs the chemical, physical, biological, or other factors to judge a water body's overall quality. In EPA's Advanced Notice of Proposed Rulemaking (ANPRM), EPA discussed the advantages and disadvantages to both approaches to designating high quality waters. 63 FR 36782, 36783, July 7, 1998. EPA also discussed these issues in the preamble to its proposed rule regarding antidegradation implementation methods for Kentucky. 67 FR 68971, 67798–99, November 14, 2002. EPA interprets its regulation to authorize either approach. Consistent with the implementation methods identified by Puerto Rico, EPA is today proposing that antidegradation reviews for high quality waters in Puerto Rico occur on a parameter-by-parameter basis.

Under the proposed methods, Puerto Rico would implement protection of waters it identifies as ONRWs, also known as Tier 3 of antidegradation, through a requirement that prohibits point source discharges in ONRWs. As described earlier in this section, the proposed methods mirror those methods already identified by Puerto Rico for implementing its antidegradation implementation policy. EPA believes this approach is more than sufficient to meet the federal requirements at 40 CFR 131.12(a)(3) to maintain and protect the water quality of waters identified as ONRWs and is consistent with Puerto Rico's preferred approach.

Consistent with the antidegradation methods identified by Puerto Rico, the proposed rule includes methods for implementing Puerto Rico's antidegradation policy for permits issued under section 404 of the CWA or permits issued under section 10 of the River and Harbors Act. The proposed methods would require that the discharge of dredged or fill material not have an unacceptable adverse impact either individually or in combination with other activities affecting the wetland before they can be allowed to discharge. Further, the proposed methods provide that any proposed discharge will not be allowed if there is a practicable alternative that would have less adverse impact. With regard to how the permits for these types of activities would be implemented in waters identified by Puerto Rico as ONRWs, the proposed methods provide that any proposed permitted activity under these sections of the statutes be treated the same as NPDES-permitted dischargers, that is, that these types of activities will be prohibited. This approach, also contained in Puerto Rico's methods, would assure that the water quality in waters identified as ONRWs be maintained and protected.

B. How Will Puerto Rico Implement the Proposed Antidegradation Implementation Methods?

Puerto Rico will implement the proposed antidegradation implementation methods through its ongoing CWA section 401 certification process. As described earlier in Section III.A., EPA Region 2 issues the NPDES permits for the Commonwealth of Puerto Rico. The permit issuance and preparation of the water quality certification occurs sequentially as described below.

Section 6.11 of the PRWQSR describes how the EQB will issue CWA section 401 Water Quality Certifications (WQC) for federally-issued permits, such as NPDES permits. This provision provides, in part, that when requesting a WQC, an applicant must submit, as part of the application, all relevant information to demonstrate to the satisfaction of the Board that the proposed action will not cause a violation of any applicable water quality standards in the receiving water body.

Puerto Rico's requirements for conducting CWA section 401 certifications, which include antidegradation reviews, are found in Resolution R–89–2–2 of the Governing Board of EQB—February 2, 1989, and are summarized as follows.

1. EPA Region 2 (the Region) receives an application from a discharger for a NPDES permit, or for the renewal or modification of an existing NPDES permit. The applicant also submits a copy of the application to the EQB.

2. The Region reviews the application, and, if necessary, obtains additional information from the applicant. After all information is submitted, and EPA completes its review, EPA solicits certification from EQB in accordance with 40 CFR Part 124.

3. EQB evaluates the application/draft permit and issues or denies a 401 certification, or waives the right. (EQB will not waive the right when an initial environmental assessment indicates that the discharge for which a permit is sought will have a significant impact on the environment, triggering the need for an antidegradation review.) In summary, if EQB plans to certify the discharge, an intent to issue a WQC will be prepared. If EQB plans to deny the certification, an intent to deny a WQC will be prepared, including the basis of the determination that the discharge will not comply with applicable water quality standards. A copy of the intent to issue or deny a WQC, whichever the case, will be sent to EPA and the petitioner. A public notice and comment period follows. EQB then decides to issue the WQC or denial. Petitioners have the ability to seek reconsideration before the WQC decision becomes final.

4. In conducting an antidegradation review as part of the CWA section 401 certification process, EQB first determines which level of antidegradation applies based upon a review of existing water quality data, and other required information, to be provided by the applicant. Based upon this review, EQB then determines if additional information is necessary in order to make a determination. In the case of Tier I waters, a determination is made as to whether a discharge would lower water quality such that it would no longer be sufficient to protect and maintain the existing and designated uses of that water body. When the assimilative capacity of a water body is determined to be insufficient to protect existing and designated uses with an additional load to the water body, EQB does not allow a discharge increase by requiring that the applicable water quality standards be met at the end of the pipe. In order to allow the lowering of water quality in Tier 2 waters, EQB evaluates the existing and protected quality of the receiving water on a parameter-by-parameter basis. In those cases where a potential increase in loading from a discharge may result in the lowering of water quality, the applicant must show and justify the necessity for such lowering of water quality. As part of the Tier 2 antidegradation review process, EQB provides a public comment period of at least 30 days. In the case of Tier 3 waters, no point source discharge will be allowed.

5. If EQB issues a 401 certification, then EPA Region 2 incorporates the WQC into the draft permit and issues public notice of its intention to issue a final permit pursuant to 40 CFR Part 122.

C. What Are the Cost Implications of the Proposed Rule?

Puerto Rico's existing antidegradation implementation methods are the same as the antidegradation methods set forth in this proposed rule. Thus, while not in regulation, the proposed implementation methods are already in place in Puerto Rico and as such, EPA's proposed antidegradation methods are not expected to result in any additional monetary costs. Nonetheless, EPA prepared an analysis to evaluate

potential impacts to the Commonwealth of Puerto Rico associated with future implementation of EPA's Federal standards. This analysis is documented in the ''Economics Analysis of Proposed Antidegradation Implementation Methods for the Commonwealth of Puerto Rico,'' which can be found in the record for this rulemaking and concludes that the total annualized costs of EPA's proposed rule for both the Commonwealth and the point source dischargers could range from $14,500 to $32,900.

Any NPDES-permitted facility that discharges to water bodies affected by this proposed rule could potentially incur costs to comply with the rule's provisions. The types of affected facilities may include industrial facilities and publicly owned treatment works (POTWs). EPA did not consider the potential costs for nonpoint sources, such as agricultural and forestry-related nonpoint sources, because EPA's proposed rule would only require that antidegradation be applied to point sources. In addition, EPA did not address the potential monetary benefits of this proposed rule for Puerto Rico.

1. Identifying Affected Entities

EPA identified approximately 265 point source facilities that may be affected by the rule. Of these potentially affected facilities, 76 are classified as major dischargers, and 189 are minor dischargers.

Exhibit 1 provides a summary of facilities that are currently permitted to discharge to Puerto Rico surface waters, as identified in EPA's Permit Compliance System (PCS). There are a total of 265 facilities, 71 percent of which are minor dischargers.

EXHIBIT 1.—POTENTIALLY AFFECTED INDIVIDUAL NPDES PERMITTED DISCHARGERS IN PUERTO RICO

Facility type	Number of facilities		
	Majors [1]	Minors [2]	Total
Municipal	36	33	69
Industrial	40	156	196
Total	76	189	265

Sources: U.S. EPA (2007) and U.S. EPA Region 2 (2007).

[1] Major dischargers are facilities discharging greater than 1 million gallons per day (mgd) and likely to discharge toxic pollutants in toxic amounts.

[2] Minor dischargers are defined as facilities discharging less than 1 million gallons per day (mgd) and not likely to discharge toxic pollutants in toxic amounts.

In the case of Tier 1 waters, EQB would make a determination as to whether a discharge would lower water quality such that it would no longer be sufficient to protect and maintain the existing and designated uses of that water body. For Tier 2 waters, EQB would evaluate the existing and protected quality of the receiving water on a parameter-by-parameter basis. Under this approach, EQB would determine whether water quality is better than the applicable criteria for a specific parameter or pollutant that would be affected by a new discharge or an increase in an existing discharge of the pollutant. In addition, no point source discharges would be allowed to Tier 3 waters.

2. Method for Estimating Potential Compliance Costs

EPA Region 2 indicates that is has received five antidegradation review requests within the last five years, or approximately one request per year. This includes antidegradation reviews for both existing and new facilities. EPA assumed that each type of facility (e.g., major municipal, minor municipal, major industrial, and minor industrial) is equally likely to request an antidegradation review.

Costs for the proposed antidegradation implementation methods include costs to facilities for preparing the review material and necessary data, and costs associated with the Commonwealth's review of the facility information and certification process. The cost incurred by facilities represents the cost of a preliminary engineering analysis and the subsequent financial analysis for which EPA provides guidance and a workbook. This analysis could cost between one percent and three percent of the installed cost of additional pollution controls.

The cost potentially incurred by Puerto Rico's Environmental Quality Board (EQB) represents the cost of reviewing the engineering cost analysis and financial impact analysis, validating source data and checking calculations, evaluating the engineering design and the conclusions regarding potential financial and community impacts, evaluating the information provided regarding the importance of the proposed development to the economic and social conditions of the affected community, and reviewing and responding to comments from the public. EPA estimated the total time requirement to process each request to be 140 hours.

3. Results

Based on the potential number of antidegradation requests, EPA estimated that point source dischargers may incur total annual costs from $9,200 to $27,600 per year. EPA also estimated that Puerto Rico's EQB may incur annual costs to review the requests of approximately $5,300. Thus, total annual costs of the proposed rule could be $14,500 to $32,900.

D. Request for Comment

EPA solicits comment on the antidegradation methods it is proposing. The Agency will evaluate any comments, data and information submitted to EPA by the close of the public comment period. After full consideration of such comments, data, and information, EPA will make a final decision on the appropriateness of the antidegradation methods it is proposing.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866 (Regulatory Planning and Review)

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

Puerto Rico is already implementing the antidegradation methods set forth in this proposed rule. Therefore, these EPA-proposed methods are not expected to result in any additional monetary costs. However, EPA has prepared an analysis of the costs and benefits of the Puerto Rico antidegradation policy and

methods. This analysis is contained in the ''Economic Analysis of Proposed Antidegradation Implementation Methods for the Commonwealth of Puerto Rico''. A copy of the analysis is available in the docket for this action and is briefly summarized in Section IV. of today's notice.

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995. It does not include any information collection, reporting or recordkeeping requirements.

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; 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.

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 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering these economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Puerto Rico's existing antidegradation implementation methods are the same as the antidegradation implementation methods set forth in this proposed rule. Thus, while not in regulation, the proposed implementation methods are already in place in Puerto Rico and, as a result, the proposed implementation methods are not expected to result in any additional monetary costs. Nonetheless, EPA prepared an analysis to evaluate potential impacts to the Commonwealth of Puerto Rico associated with future implementation of EPA's Federal standards. This analysis is documented in the ''Economic Analysis of Proposed Antidegradation Implementation Methods for the Commonwealth of Puerto Rico,'' which can be found in the record for this rulemaking.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, this rule is not subject to the requirements of section 203 of the Unfunded Mandates Reform Act.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule would not affect the nature of the relationship between EPA and States generally, for the rule would only apply to waters within Puerto Rico's jurisdiction. Further the proposed rule would not substantially affect the relationship of EPA and the Commonwealth of Puerto Rico, or the distribution of power or responsibilities between EPA and the various levels of government. Because Puerto Rico is already implementing these proposed antidegradation methods, this proposed rule would not change the Commonwealth's ability to implement these methods. Further, this proposed rule would not preclude Puerto Rico from adopting its own antidegradation methods that meet the requirements of the CWA into its own regulations. Thus, Executive Order 13132 does not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this proposed

rule, EPA did consult with the Commonwealth of Puerto Rico in developing this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175, because no Indian Tribal Governments exist in Puerto Rico. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

Executive Order 13045: ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant and EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)

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

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The antidegradation implementation methods set forth in this proposed rule are the same as the implementation methods Puerto Rico provided to EPA in 2004, which Puerto Rico is already implementing.

K. Endangered Species Act

EPA is transmitting this proposed rule to the FWS and NMFS for review and comment concurrent with the publication of today's notice. That transmittal constitutes EPA's initiation of informal consultation with the Services on this rulemaking, pursuant to section 7 of the Endangered Species Act and its implementing regulations. EPA will continue to work closely with the Services to ensure that the final rule will not adversely affect or jeopardize the continued existence of threatened or endangered species or their critical habitat.

List of Subjects in 40 CFR Part 131

Environmental protection, Antidegradation, Water quality standards.

Dated: May 10, 2007.

Stephen L. Johnson,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

2. Section 131.42 is added to read as follows:

§ 131.42 Antidegradation Implementation Methods for the Commonwealth of Puerto Rico.

(a) General Policy Statement. (1) All point sources of pollution are subject to an antidegradation review.

(2) An antidegradation review shall be initiated as part of the Section 401—''Water Quality Certification Process'' of the Clean Water Act.

(3) The 401 Certification Process shall follow the procedures established by the February 2, 1989 Resolution R–89–2–2 of the Governing Board of the Puerto Rico Environmental Quality Board (EQB).

(4) The following are not subject to an antidegradation review due to the fact that they are non discharge systems and are managed by specific applicable Puerto Rico regulations:

(i) All nonpoint sources of pollutants.

(ii) Underground Storage Tanks.

(iii) Underground Injection Facilities.

(5) The protection of water quality shall include the maintenance, migration, protection, and propagation of desirable species, including threatened and endangered species identified in the local and federal regulations.

(b) Definitions. (1) All the definitions included in Article 1 of the Puerto Rico Water Quality Standards Regulation (PRWQSR), as amended, are applicable to this procedure.

(2) *High Quality Waters:*

(i) Are waters whose quality is better than the mandatory minimum level to

support the CWA Section 101(a)(2) goals of propagation of fish, shellfish, wildlife and recreation in and on the waters. High Quality Waters are to be identified by EQB on a parameter-by-parameter basis.

(ii) [Reserved].

(3) *Outstanding National Resources Waters (ONRW):*

(i) Are waters classified as SA or SE in the PRWQSR, as amended, or any other water designated by Resolution of the Governing Board of EQB. ONRWs are waters that are recreationally or ecologically important, unique or sensitive.

(ii) [Reserved].

(c) Antidegradation Review Procedure. (1) The antidegradation review will commence with the submission of the CWA Section 401 water quality certification request. EQB uses a parameter-by-parameter approach for the implementation of the anti-degradation policy and will review each parameter separately as it evaluates the request for certification. The 401 certification/antidegradation review shall comply with Article 4(B)(3) of the Puerto Rico Environmental Public Policy Act, (Law No. 416 of September 22, 2004, as amended (12 LPRA 8001 *et seq.*). Compliance with Article 4(B)(3) shall be conducted in accordance with the Reglamento de la Junta de Calidad Ambiental para el Proceso de Presentación, Evaluación y Trámite de Documentos Ambientales (EQB's Environmental Documents Regulation). As part of the evaluation of the Environmental Document an alternatives analysis shall be conducted (12 LPRA 8001(a)(5), EQB's Environmental Documents Regulation, e.g., Rules 211E and 253C), and a public participation period and a public hearing shall be provided (12 LPRA 8001(a), EQB's Environmental Documents Regulation, Rule 254).

(2) In conducting an antidegradation review, EQB will sequentially apply the following steps:

(i) Determine which level of antidegradation applies:

(A) Tier 1—Protection of Existing and Designated Uses.

(B) Tier 2—Protection of High Quality Waters.

(C) Tier 3—Protection of ONRWs.

(ii) [Reserved].

(3) Review existing water quality data and other information submitted by the applicant. The applicant shall provide EQB with the information regarding the discharge, as required by the PRWQSR including, but not limited to the following:

(i) A description of the nature of the pollutants to be discharged.

(ii) Treatment technologies applied to the pollutants to be discharged.

(iii) Nature of the applicant's business.

(iv) Daily maximum and average flow to be discharged.

(v) Effluent characterization.

(vi) Effluent limitations requested to be applied to the discharge according to Section 6.11 of the PRWQSR.

(vii) Location of the point of discharge.

(viii) Receiving waterbody name.

(ix) Water quality data of the receiving waterbody.

(x) Receiving waterbody minimum flow (7Q2 and 7Q10) for stream waters.

(xi) Location of water intakes within the waterbody.

(xii) In the event that the proposed discharge will result in the lowering of water quality, data and information demonstrating that the discharge is necessary to accommodate important economic or social development in the area where the receiving waters are located.

(4) Determine if additional information or assessment is necessary to make the decision.

(5) Prepare an intent to issue or deny the 401 water quality certificate and publishes a notice in a newspaper of wide circulation in Puerto Rico informing the public of EQB's preliminary decision and granting a public participation period of at least thirty (30) days.

(6) Address the comments received from the interested parties and consider such comments as part of the decision making process.

(7) Make the final determination to issue or deny the requested 401 certification. Such decision is subject to the reconsideration procedure established in Law 170 of August 12, 1988, *Ley de Procedimiento Administrativo Uniforme del Estado Libre Asociado de Puerto Rico* (3 LPRA 2165).

(d) Implementation Procedures. (1) Activities Regulated by NPDES Permits

(i) Tier 1—Protection of Existing and Designated Uses:

(A) Tier 1 waters are:

(1) Those waters of Puerto Rico (except Tier 2 or Tier 3 waters) identified as impaired and that have been included on the list required by Section 303(d) of the CWA; and

(2) Those waters of Puerto Rico (except Tier 2 and Tier 3 waters) for which attainment of applicable water quality standards has been or is expected to be, achieved through implementation of effluent limitations more stringent than technology-based controls (Best Practicable Technology, Best Available Technology and Secondary Treatment).

(B) To implement Tier 1 antidegradation, EQB shall determine if a discharge would lower the water quality to the extent that it would no longer be sufficient to protect and maintain the existing and designated uses of that waterbody.

(C) When a waterbody has been affected by a parameter of concern causing it to be included on the 303(d) List, then EQB will not allow an increase of the concentration of the parameter of concern or pollutants affecting the parameter of concern in the waterbody. This no increase will be achieved by meeting the applicable water quality standards at the end of the pipe. Until such time that a Total Maximum Daily Load (TMDL) is developed for the parameter of concern for the waterbody, no discharge will be allowed to cause or contribute to further degradation of the waterbody.

(D) When the assimilative capacity of a waterbody is not sufficient to ensure maintenance of the water quality standard for a parameter of concern with an additional load to the waterbody, EQB will not allow an increase of the concentration of the parameter of concern or pollutants affecting the parameter of concern in the waterbody. This no increase will be achieved by meeting the applicable water quality standards at the end of the pipe. Until such time that a TMDL is developed for the parameter of concern for the waterbody, no discharge will be allowed to cause or contribute to further degradation of the waterbody.

(ii) Tier 2—Protection of High Quality Waters:

(A) To verify that a waterbody is a high quality water for a parameter of concern which initiates a Tier 2 antidegradation review, EQB shall evaluate and determine:

(1) The existing water quality of the waterbody;

(2) The projected water quality of the waterbody pursuant to the procedures established in the applicable provisions of Articles 5 and 10 of the PRWQSR including but not limited to, Sections 5.2, 5.3, 5.4, 10.2, 10.3, 10.4, 10.5, and 10.6;

(3) That the existing and designated uses of the waterbody will be fully maintained and protected in the event of a lowering of water quality.

In multiple discharge situations, the effects of all discharges shall be evaluated through a waste load allocation analysis in accordance with the applicable provisions of Article 10 of the PRWQSR or the applicable

provisions of Article 5 regarding mixing zones.

(B) In order to allow the lowering of water quality in high quality waters, the applicant must show and justify the necessity for such lowering of water quality through compliance with the requirements of Section 6.11 of the PRWQSR. EQB will not allow the entire assimilative capacity of a waterbody for a parameter of concern to be allocated to a discharger, if the necessity of the requested effluent limitation for the parameter of concern is not demonstrated to the full satisfaction of EQB.

(iii) Tier 3—Protection of ONRWs:

(A) EQB may designate a water as Class SA or SE (ONRWs) through a Resolution (PRWQSR Sections 2.1.1 and 2.2.1). Additionally, any interested party may nominate a specific water to be classified as an ONRW and the Governing Board of EQB will make the final determination. Classifying a water as an ONRW may result in the water being named in either Section 2.1.1 or 2.2.2 of the PRWQSR, which would require an amendment of the PRWQSR. The process for amending the PRWQSR, including public participation, is set forth in Section 8.6 of said regulation.

(B) The existing characteristics of Class SA and SE waters shall not be altered, except by natural causes, in order to preserve the existing natural phenomena.

(1) No point source discharge will be allowed in ONRWs.

(2) [Reserved].

(2) Activities Regulated by CWA Section 404 or Rivers and Harbors Action Section 10 Permits (Discharge of dredged or fill material)

(i) EQB will only allow the discharge of dredged or fill material into a wetland if it can be demonstrated that such discharge will not have an unacceptable adverse impact either individually or in combination with other activities affecting the wetland of concern. The impacts to the water quality or the aquatic or other life in the wetland due to the discharge of dredged or fill material should be avoided, minimized and mitigated.

(ii) The discharge of dredged or fill material shall not be certified if there is a practicable alternative to the proposed discharge which would have less adverse impact on the recipient ecosystem, so long as the alternative does not have other more significant adverse environmental consequences. Activities which are not water dependent are presumed to have practicable alternatives, unless the applicant clearly demonstrates otherwise. No discharge of dredged and fill material shall be certified unless appropriated and practicable steps have been taken which minimize potential adverse impacts of the discharge on the recipient ecosystem. The discharge of dredged or fill material to ONRWs, however, shall be governed by paragraph (d)(1)(iii) of this section.

[FR Doc. E7–9409 Filed 5–16–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 041307D]

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea/Aleutian Islands Fishery Resources; Notice of Limited Access Privilege Program Public Workshop

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

ACTION: Notification of public workshop.

SUMMARY: NMFS will present a public workshop on the proposed program to implement the Amendment 80 Program (Program) for potentially eligible participants and other interested parties. The Program would implement a limited access privilege program (LAPP) for specific groundfish fisheries in the Bering Sea and Aleutian Islands management area (BSAI). At the workshop, NMFS will provide an overview of the proposed Program, discuss the key proposed Program elements, and answer questions. NMFS is conducting this public workshop to provide assistance to fishery participants in understanding and reviewing this proposed Program.

DATES: The workshop will be held on Wednesday, May 23, 2007, from 1 p.m. to 4 p.m. Pacific standard time.

ADDRESSES: The workshop will be held at the Leif Erikson Lodge, 2245 NW 57th Street, Seattle, WA 98119.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228 or *glenn.merrill@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS intends to publish a proposed rule that would implement a LAPP for Amendment 80 to the Fishery Management Plan for BSAI Groundfish (FMP). Among other things, Amendment 80 would allocate specific BSAI groundfish resources among a defined group of harvesters under a LAPP; limit the bycatch of halibut and crab resources; assign Amendment 80 quota share (QS) that could be used to yield an exclusive harvest privilege on an annual basis; allow Amendment 80 QS holders to form a cooperative with other Amendment 80 QS holders on an annual basis to receive an exclusive harvest privilege; implement use caps to limit the amount of Amendment 80 QS a person could hold; limit the total amount of catch in other groundfish fisheries that could be taken by participants in the Program; ensure minimum retention of groundfish while fishing in the BSAI; and establish necessary monitoring and enforcement standards. Amendment 80 was approved by the North Pacific Fishery Management Council (Council) on June 9, 2006.

In addition to other laws, the Program is specifically designed to meet the requirements of:

- Section 219 of the Consolidated Appropriations Act of 2005 (Public Law 108–447; December 8, 2004), which defined the Amendment 80 sector and implemented a capacity reduction program for several catcher/processor sectors;
- Section 416 of the Coast Guard and Maritime Transportation Act of 2006 (Public Law 109–241; July 11, 2006), which amended provisions of the Community Development Quota (CDQ) Program in the Magnuson-Stevens Fishery Conservation and Management Act (MSA); and
- The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Public Law 109–479, January 12, 2007), which modified provisions related to the CDQ Program and instituted other measures applicable to LAPPs.

NMFS anticipates that a proposed rule implementing the Program will be published by mid-May. NMFS is conducting this public workshop to provide assistance to fishery participants in understanding and reviewing the proposed requirements. At the workshop, NMFS will provide an overview of the proposed Program, and discuss the key Program elements, including: quota share application; cooperative and limited access participation provisions; cooperative quota transfer provisions; measures to establish sideboard limits to protect non-LAPP fishery participants, the appeals process; catch accounting; monitoring and enforcement; and electronic reporting. Additionally, NMFS will answer questions from workshop participants. For further information on the Program, please visit

the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov*.

Special Accommodations

This workshop is physically accessible to people with disabilities. Requests for special accommodations should be directed to Glenn Merrill (see **FOR FURTHER INFORMATION CONTACT**) at least 5 working days before the workshop date.

Dated: May 11, 2007.

James P. Burgess

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

[FR Doc. E7–9530 Filed 5–16–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 72, No. 95

Thursday, May 17, 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.

DEPARTMENT OF AGRICULTURE

Forest Service

Nez Perce National Forest, Idaho County; ID; Designated Route and Motorized Vehicle Use

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Nez Perce National Forest is undergoing planning efforts to comply with the designated routes and areas for motor vehicle use rule of November 9, 2005. The forest is proposing to analyze motorized routes and areas forest-wide to determine a base system, while considering the needs of the users, resources effects, rule requirements, and fiscal capabilities for continued maintenance.

DATES: Comments concerning the scope of the analysis must be received by 45 days after the date of publication in the **Federal Register**. The draft environmental impact statement is expected June of 2008 and the final environmental impact statement is expected February 2009.

ADDRESSES: Send written comments to Jane Cottrell, Forest Supervisor, 1005 Highway 13, Grangeville, ID 83530, Attn: Designated Routes and Areas for Motor Vehicle Use.

The Nez Perce National Forest has scheduled public meetings, to be held in three separate locations, to introduce this project and discuss the most effective ways the public can become involved. Meetings will take place in Elk City, ID on May 29, in Grangeville, ID on May 30, and in Riggins, ID on May 31, 2007. Additional information will be provided in the local newspaper prior to meeting times.

FOR FURTHER INFORMATION CONTACT: Alexandra Botello, Project Lead, 1005 Highway 13, Grangeville, ID 83530, Attn: Designated Routes and Areas for Motor Vehicle Use.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

In November 2005, the USDA published the *Travel Management; Designated Routes and Areas for Motor Vehicle Use; Final Rule [36 CFR parts 212, 251, 261, and 295] (the rule)*. This rule requires designations of those roads, trails, and areas that are open to motor vehicle use. Designations will be made by class of vehicle, and if appropriate, by time of year. The final rule prohibits the use of motor vehicles off the designated system, as well as the use of motor vehicles on routes and in areas not consistent with those designations. The rule seeks to create a system of routes and areas where motorized use is appropriate. The primary difference from our current system that will occur when implementing the rule is that routes and areas are closed to motorized use unless specifically designated open.

The following vehicles and uses are exempt from Provisions in the rule [36 CFR 212.51]:

Aircraft, Watercraft, Over-snow vehicles, Limited administrative use by Forest Service, Use of any fire, military, emergency, of law enforcement vehicles for emergency purposes, Authorized use of any combat or combat support vehicle for national defense purposes, Law enforcement [in] response to violations of law, and, any motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulation.

Current direction for the Nez Perce National Forest, under the *Nez Perce National Forest Plan (1987) Amendment No. 2, October 1988,* allows cross-country motorized travel unless otherwise designated closed.

The Designated Routes and Areas for Motor Vehicle Use planning effort is designed to bring the direction for the Nez Perce National Forest in compliance with the Executive orders of the rule that ''direct Federal agencies to ensure that the use of off road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among various uses of those lands''.

Proposed Action

The proposed action is to designate the current National Forest System (NFS) motorized routes on the Nez Perce National Forest, under class of vehicle and seasons of use, as they are presently (April, 2007). This action would close the forest to cross-country motorized travel except in specifically designated areas or to over snow vehicle use (see attached map and legend).

The proposed action also includes a distance 300 feet from center of road which allows for motorized use for the purposes of dispersed camping only, in areas where geography and resource protection are not limiting factors (*e.g.,* cliffs, streams, etc.).

This action does not supersede CFR 261.12 National Forest System roads and trails; * * * *prohibition (c) Damaging and leaving in a damaged condition any such road, trail, or segment thereof.* Nor will this action supersede CFR 261.15 Use of vehicles off roads; *It is prohibited to operate any vehicle off National Forest System, State, or County roads; (h) In a manner which damages or unreasonably disturbs the land, wildlife, or vegetative resources.*

Responsible Official

Jane Cottrell, Forest Supervisor, Nez Perce National Forest, 1005 Highway 13, Grangeville, ID 83530 is the responsible official for this proposal.

Nature of Decision To Be Made

The Nez Perce National Forest will decide what routes and areas are appropriate to designate and manage for motor vehicle use by class of vehicle and seasons of use. Additionally, we will determine whether to amend the Nez Perce Forest Plan to remove certain existing standards applicable to motorized routes and area management.

Scoping Process

The U.S. Forest Service uses the process required by the National Environmental Policy Act (NEPA). NEPA requires a systematic, interdisciplinary approach to ensure integrated application of the natural and social sciences and the environmental design arts in any planning and decisionmaking that affects the human environment (42 U.S.C. 4332(2)(A)). Comments are accepted for 45 days after notification in the **Federal Register.** These comments help identify significant issues and/or eliminate nonsignificant issues from detailed study in the environmental impact statement.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. The Nez Perce National Forest is seeing comments and issues you may have regarding this project. Comments are most useful if they are specific.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues nd concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection. (Authority:

40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.)

Dated: May 10, 2007.

Jane L. Cottrell,

Nez Perce National Forest Supervisor.

[FR Doc. 07–2419 Filed 5–16–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket T–3–2007]

Foreign–Trade Zone 7 - - Mayaguez, Puerto Rico, Application for Temporary/Interim Manufacturing Authority, Merck Sharpe & Dohme Quimica De Puerto Rico, Inc., (Pharmaceutical Products), Caguas, Puerto Rico

An application has been submitted to the Executive Secretary of the Foreign–Trade Zones Board (the Board) by the Puerto Rico Industrial Development Company (PRIDCO), grantee of FTZ 7, requesting temporary/interim manufacturing (T/IM) authority within FTZ 7 at the MOVA Pharmaceutical Corporation (MOVA) facility in Caguas, Puerto Rico, on behalf of Merck Sharp & Dohme Quimica De Puerto Rico, Inc. (MSDQ). The application was filed on May 10, 2007.

The MOVA facility (650 employees, 250,000 sq. ft.) is located at State Road 1, Km 34.8, within the Villa Blanca Industrial Park in Caguas (Site 1, Parcel 2). T/IM procedures would be used for pharmaceutical manufacturing involving two products, MK–431A and sitagliptin (HTSUS 3004.90 and 2933.59) on behalf of MSDQ for the U.S. market and export. Foreign components that would be used in the manufacturing process (up to 25% of total content) include sitagliptin, metformin hydrochloride, enamine amide and butyl josphos (duty rates of 3.7 to 6.5%). MSDQ has also submitted a request for permanent FTZ manufacturing authority (which will be docketed with the Board separately).

FTZ procedures would exempt MSDQ from Customs duty payments on foreign components used in production for export to non–NAFTA countries. For domestic and NAFTA markets, MSDQ could select the duty rate that applies to the finished product (duty–free to 6.5%) for the components used in production when the finished products are entered for U.S. consumption from the zone. The application indicates that the company would also realize duty deferral and certain logistical/supply chain savings.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. The closing period for receipt of comments is June 18, 2007.

A copy of the application will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at the address listed above. For further information, contact Christopher Kemp at: *christopher__kemp@ita.doc.gov*, or (202) 482–0862.

Dated: May 10, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–9539 Filed 5–16–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–830]

Carbon and Certain Alloy Steel Wire Rod from Mexico: Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska or John Conniff, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230; telephone: (202) 482–8362 or (202) 482–1009, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 2006, the Department of Commerce (''Department'') published a notice of initiation of the administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Mexico, covering the period October 1, 2005, to September 30, 2006. *See Initiation of Antidumping and*

Countervailing Duty Administrative Reviews and Request for Revocation in Part (71 FR 68535). The preliminary results of this review are currently due no later than July 3, 2007.

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245-day period to issue its preliminary results by up to 120 days.

We determine that completion of the preliminary results of this review within the 245-day period is not practicable for the following reasons. There have been significant changes in the ownership and operating structure of Hylsa from the previous review period. To conduct the sales and cost analyses of Hylsa requires the Department to gather and analyze a significant amount of information pertaining to Hylsa's modified sales practices, manufacturing costs and corporate relationships. Given the number and complexity of issues in this case, and in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review to 365 days. Therefore, the preliminary results are now due no later than October 31, 2007. The final results continue to be due 120 days after publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: May 11, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–9540 Filed 5–16–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–549–817)

Certain Hot–Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has conducted an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from Thailand produced and/or exported by Nakornthai Strip Mill Public Co., Ltd. (''NSM'') and G Steel Public Company Limited (''G Steel''). The period of review (''POR'') is November 1, 2004, through October 31, 2005. Based on our analysis of comments received, we have made certain clerical error corrections for these final results which change the margin. The final results are listed below in the ''Final Results of Review'' section.

EFFECTIVE DATE: May 17, 2007.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Angelica Mendoza, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230; telephone: (202) 482–0193 and (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 8, 2006, the Department published the preliminary results and partial rescission of its administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products (''hot–rolled steel'') from Thailand. *See Certain Hot–Rolled Carbon Steel Flat Products From Thailand; Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part*, 71 FR 65458 (November 8, 2006) (*Preliminary Results*).

We invited parties to comment on our *Preliminary Results*. We received case briefs from respondent NSM, United States Steel Corporation (''petitioner''), and a domestic interested party, Nucor Corporation (''Nucor''), on January 8, 2007. We received rebuttal briefs from NSM, petitioner and Nucor on January 16, 2007. No public hearing was held.

Additionally, on November 8, and November 13, 2006, the Department issued supplemental questionnaires: one regarding possible affiliation between NSM and Siam Cement Group (''Siam'') and one requesting certain additional cost information. NSM provided responses to these supplemental questionnaires on November 17, and November 21, 2006, respectively.

Because the Department determined that it was not practicable to complete the final results of this review within the original time period, the Department extended the time limit for completion of the final results of this administrative review in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''). *See Certain Hot–Rolled Carbon Steel Flat Products from Thailand: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 72 FR 9515 (March 2, 2007).

Partial Rescission

In our *Preliminary Results*, we announced our preliminary decision to rescind the review with respect to G Steel because this company had no entries of hot–rolled steel from Thailand during the POR. *See Preliminary Results*. We have received no new information contradicting this decision. Therefore, we are rescinding the administrative review with respect to G Steel.

Scope of the Antidumping Duty Review

The products covered by this antidumping duty review are certain hot–rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this review.

Specifically included within the scope of this review are vacuum degassed, fully stabilized (commonly referred to as interstitial–free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro–alloying levels of elements such as titanium or niobium

(also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this review, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: i) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this review unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this review:

• Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).

• Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.

• Ball bearing steels, as defined in the HTSUS.

• Tool steels, as defined in the HTSUS.

• Silico–manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.

• ASTM specifications A710 and A736.

• USS abrasion–resistant steels (USS AR 400, USS AR 500).

• All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

• Non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this review is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled carbon steel flat products covered by this review, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and CBP purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

The Department has received case and rebuttal briefs from petitioner, Nucor and NSM. All case and rebuttal briefs for the final results are addressed in the ''Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review of Certain Hot–Rolled Carbon Steel Flat Products from Thailand'' from Stephen J. Claeys, Deputy Assistant Secretary, Import Administration, to David M. Spooner, Assistant Secretary, Import Administration, dated May 7, 2007 (Decision Memorandum), which is hereby adopted by this notice. Additionally, certain issues that contain proprietary information and arguments are addressed in the memorandum ''Proprietary Arguments from the Issues and Decision Memorandum for the Final Results of Certain Hot–Rolled Carbon Steel Flat Products from Thailand'' from Stephen J. Claeys, Deputy Assistant Secretary, Import Administration, to David M. Spooner, Assistant Secretary, Import Administration, dated May 7, 2007 (Proprietary Decision Memorandum), which is also hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that petitioner, Nucor, and NSM have raised and to which we have responded to in the Decision Memorandum and Proprietary Decision Memorandum. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the Decision Memorandum, which is on file in the Department's Central Records Unit, located at 14th Street and Constitution Avenue, NW, Room B–099. In addition, a complete version of the Decision Memorandum can be accessed directly on the Import Administration website at *http://ia.ita.doc.gov/* under the heading **Federal Register Notices**. The paper copy and electronic version of the Decision Memorandum are identical in content. Access to the proprietary version of the Proprietary Decision Memorandum is only through administrative protective order.[1]

Changes Since the Preliminary Results

Based on our analysis of comments received, we made the following changes from the preliminary results:

1) We recalculated comparison market net price and duty drawback to avoid double conversion;

2) We adjusted NSM's reported costs to reflect the higher of transfer price or market price for the scrap purchased from one of NSM's affiliated suppliers *(i.e.,* transactions disregarded rule);

3) We constructed a market price for a particular type of scrap with no market price for the purpose of applying the major input rule under section 773(f)(3) of the Act;

4) We adjusted variable cost of manufacture to account for scrap purchases and losses on scrap; and

5) We used home market net quantity in our analysis.

Final Results of Review

We determine that the following dumping margin exists for the period November 1, 2004, through October 31, 2005:

Manufacturer/Exporter	Margin (Percent)
NSM	8.23

[1] A public version of the Proprietary Decision Memorandum is on file in the Department's Central Records Unit, located at 14th Street and Constitution Avenue, NW, Room B-099.

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1)(B) of the Act, and 19 CFR 351.212(b). The Department calculated importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these final results of reviews for which the reviewed companies did not know their 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* Notice of Policy Concerning Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003). Antidumping duties for the rescinded company G Steel, shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(I). 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

The following deposit requirements will be effective upon publication of this notice of final results of administrative review all shipments of hot–rolled steel from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates indicated above; (2) for previously 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, or in the less–than-fair–value (''LTFV'') investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.86 percent, the ''all others'' rate established in the LTFV investigation (66 FR 49622 September 28, 2001). These deposit requirements shall remain in effect until further notice.

Notification of Interested Parties

This notice also serves as a final 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 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 doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') 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 final results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 7, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Comment 1: Affiliation

Comment 2: Date of Sale

Comment 3: Major Input Rule

Comment 4: Depreciation Expense

Comment 5: Commissions Offset

Comment 6: Clerical Errors

[FR Doc. E7–9526 Filed 5–16–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[XRIN: 0648–XA33]

Western Pacific Regional Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The 95th meeting of the Western Pacific Regional Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) meeting will be held between 9 a.m. and 5 p.m. on Tuesday, June 12, 2007, and between 8:30 am and 5 p.m. on Wednesday and Thursday June 13–14, 2007.

DATES: The SSC will convene Tuesday, June 12, 2007, through Thursday June 14, 2007(see **SUPPLEMENTARY INFORMATION** for the agenda).

ADDRESSES: The SSC meeting will be held at the Council Office Conference Room, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808)-522–8220.

SUPPLEMENTARY INFORMATION:

Agenda

9 a.m. Tuesday, June 12, 2007

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Approval of the Minutes of the 94th Meeting
4. Report from the NMFS Pacific Science Center Director
5. Insular Fisheries

A. Bottomfish and Seamount Groundfish

1. MHI Bottomfish (ACTION ITEM)
   a. Seasonal Closures, TACs and Commercial Reporting
   b. Recreational Permits and Reporting
   c. Federal Recreational Bag Limits
2. Risk Analysis of Potential TACs
3. Updated Analysis of HDAR Survey of BF Registered Vessel Owners
4. Bottomfish education and outreach program
5. Advisory Panel Recommendations
6. Public Comment
7. Discussion and Recommendations

B. **Precious Corals**

1. Potential for Auau Limited Entry Program (ACTION ITEM)
2. Plan Team Recommendations

3. Public Comment
4. Discussion and Recommendations

8:30 a.m. Wednesday, June 13, 2007

6. Pelagic Fisheries
A. Longline Management
1. Longline Tuna TAC Framework (ACTION ITEM)
2. Guam Longline Area Closure (ACTION ITEM)
3. Review of Report on Transferred Effects
B. American Samoa and Hawaii Longline Quarterly Reports
C. International Fisheries
1. ISC Bycatch Working Group
2. IATTC Stock Assessment Working Group
3. WCPFC- SC3 Agenda
4. SPC/PNG Tuna Tagging
5. FAO Report
D. Plan Team Recommendations
E. Advisory Panel Recommendations
F. Public Comment
G. Discussion and Recommendations

8:30 a.m. Thursday, June 14, 2007

7. Ecosystem And Habitat
A. Use of Traditional Knowledge in Marine Resource Management
B. Report on American Samoa Coral Reef Fisheries
C. Report on Hawaii Ulua Tagging Data Analysis
D. Report on MSRA Annual Catch Limit Guidance
E. Advisory Panel Recommendations
F. REAC Reports
G. Public Comment
H. Discussion and Recommendations
8. Other Business
A. 96th SSC meeting
9. Summary of SSC Recommendations to the Council

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808)522–8220 (voice) or (808)522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: May 14, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–9487 Filed 5–16–07; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments on the proposed follow-up survey for the National Evaluation of Youth Corps. This survey will be completed by individuals 18 months after they were randomly assigned to participate in either a youth corps program or a control group. These individuals completed a baseline survey at the time of application to a youth corps program. Many of the youth corps programs receive all or part of their funding from the Corporation.

Copies of the information collection requests can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by July 16, 2007.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service; Attention: Lillian Dote, Program Officer; Office of Research and Policy Development, Room 10901C; 1201 New York Avenue, NW.; Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8102C at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3464, Attention: Lillian Dote, Program Officer, Office of Research and Policy Development.

(4) *Electronically through the Corporation's e-mail address system: ldote@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Lillian Dote, (202) 606–6984, or by *e-mail at ldote@cns.gov.*

SUPPLEMENTARY INFORMATION:

The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

The Corporation is interested in learning about the effects of national service on its participants. This study will use an experimental design to assess the outcomes associated with participation in national service. This survey will be completed by individuals 18 months after they were randomly assigned to participate in either a youth corps program or a control group. These individuals completed a baseline survey at the time of application to a youth corps program.

Current Action

This is an application for a new data collection. It is anticipated that data collection will begin in January 2008.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: National Evaluation of Youth Corps.

OMB Number: None.

Agency Number: None.

Affected Public: Individuals who have agreed to participate in the evaluation and who have completed a baseline survey.

Total Respondents: 3,000.

Frequency: One time.

Average Time Per Response: Averages 45 minutes.

Estimated Total Burden Hours: 2,250 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 10, 2007.

Robert Grimm,

Director, Office of Research and Policy Development.

[FR Doc. E7–9446 Filed 5–16–07; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notification of an ''Open Meeting'' of the National Defense University Visitors (BOV)

AGENCY: Department of Defense; National Defense University.

ACTION: Notice of ''Open Meeting.''

SUMMARY: The National Defense University (NDU), Designated Federal Officer, has scheduled a meeting of the Board of Visitors. Request subject notice be published in the **Federal Register**. The National Defense University Board of Visitors is a Federal Advisory Board. The Board meets twice a year in proceedings that are open to the public.

DATES: The meeting will be held on May 21–22, 2007 from 1100 to 1700 on the 21st and continuing on the 22nd from 0830 to 1330.

Location: The Board of Visitors meeting will be held at Building 62, Marshall Hall, Room 155, National Defense University, 300 5th Avenue, Fort McNair, Washington, DC 20319–5066.

FOR FURTHER INFORMATION CONTACT: The point of contact for this notice of an ''Open Meeting'' is Mr. Roy Austin (202) 685–2649, Fax (202) 685–3935 or *Austin R4@ndu.edu*.

SUPPLEMENTARY INFORMATION: State of the University, National Security Education, Accreditation, and Federal Policy. The meeting is open to the public; limited space is made available for observers and will be allocated on a first come first serve basis.

Dated: May 1, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 07–2420 Filed 5–15–07; 9:25 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Commission on Care for America's Returning Wounded Warriors

AGENCY: Department of Defense

ACTION: Federal Advisory Committee Sub Committee Meeting notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended) and 41 Code of Federal Regulations (CFR) §§ 102–3.140 through 160, the Department of Defense announces the forthcoming sub committee meeting.

Subcommittees of the Commission will conduct preparatory work meetings in the Chicago area to gather information, conduct research and analyze issues and facts in preparation for a meeting of the Commission. Pursuant to section 102–3.160(a) of 41 Code of Federal Regulations (CFR), these subcommittee meetings are not open to the public, and the subcommittees are required to report their findings to the Commission for further deliberation. Locations include the DoD/VA combined Health Center at Naval Training Center Great Lakes. Additionally, the Sub Committees will visit public and private hospitals in the area for investigation of Centers of Excellence that apply to the Commission's Charter.

Dated: May 11, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 07–2421 Filed 5–16–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–305–031]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Negotiated Rate

May 10, 2007.

Take notice that on April 27, 2007, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing a negotiated rate agreement for Rate Schedule ITS service from ConocoPhillips Company to WRB Refining, LLC., effective May 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9459 Filed 5–16–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–328–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Application

May 10, 2007.

Take notice that on May 3, 2007, Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 Highway 56, Owensboro, Kentucky 42301, filed an application in Docket No. CP07–328–000 pursuant to section 7(b) of the

Natural Gas Act (NGA) for permission and approval to abandon Southern Star's Cement-Drumright line comprised of approximately 40.83 miles of 12-inch and 16-inch diameter pipeline and appurtenances located in Grady and Comanche Counties, Oklahoma, by sale to DCP Midstream, LP. Southern Star further requests that the Commission find the facilities, when sold, as exempt from the Commission's jurisdiction pursuant to section 1(b) of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern Star states that the facilities were originally constructed to support its former merchant function and provide mainline transmission, but in more recent years has only served to gather gas from local producers and provided limited gas service to various parties along the system, which will continue upon the transfer of the facilities to DCP Midstream, LP.

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 ''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 Telephone: 202–502–6652; Toll-free: 1–866–208–3676; or for TTY, contact (202) 502–8659.

Any initial questions regarding this application should be directed to Tim Thompson, Attorney, Southern Star Central Gas Pipeline, Inc., 4700 Highway 56, Owensboro, Kentucky 42301, or call (270) 852–4943.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceeding for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions 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.

Comment Date: May 31, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9462 Filed 5–16–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2576–083]

Northeast Generation Company; Notice Granting Late Intervention

May 10, 2007.

On August 2, 2006, the Commission issued a notice of application soliciting comments, motions to intervene, and protest for the Housatonic River Hydroelectric Project No. 2576, located on the Housatonic River, in Fairfield, Litchfield, and New Haven Counties, Connecticut. The notice established September 1, 2006, as the deadline for filing motions to intervene in the proceeding.

On September 8, 2006, the Candlewood Lake Authority filed a late motion to intervene in the proceeding. Granting the late motion to intervene will not unduly delay or disrupt the proceeding, or prejudice other parties to it. Therefore, pursuant to Rule 214,[1] the late motion to intervene filed by the Candlewood Lake Authority is granted, subject to the Commission's rules and regulations.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9460 Filed 5–16–07; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.214 (2006).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2615–035]

Madison Paper Industries, FPL Energy Maine Hydro LLC, Merimil Limited Partnership, and Brassua Hydroelectric Limited Partnership; Notice of Intent to File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, Scoping Meetings, Solicitation of Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

May 10, 2007.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Pre-Application Document; Commencing Licensing Proceeding.

b. *Project No.:* 2615–035.

c. *Dated Filed:* March 29, 2007.

d. *Submitted By:* Madison Paper Industries, FPL Energy Maine Hydro LLC, Merimil Limited Partnership, and Brassua Hydroelectric Limited Partnership (current co-licensee Brassua Hydroelectric Limited Partnership will no longer be a licensee after the termination of the existing license on March 31, 2012, in accordance with an indenture of lease dated October 15, 1989).

e. *Name of Project:* Brassua Project.

f. *Location:* On the northern Moose River in Sumerset, County, Maine. The project does not occupy any federal lands.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Mr. Frank Dunlap, Senior Environmental Specialist, FPL Energy Maine Hydro LLC, 160 Capital Street, Augusta, ME 04330, (207) 623–8417 or e-mail at *Frank_Dunlap@fpl.com*.

i. *FERC Contact:* John Costello (202) 502–6119 or e-mail at *john.costello@ferc.gov*.

j. We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph o below.

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating FPL Energy Maine Hydro LLC, Madison Paper Industries, and Merimil Limited Partnership the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. FPL Energy Maine Hydro LLC, Madison Paper Industries, and Merimil Limited Partnership filed a Pre-Application Document (PAD); including a proposed process plan and schedule with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. Copies of the PAD and Scoping Document are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Scoping Document as well as study requests. All comments on the PAD and Scoping Document, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and Scoping Document, study requests, requests for cooperating agency status, and all communications to Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Brassua Project) and number (P–2615–035), and bear the heading ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or Scoping Document, and any agency requesting cooperating status must do so by July 27, 2007.

Comments on the PAD and Scoping Document, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link.

p. At this time, Commission staff intends to prepare a single Environmental Assessment for the project, in accordance with the National Environmental Policy Act.

Scoping Meetings

We will hold two scoping meetings at the times and places noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date and Time: Thursday, June 28, 2007, 12 to 3 p.m. (EST).

Location: Holiday Inn, York Room, 110 Community Drive, Augusta, Maine 04330.

For Directions: Call Holiday Inn at (207) 622–4751.

Evening Scoping Meeting

Date and Time: Wednesday, June 27, 2007, 7 to 10 p.m. (EST).

Location: The Community House, 6 Lakeville Street, Greenville, Maine 04441.

For Directions: Please call the Moosehead Historical Society at (207) 695–2909.

Scoping Document, which outlines the subject areas to be addressed in the environmental document, has been mailed to the individuals and entities on the Commission's mailing list. Copies of the Scoping Document will be available at the scoping meetings, or

may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Depending on the extent of comments received, a Scoping Document 2 may or may not be issued.

Site Visit

FPL will conduct a tour of the project on Wednesday, June 27, 2007, starting at 9 a.m. All participants interested in attending should meet at the project's dam located on Route 15. All participants attending the site visit should be prepared to provide their own transportation and lunch. Anyone in need of directions to the dam should contact Mr. Frank Dunlap of FPL at (207) 623–8417. Those individuals planning to participate in the site visit are asked to notify Mr. Dunlap of their intent, no later than June 14, 2007.

Scoping Meeting Objectives

At the scoping meetings, staff will: (1) Present the proposed list of issues to be addressed in the EA; (2) review and discuss existing conditions and resource agency management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss requests by any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the Pre-Application Document in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and Scoping Document are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will become part of the formal Commission record on the project.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9461 Filed 5–16–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8315–8]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566–1672, or email at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 0658.09; NSPS for Pressure Sensitive Tape and Label Surface Coating (Renewal); in 40 CFR part 60, subpart RR; was approved 05/02/2007; OMB Number 2060–0004; expires 05/31/2010.

EPA ICR No. 1066.05; NSPS for Ammonium Sulfate Manufacturing Plants; in 40 CFR part 60, subpart PP; was approved 05/02/2007; OMB Number 2060–0032; expires 05/31/2010.

EPA ICR No. 1157.08; NSPS for Flexible Vinyl Urethane Coating and Printing (Renewal); in 40 CFR part 60, subpart FFF; was approved 05/02/2007; OMB Number 2060–0073; expires 05/31/2010.

EPA ICR No. 2205.01; Focus Groups as Used by EPA for Economics Projects; was approved 05/01/2007; OMB Number 2090–0028; expires 11/30/2008.

EPA ICR No. 1801.06; NESHAP for the Portland Cement Manufacturing Industry (Final Rule); in 40 CFR part 63, subpart LLL; was approved 04/30/2007; OMB Number 2060–0416; expires 04/30/2010.

EPA ICR No. 2044.03; NESHAP for Plastic Parts and Products Surface Coating (Renewal); in 40 CFR part 63, subpart PPPP; was approved 04/16/2007; OMB Number 2060–0537; expires 04/30/2010.

EPA ICR No. 2086.02; Dioxin and Dioxin-Like Compounds, Information Collection Request Supporting Statement Toxic Equivalency Reporting, Community-Right-to-Know, Toxic Chemicals (Final Rule); in 40 CFR 372.85; was approved 04/25/2007; OMB Number 2025–0007; expires 04/30/2010.

Short Term Extensions

EPA ICR No. 0370.22; Information Collection Request for the Revision to Federal UIC Requirements for Class I Municipal Wells in Florida (Final Rule); OMB Number 2040–0042; on 04/24/2007 OMB extended the expiration date through 09/30/2007.

Comment Filed

EPA ICR No. 1730.05; NSPS for Hospital/Medical/Infectious Waste Incinerators (Proposed Rule); in 40 CFR part 60, subpart Ec; OMB Number 2060–0363; OMB filed comment on 4/13/2007.

EPA ICR No. 1684.09; Emissions Certification, Compliance and In-Use Testing Requirements for On-Highway Heavy Duty Engines and Vehicles Equipped with On-Board Diagnostics (Amendment) (Proposed Rule); OMB filed comment on 04/16/2007; OMB Number 2060–0287; expires 03/31/2008.

Dated: May 9, 2007.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. E7–9503 Filed 5–16–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2004–0014; FRL–8315–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; The 2007 National Survey of Local Emergency Planning Committees (Reinstatement); EPA ICR No. 1903.02, OMB Control No. 2050–0162

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to reinstate a previously approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 18, 2007.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2004–0014, to (1) EPA online using www.regulations.gov (our preferred method), by email to *superfund.docket@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Superfund Docket, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Office of Emergency Management (OEM), OSWER, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–8019; fax number: 202–564–2625; e-mail address: *jacob.sicy@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 13, 2005 (70 FR 54044), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received 4 comments during the comment period, which are addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2004–0014, which is available for online viewing at www.regulations.gov, or in person viewing at the Superfund 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 the Superfund Docket is 202–566–0276.

Use EPA's electronic docket and comment system at www.regulations.gov to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at www.regulations.gov as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: The 2007 National Survey of Local Emergency Planning Committees.

ICR number: EPA ICR No. 1903.02, OMB Control No. 2050–0162.

ICR Status: This ICR is for a reinstatement of a previously approved collection. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The U.S. Environmental Protection Agency (EPA), Office of Solid Waste and Emergency Response (OSWER), Office of Emergency Management (OEM) plans to collect information through a one-time, web-based, voluntary nationwide survey of representatives from Local Emergency Planning Committees (LEPCs). The establishment of LEPCs is required under The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). These broad committees, composed of representatives from the public safety, health care, and industry sectors, as well as environmental and community organizations, are charged with developing and maintaining emergency plans for their communities. LEPCs foster a valuable dialogue between members of government, industry, and the public to prevent and prepare for the accidental (and terrorist-related) releases of hazardous chemicals.

This proposed information collection will build upon previous LEPC surveys, which measured levels of compliance and proactivity of LEPCs. Since the last survey in 1999, no systematic nationwide analysis of LEPC activity has been conducted. In the six years since September 11th, local emergency planning has evolved, most notably, in the amount of information that is now available to assist LEPCs in preparing for and preventing chemical emergencies.

The primary goals of this research are to: (1) Track the progress of LEPCs by assessing their current activity compared to some of the data collected in 1999 survey; and (2) probe current LEPC practices and preferences regarding several important sets of issues, including: Communications with local citizens, proactive accident prevention efforts, and the effectiveness of selected OEM products and services.

This collection will also contribute to reporting requirements of the Government Performance and Results Act (GPRA) of 1993, which stipulates that agencies evaluate program activities in terms of outputs and outcomes. This survey is necessary to evaluate whether OEM is successfully providing national leadership and assistance to local communities in preparing for and preventing chemical emergencies.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.25 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: People who hold a leadership position on Local Emergency Planning Committees (LEPCs). It is anticipated that the majority of respondents will be LEPC chairs.

Estimated Number of Respondents: 3,500.

Frequency of Response: One time collection.

Estimated Total Annual Hour Burden: 875.

Estimated Total Annual Cost: $40,285, which is exclusively for labor, as there are no annualized capital or O&M costs.

Changes in the Estimates: As this ICR was previously discontinued, there are no currently approved burdens and costs. Accordingly, this ICR requests a new one-time labor burden of 875 hours.

Dated: May 9, 2007.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. E7–9504 Filed 5–16–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8315–6]

Clean Air Act Operating Permit Program; Petition To Object to Title V Permits for Potlatch Corporation's Clearwater Wood Products Facility, Idaho Pulp and Paperboard Division, and Consumer Products Division, Lewiston, ID

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to state operating permits

SUMMARY: Pursuant to Clean Air Act (CAA) section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an order dated May 7, 2007, denying a petition to object to state operating permits issued by the Idaho Department of Environmental Quality to Potlatch Corporation's Clearwater Wood Products Facility, Idaho Pulp and Paperboard Division, and Consumer Products Division, all located in Lewiston, Idaho (Potlatch permits). This order constitutes final action on the petition submitted by Mr. Mark Solomon, representing the Idaho Conservation League, Friends of the Clearwater, and himself, on February 7, 2003, requesting that EPA object to the issuance of the Potlatch permits. Pursuant to section 505(b)(2) of the CAA, any person may seek judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of this notice under section 307 of the CAA.

ADDRESSES: Copies of the final order, the petition, and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101. The final order is also available electronically at the following Web site: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb.htm.*

FOR FURTHER INFORMATION CONTACT: Doug Hardesty, Office of Air, Waste and Toxics, EPA Region 10, telephone (208) 378–5759, e-mail *hardesty.doug@epa.gov.*

SUPPLEMENTARY INFORMATION: The Clean Air Act affords EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to a state operating permit if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or that the grounds for the objection or other issue arose after the comment period.

On February 7, 2003, EPA received a petition from Mr. Mark Solomon, representing the Idaho Conservation League, Friends of the Clearwater, and himself, requesting that EPA object to the issuance of the Potlatch permits. The petition alleged that: (1) The three Potlatch divisions should be covered by a single Title V operating permit; and (2) IDEQ used the wrong model in determining the ambient air quality impacts of the Potlatch facilities. The order explains the reasons behind EPA's decision to deny the petition for objection on all grounds.

Ronald Kreizenbeck,

Deputy Regional Administrator, Region 10.

[FR Doc. 07–2439 Filed 5–16–07; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8316–2]

Gulf of Mexico Program Citizens Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (Pub. L. 92–463), EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Citizens Advisory Committee (CAC).

For information on access or services for individuals with disabilities, please contact Gloria Car, U.S.EPA, at (228) 688–2421 or *car.gloria@epa.gov.* To request accommodation of a disability, please contact Gloria Car, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

DATES: The meeting will be held on Tuesday, June 19, 2007, from 1 p.m. to 4:30 p.m. and Wednesday, June 20, 2007, from 8:30 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the River House, Stennis Space Center, Mississippi 39529, (228) 688–3726.

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: The proposed agenda includes the following topics: Gulf of Mexico Program Updates; Presentation on Liquified Natural Gas Facilities; Nature Conservancy Presentation; Priority Interests of the Citizens Advisory Committee; Citizens Advisory Committee membership status.

The meeting is open to the public.

Dated: May 10, 2007.

Gloria D. Car,

Designated Federal Officer.

[FR Doc. E7–9505 Filed 5–16–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 93–8; DA 07–2005]

Commission Seeks To Update the Record for a Petition for Reconsideration Regarding Home Shopping Stations

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission seeks to update the record for a Petition for Reconsideration filed by the Center for the Study of Commercialism (CSC), concerning stations that air home shopping programming and their status. The Commission seeks comment on CSC's argument that the Commission failed to consider in its public interest analysis the significant amount of commercial programming broadcast by home shopping stations; on the specific issues concerning how home shopping stations serve the people in their communities, including the elderly and homebound; on CSC's assertion that the Commission failed to consider information relevant to one of three statutory factors, *i.e.*, competing demands for the spectrum; and on CSC's assertion that the Cable Act requires the Commission to consider non-broadcast uses in its analysis of competing demands for spectrum. The Commission would like to update the record for this proceeding before ruling on the petition.

DATES: Comments for this proceeding are due on or before June 18, 2007; reply comments are due on or before July 2, 2007.

ADDRESSES: You may submit comments, identified by MM Docket No. 93–8, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Belinda Nixon, *Belinda.Nixon@fcc.gov* of the Media Bureau, Policy Division, (202) 418–1382. Press inquiries should be directed to Mary Diamond of the Media Bureau, (202) 418–2388. TTY: (202) 418–7172 or (888) 835–5322.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, DA 07–2005 released on May 4, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Notice

1. In this Public Notice, the Commission seeks to update the record for a Petition for Reconsideration of its *Report and Order* in MM Docket No. 93–8 (58 FR 39156–01), concerning stations that air home shopping programming and their status under section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992. In the *Report and Order*, the Commission concluded that television broadcast stations that are used predominantly for the transmission of sales presentations or program length commercials (such as home shopping stations) serve the public interest and are therefore qualified for mandatory cable carriage. The Center for the Study of Commercialism (CSC) filed a petition for reconsideration of that order. We issue this Public Notice because the Commission would like to update the record for this proceeding before ruling on the petition.

2. On January 14, 1993, the Commission opened a proceeding to implement section 4(g) of the Cable Act of 1992. The Cable Act requires the Commission to determine, regardless of prior proceedings, whether home shopping broadcast stations are serving the public interest, convenience, and necessity. Pursuant to this provision, if the Commission finds that these stations serve the public interest, it must qualify them as local commercial television stations for the purposes of mandatory cable carriage, or must-carry. If the Commission found that one or more such stations did not serve the public interest, then the Act required the Commission to provide them with reasonable time to provide different programming. The Cable Act further provides that the Commission consider three factors in making its public interest determination: ''The viewing of home shopping stations, the level of competing demands for the spectrum allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming.''

3. In the *Report and Order*, the Commission noted that the overwhelming majority of commenters in the proceeding contended that home shopping stations do serve the public interest, that their programming format should not adversely affect their renewal expectancy, and that they should be eligible for must-carry status. Addressing the first of the three factors enumerated in Section 4(g), the Commission found that home shopping stations have significant viewership. With respect to the second factor, the Commission found that it must consider the demands only of other television broadcasters and not the demands of services other than broadcast television. The Commission further found that the licensing process adequately took into account the competing demands of television broadcasters for the television broadcast spectrum. Finally, turning to the third factor, the Commission found that the existence and carriage of home shopping broadcast stations play a role in providing competition for nonbroadcast services supplying similar programming. Thus, the Commission found that each of the three statutory factors supported a conclusion that home shopping stations are serving the public interest.

4. In addition, the Commission found that other factors, including the following, supported its conclusion: (1) Home shopping stations provide a needed and valuable service to people without the time or ability to obtain goods outside the home, including the disabled, elderly, and homebound; (2) home shopping stations fulfill public interest programming obligations; (3) the role played by the Home Shopping Network in assisting minority-controlled and other small and marginal stations to attain financial viability; and (4) lack of evidence that the marketplace had failed to serve television viewers based on the then-present number and variety of home shopping services. Accordingly, the Commission concluded that home shopping stations serve the public interest, and it therefore qualified them as local commercial television stations for the purposes of mandatory cable carriage.

5. CSC argues that (1) the Commission did not consider the amount of the commercial programming home shopping stations broadcast when it concluded that such stations discharge their obligation to broadcast programming that is in the public interest; and (2) the Commission did not consider information relevant to the second of the three factors in section 4(g) relating to competing uses for the television broadcast spectrum.

6. In order to update our records for this proceeding, we seek comment on the issues presented in the petition for reconsideration filed by CSC. CSC argues that the Commission failed to consider in its public interest analysis the significant amount of commercial programming broadcast by home shopping stations. We seek comments on this assertion. Additionally, in order to update the record, we're now seeking comment on the specific issues concerning how home shopping stations serve the people in their communities, including the elderly and homebound.

7. We also seek comment on CSC's assertion that the Commission failed to consider information relevant to the second statutory factor, *i.e.*, competing demands for the spectrum. Specifically,

CSC claims that the Commission failed to consider evidence regarding Congressional intent that the Commission consider non-broadcast uses for the television broadcast spectrum, such as those of police and fire departments. We seek comment on CSC's assertion that the Cable Act requires the Commission to consider non-broadcast uses in its analysis of competing demands for spectrum.

8. Finally, given the passage of time since the *Report and Order* was adopted, we seek comment on the current number of broadcast stations that provide home shopping programs for the majority of their broadcast day. How do home shopping stations meet their public interest obligations? In particular, how do they comply with the requirements of the Children's Television Act of 1990 and licensees' obligation to provide coverage of issues facing their communities?

9. *Ex Parte Rules.* This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under section 1.1206(b) of the Commission's rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

10. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings must be submitted in MM Docket No. 93–8. Pleadings sent via e-mail to the Commission will be considered informal and will not be part of the official record. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and the applicable docket number: MM Docket No. 93–8. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message: ''get form''. A sample form and instructions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, D.C. 20554.
- People with Disabilities: To request materials in accessible formats for persons with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or contact the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–7365 (TTY).
- Copies of any filed documents in this matter are also available for inspection in the Commission's Reference Information Center: 445 12th Street, SW., Washington, DC 20554, (202) 418–7092.

Federal Communications Commission.

Elizabeth Andrion,

Deputy Chief, Media Bureau.

[FR Doc. E7–9552 Filed 5–16–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY:

Background.

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Michelle Shore—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. Report title: Notification of Nonfinancial Data Processing Activities

Agency form number: FR 4021

OMB control number: 7100–0306

Frequency: On occasion

Reporters: Bank holding companies

Annual reporting hours: 4 hours

Estimated average hours per response: 2 hours

Number of respondents: 2

General description of report: This information collection is required to obtain a benefit. (12 U.S.C. 1843(c)(8), (j) and (k)) and may be given confidential treatment upon request (5 U.S.C. 552(b)(4)).

Abstract: Bank holding companies submit this notification to request permission to administer the 49–percent

revenue limit on nonfinancial data processing activities on a business–line or multiple–entity basis. A request may be filed in a letter form; there is no reporting form for this information collection.

2. Report title: Survey of Financial Management Behaviors of Military Personnel

Agency form number: FR 1375

OMB control number: 7100–0307

Frequency: Semi–annually

Reporters: Military personnel

Annual reporting hours: 2,640 hours

Estimated average hours per response: 20 minutes

Number of respondents: 4,000

General description of report: This information collection is voluntary. The statutory basis for collecting this information is section 2A of the Federal Reserve Act [12 U.S.C. § 225a]; the Bank Merger Act [12 U.S.C. § 1828(c)]; and sections 3 and 4 of the Bank Holding Company Act [12 U.S.C. §§ 1842 and 1843 and 12 U.S.C. §§ 353 and 461]. No issue of confidentiality normally arises because names and any other characteristics that would permit personal identification of respondents will not be reported to the Board.

Abstract: This survey gathers data from two groups of military personnel: (1) those completing a financial education course as part of their advanced training and (2) those not completing a financial education course. These two groups are surveyed on their financial management behaviors and changes in their financial situations over time. Data from the survey help to determine the effectiveness of financial education for young adults in the military and the durability of the effects as measured by financial status of those receiving financial education early in their military careers.

3. Report title: Survey to Obtain Information on the Relevant Market in Individual Merger Cases

Agency form number: FR 2060

OMB control number: 7100–0232

Frequency: On occasion

Reporters: Small businesses and consumers

Annual reporting hours: 18 hours

Estimated average hours per response: Small businesses, 10 minutes; Consumers, 6 minutes.

Number of respondents: 25 small businesses and 50 consumers per survey

General description of report: This information collection is voluntary (12 U.S.C. 1817(j), 1828(c), and 1842)) and is given confidential treatment (5 U.S.C. 552 (b)(4) and (b)(6)).

Abstract: The Federal Reserve uses this information to define relevant banking markets for specific merger and acquisition applications and to evaluate changes in competition that would result from proposed transactions.

4. Report title: Notice of Branch Closure

Agency form number: FR 4031

OMB control number: 7100–0264

Frequency: On occasion

Reporters: State member banks

Annual burden hours: 423 hours

Estimated average hours per response: Reporting requirements, 2 hours; Disclosure requirements, 1 hour; Recordkeeping requirements, 8 hours.

Number of respondents: 124

General description of report: This information collection is mandatory (12 U.S.C. 1831r–l(a)(1)) and may be given confidential treatment upon request (5 U.S.C. 552(b)(4)).

Abstract: The mandatory reporting, recordkeeping, and disclosure requirements regarding the closing of any branch of an insured depository institution are imposed by section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991. There is no reporting form associated with the reporting portion of this information collection; state member banks notify the Federal Reserve by letter prior to closing a branch. The Federal Reserve uses the information to fulfill its statutory obligation to supervise state member banks.

5. Report title: Reports Related to Securities of State Member Banks as Required by Regulation H

Agency form number: Reg H–1

OMB Control number: 7100–0091

Frequency: Quarterly and on occasion

Reporters: State member banks

Annual reporting hours: 1,477 hours

Estimated average hours per response: 5.11 hours

Number of respondents: 17

General description of report: This information collection is mandatory (15 U.S.C. 781(i)) and is not given confidential treatment.

Abstract: The Federal Reserve's Regulation H requires certain state member banks to submit information relating to their securities to the Federal Reserve on the same forms that bank holding companies and nonbank entities use to submit similar information to the Securities and Exchange Commission. The information is primarily used for public disclosure and is available to the public upon request.

Current Actions: On March 9, 2007, the Federal Reserve published a notice in the Federal Register (72 FR 10762) requesting public comment for 60 days on the extension, without revision, of the: FR 4021, FR 1375, FR 2060, FR 4031, and Reg H–1. The comment period for this notice expired on May 8, 2007. No substantive comments were received.

Board of Governors of the Federal Reserve System, May 11, 2007.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. E7–9444 Filed 5–16–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 11, 2007.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Umphrey II Family Limited Partnership and Hillister Enterprises II, Inc., Beaumont, Texas; to become bank holding companies by acquiring 19.61 percent of the voting shares of CBFH, Inc., Beaumont, Texas, and thereby indirectly acquire voting shares of County Bancshares, Inc., Newton,

Texas; Newton Delaware Financial Corporation, Dover, Delaware; and CountyBank, National Association, Newton, Texas.

In connection with this application, CBFH, Inc., Beaumont, Texas, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of County Bancshares, Inc., Newton, Texas, and thereby indirectly acquire voting shares of Newton Delaware Financial Corporation, Dover, Delaware, and CountyBank, National Association, Newton, Texas.

Board of Governors of the Federal Reserve System, May 11, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–9441 Filed 5–17–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0000]

30-Day Notice

AGENCY: Office of the Secretary, HHS.

ACTION: Agency information collection activities: proposed collection; comment request.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection.

Title of Information Collection: Understanding Barriers and Successful Strategies for Faith-Based Organizations in Accessing Grants.

Form/OMB No.: OS–0990–0000.

Use: The Understanding Barriers and Successful Strategies for Faith-Based Organizations (FBOs) in Accessing Grants study will identify perceived or underlying barriers faith-based organizations may face in applying for federal discretionary grants, as well as identify the strategies and approaches used by successful applicants. The data gathered will help Health and Human Services understand the effectiveness of its past internal efforts to ensure that FBOs had equal access to grants, and whether additional steps should be considered. Additionally, this study should provide future FBO grant applicants, as well as other nonprofit organizations, information that could be used to improve the quality of their grant applications and their capacity to seek federal funding.

Frequency: Single time.

Affected Public: Not-for-profit institutions.

Annual Number of Respondents: 290.

Total Annual Responses: 290.

Average Burden Per Response: 35.2 minutes.

Total Annual Hours: 170.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the Desk Officer at the address below:

OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–0000), New Executive Office Building, Room 10235, Washington DC 20503.

Dated: May 10, 2007.

Alice Bettencourt,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E7–9529 Filed 5–16–07; 8:45 am]

BILLING CODE 4154–07–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); the Murine Local Lymph Node Assay: Request for Comments, Nominations of Scientific Experts, and Submission of Data

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Request for comments, submission of relevant data, and nominations of scientific experts.

SUMMARY: The Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) received a nomination from the U.S. Consumer Product Safety Commission (CPSC) to evaluate the validation status of: (1) The murine local lymph node assay (LLNA) as a stand-alone assay for determining potency (including severity) for the purpose of hazard classification; (2) the ''cut-down'' or ''limit dose'' LLNA approach; (3) non-radiolabeled LLNA methods; (4) the use of the LLNA for testing mixtures, aqueous solutions, and metals; and (5) the current applicability domain (i.e., the types of chemicals and substances for which the LLNA has been validated). ICCVAM reviewed the nomination, assigned it a high priority, and proposed that NICEATM and ICCVAM carry out the following activities in its evaluation: (1) Initiate a review of the current literature and available data, including the preparation of a comprehensive background review document, and (2) convene a peer review panel to review the various proposed LLNA uses and procedures for which sufficient data and information are available to adequately assess their validation status. ICCVAM also recommends development of performance standards for the LLNA. At this time, NICEATM requests: (1) Public comments on the appropriateness and relative priority of these activities, (2) nominations of expert scientists to consider as members of a possible peer review panel, and (3) submission of data for the LLNA and/or modified versions of the LLNA.

DATES: Submit comments, data, and nominations by June 15, 2007. Relevant data will also be accepted after this date and considered when feasible.

ADDRESSES: Dr. William S. Stokes, NICEATM Director, NIEHS, P.O. Box 12233, MD EC–17, Research Triangle Park, NC 27709, (fax) 919–541–0947, (e-mail) *niceatm@niehs.nih.gov.* Courier address: NICEATM, 79 T.W. Alexander Drive, Building 4401, Room 3128, Research Triangle Park, NC 27709. Responses can be submitted electronically at the ICCVAM–NICEATM Web site: *http://iccvam.niehs.nih.gov/contact/FR_pubcomment.htm* or by e-mail, mail, or fax.

FOR FURTHER INFORMATION CONTACT: Other correspondence should be

directed to Dr. William S. Stokes (919–541–2384 or *niceatm@niehs.nih.gov*).

SUPPLEMENTARY INFORMATION:

Background

ICCVAM previously evaluated the validation status of the LLNA as a stand-alone alternative method to the Guinea Pig Maximization Test (GPMT) and the Buehler Assay (NIH publication No. 99–4494; available at *http://iccvam.niehs.nih.gov/methods/immunotox/llna.htm*). Based on this evaluation, ICCVAM recommended the LLNA as a valid substitute for the guinea pig methods for most testing situations. The Environmental Protection Agency, Food and Drug Administration, and the CPSC subsequently accepted the method as a valid substitute. The OECD also adopted the LLNA as OECD Test Guideline 429.

In January 2007, the CPSC submitted a nomination to NICEATM (*http://iccvam.niehs.nih.gov/SuppDocs/submission.htm*) requesting that ICCVAM assess the validation status of:

- The LLNA as a stand-alone test for potency determinations (including severity) for the purpose of hazard classification.
- LLNA protocols that do not require the use of radioactive materials.
- The LLNA ''cut-down'' or ''limit dose'' procedure.
- The ability of the LLNA to test mixtures, aqueous solutions, and metals.
- The current applicability domain (i.e., the types of chemicals and substances for which the LLNA has been determined to be useful).

Since 2003, ICCVAM has routinely developed performance standards for test methods; however, they were not developed for the LLNA, which was reviewed in 1999. Accordingly, ICCVAM proposes to now develop performance standards for the LLNA. Performance standards communicate the basis by which new proprietary and nonproprietary test methods have been determined to have sufficient relevance and reliability for specific testing purposes. Performance standards based on test methods accepted by regulatory agencies can be used to evaluate the reliability and relevance of other test methods that are based on similar scientific principles and measure or predict the same biological or toxic effect. On January 24, 2007, ICCVAM unanimously endorsed with a high priority: (1) Developing performance standards for the LLNA and (2) initiating a review of the available data and information associated with the CPSC nominated activities. A determination of which (if any) of the nominated activities will move forward will be made subsequent to this review and after consideration of comments by the public and the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM). If a decision is made to proceed with evaluation of these test methods, ICCVAM and NICEATM propose convening a peer review panel to review the usefulness and limitations of each of the LLNA methods listed above. The panel would also formulate conclusions on the adequacy of draft ICCVAM performance standards, any proposed future validation studies, and draft ICCVAM-proposed standardized test method protocols.

Request for Public Comments and Nominations of Scientific Experts

NICEATM requests public comments on the appropriateness and relative priority of the nominated activities. NICEATM also requests the nominations of scientists with relevant knowledge and experience to serve on the panel if a panel meeting occurs. Areas of relevant expertise include, but are not limited to: physiology, pharmacology, immunology, skin sensitization testing in animals, development and use of in vitro methodologies, biostatistics, knowledge about the use of chemical datasets for validation of toxicity studies, and hazard classification of chemicals and products. Each nomination should include the person's name, affiliation, contact information (i.e., mailing address, e-mail address, telephone and fax numbers), curriculum vitae, and a brief summary of relevant experience and qualifications.

Request for Data

NICEATM invites the submission of data from standard LLNA testing (i.e., OECD TG 429) with mixtures, aqueous solutions, and/or metals, as well as corresponding data from human and other animal studies. In addition, NICEATM invites the submission of data supporting the use of (1) the LLNA as a stand-alone test for determining potency (including severity) for the purpose of hazard classification, (2) the LLNA ''cut-down'' or ''limit dose'' procedure, and (3) LLNA protocols that do not require the use of radioactivity. Although data can be accepted at any time, data submitted by June 15, 2007, will be considered during the ICCVAM evaluation process. Submitted data will be used to further evaluate the usefulness and limitations of the LLNA and may be incorporated into future NICEATM and ICCVAM reports and publications as appropriate. The data will also be included in a database to support the investigation of other test methods for assessing skin sensitization.

When submitting chemical and protocol information/test data, please reference this **Federal Register** notice and provide appropriate contact information (name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, as applicable).

NICEATM prefers data to be submitted as copies of pages from study notebooks and/or study reports, if available. Raw data and analyses available in electronic format may also be submitted. Each submission for a chemical should preferably include the following information, as appropriate:

- Common and trade name.
- Chemical Abstracts Service Registry Number (CASRN).
- Chemical class.
- Product class.
- Commercial source.
- LLNA protocol used.
- Individual animal responses.
- The extent to which the study complied with national or international Good Laboratory Practice (GLP) guidelines.
- Date and testing organization.
- Sensitization data from other test methods.

Consideration by SACATM

On June 12, 2007, SACATM will meet at the Marriott Bethesda North Hotel and Conference Center in Bethesda, Maryland. The agenda includes consideration of the nominated LLNA activities, priorities, and proposed activities *http://ntp.niehs.nih.gov/go/7441*) and an opportunity for oral public comments. The SACATM meeting was announced in a separate **Federal Register** notice (**Federal Register** Vol. 72, No. 83, pp. 23831–32, May 1, 2007).

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from 15 federal regulatory and research agencies that use or generate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological test methods that more accurately assess the safety and hazards of chemicals and products and that refine, reduce, or replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285l–3, available at *http://iccvam.niehs.nih.gov/about/PL106545.htm*) establishes ICCVAM as a permanent interagency committee of the

NIEHS under NICEATM. NICEATM administers ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of federal agencies. Additional information about ICCVAM and NICEATM is available on the following Web site: *http://iccvam.niehs.nih.gov*.

Dated: May 8, 2007.

David A. Schwartz,

Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E7–9544 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Evaluation of Vaccination Reminder/Recall Systems for Adolescent Patients, Funding Opportunity Announcement (FOA) IP07–007, Strategies to Reach the ''Unreachable'' Through Immunization Registries, FOA IP07–010, and Using Provider Reminder/Recall to Enhance Up-to-Date Coverage of 18-Month Olds, FOA IP07–012

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting of the aforementioned Special Emphasis Panel.

Time and Date: 12 p.m.–4 p.m., June 18, 2007 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of research grant applications in response to FOA IP07–007, ''Evaluation of Vaccination Reminder/Recall Systems for Adolescent Patients,'' FOA IP07–010, ''Strategies to Reach the ''Unreachable'' Through Immunization Registries,'' and FOA IP07–012, ''Using Provider Reminder/Recall to Enhance Up-to-Date Coverage of 18-Month Olds.''

For Further Information Contact: Trudy Messmer, Ph.D., Designated Federal Official, 1600 Clifton Road, Mailstop C–19, Atlanta, GA 30333, telephone (404) 639–3770.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 10, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–9498 Filed 5–16–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Times and Dates: 8:30 a.m.–5 p.m., June 11, 2007. 8:30 a.m.–3 p.m., June 12, 2007.

Place: CDC Roybal Campus, Bldg 19, Auditorium B3, 1600 Clifton Road, NE., Atlanta, GA 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (e.g., nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters to be Discussed: Agenda items will include: Guideline Planning, Discussion of Norovirus Guideline, Discussion of Urinary Track Infection Guideline, Healthcare Infection Control Information Technology follow up and Surveillance Definitions discussion.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Angela B. Scott, Committee Management Specialist, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, l600 Clifton Road, NE., M/S A–07, Atlanta, GA 30333, telephone 404/639–1526.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 10, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–9479 Filed 5–16–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Physicians' Experience of Ethical Dilemmas and Resource Allocation

SUMMARY: 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 National Institute of Dental and Craniofacial Research (NIDCR), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Physicians' Experience of Ethical Dilemmas and Resource Allocation.

Type of Information Collection Request: New.

Need and Use of Information Collection: Health care costs are rising ceaselessly and there are currently no generally accepted way of controlling them. This study will access the experience of physicians regarding resource allocation in clinical practice, and how allocation decisions made at other levels shapes this experience. The primary objectives of the study are to determine if physicians make decisions to withhold interventions on the basis of cost, how often they report doing so, what types of care are withheld, and what criteria are used in making such decisions. The findings will provide valuable information concerning: (1) The practice of resource allocation in clinical practice, (2) the possible effects of perceived constraints on this practice, and (3) international comparisons on these two aspects.

Frequency of Response: Once.

Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions.

Type of Respondents: Physicians.

The annual reporting burden is as follows:

Estimated Number of Respondents: 250;

Estimated Number of Responses per Respondent: 1;

Average Burden Hours Per Response: .0.3674; and

Estimated Total Annual Burden Hours Requested: 91.85.

The annualized cost to respondents is estimated at: $5,218. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

A.12–1.—ESTIMATES OF HOUR BURDEN

Type of respondents	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Physicians (internists)	250	1	0.3674	91.85
Total	250			91.85

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Marion Danis, Department of Clinical Bioethics, Building 10, room 1C118, National Institutes of Health, Bethesda, MD 20892, or call non-toll-free number 301–435–8727 or e-mail your request, including your address to: *mdanis@cc.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

David K. Henderson,

Deputy Director, Warren G. Magnuson Clinical Center, National Institutes of Health.

Ezekiel J. Emanuel,

Director, Department of Clinical Bioethics, Warren G. Magnuson Clinical Center, National Institutes of Health.

[FR Doc. E7–9543 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301/496–7057; *fax:* 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Humanized Anti-Carcinoma CC49 Monoclonal Antibodies

Description of Technology: The technology describes the humanization of a murine anti-carcinoma antibody CC49 which has been shown to react with Tumor Associated Glycoprotein 72 (TAG–72), an antigen which is expressed on human breast, ovarian, colorectal, and other carcinomas.

The invention includes a new method of humanization of a rodent antibody which is based on grafting all the Complementarity Determining Residues (CDRs) of a rodent antibody onto a human antibody framework. Additionally, the method identifies Specificity Determining Residues (SDRs), the amino acid residues in the hypervariable regions of an antibody that are most critical for antigen binding activity and of rendering any antibody minimally immunogenic in humans by transferring the SDRs of the antibody to a human antibody framework. The resulting humanized antibodies, including CDR variants thereof (including a CH2 deleted version), are also embodied in the invention, as are methods of using the antibodies for therapeutic and diagnostic purposes.

Furthermore, these antibodies are suitable for radiolabeling for the application in radioimmunotherapy (RIT) based treatment of several cancers. Phase I results of radioimmunotherapy for ovarian cancer using ^{90}Yttrium-CC49 murine monoclonal antibodies have shown promising results and confirms feasibility of the use of these antibodies for RIT. Promising pharmacokinetic data for the radiolabeled humanized antibodies in colon carcinoma xenograft models were recently published.

Applications and Modality

1. A humanized anti-cancer CC49 monoclonal antibody has been developed.
2. New methods of humanization of rodent antibodies have been identified.
3. The antibody(s) has been shown to react with Tumor Associated Glycoprotein 72 (TAG–72), an antigen which is expressed on human breast, ovarian, colorectal, and other carcinomas.
4. These antibodies are suitable for radiolabeling for the application in radioimmunotherapy (RIT) based treatment of several cancers.
5. These antibodies can be useful in diagnosis and treatment of several cancers.

Development Status: The technology is currently in the pre-clinical stage of development. Phase I results of

radioimmunotherapy for ovarian cancer using ^{90}Yttrium-CC49 murine monoclonal antibodies have shown promising results and confirms feasibility of the use of these antibodies for radioimmunotherapy (RIT).

Inventors: Syed V. Kashmiri (NCI), Eduardo A. Padlan (NIDDK), Jeffrey Schlom (NCI).

Publications

1. RD Alvarez *et al.* A Phase I study of combined modality ^{90}Yttrium-CC49 intraperitoneal radioimmunotherapy for ovarian cancer. Clin Cancer Res. 2002 Sep; 8(9):2806–2811.
2. A Forero *et al.* A novel monoclonal antibody design for radioimmunotherapy. Cancer Biother Radiopharm. 2003 Oct;18(5):751–759.
3. PC Chinn *et al.* Pharmacokinetics and tumor localization of (111) in-labeled HuCC49DeltaC(H)2 in BALB/c mice and athymic murine colon carcinoma xenograft. Cancer Biother Radiopharm. 2006 Apr;21(2):106–116.

Patent Status

1. U.S. Patent No. 6,818,749 issued November 16, 2004 and U.S. Patent Application 10/927,433 filed August 25, 2004 as well as issued and pending foreign counterparts [HHS Ref. No. E–259–1998];
2. European Patent No. 00365997 issued September 14, 1994 and its counterpart in Japan [HHS Ref. Nos. D–003–1992/0–EP–07 and D–003–1992/0–JP–05];
3. U.S. Patent No. 5,472,693 issued December 5, 1995 [HHS Ref. No. D–003–1992/2–US–01];
4. U.S. Patent No. 6,051,225 issued April 18, 2000 [HHS Ref. No. D–003–1992/3–US–01];
5. U.S. Patent No. 5,993,813 issued November 30, 1999 [HHS Ref. No. D–003–1992/2–US–02];
6. U.S. Patent No. 6,641,999 issued November 4, 2003 [HHS Ref. No. D–003–1992/2–US–04];
7. European Patent No. 628078 issued December 8, 1999 and its counterparts in Japan, Canada and Australia [HHS Ref. Nos. D–004–1992/0–EP–06, D–004–1992/0–JP–03, D–004–1992/0–CA–04 and D–004–1992/0–AU–05];
8. U.S. Patent No. 5,877,291 issued March 2, 1999 [HHS Ref. No. D–004–1992/1–US–01];
9. U.S. Patent No. 5,892,020 issued April 6, 1999 [HHS Ref. No. D–004–1992/1–US–01] and its foreign counterparts;
10. Taiwanese Patent No. 173667 issued July 10, 2003 [HHS Ref. No. D–001–1996/0–TW–03];
11. U.S. Patent No. 6,737,060 issued May 18, 2004 [HHS Ref. No. D–001–1996/1–US–03];
12. U.S. Patent No. 6,737,061 issued May 18, 2004 [HHS Ref. No. D–001–1996/1–US–04];
13. U.S. Patent No. 6,753,152 issued June 22, 2004 [HHS Ref. No. D–001–1996/1–US–05];
14. U.S. Patent No. 6,752,990 issued June 22, 2004 [HHS Ref. No. D–001–1996/1–US–06];
15. U.S. Patent No. 6,329,507 issued December 11, 2001 [HHS Ref. No. D–001–2006/0–US–01] and
16. U.S. Patent No. 6,071,515 issued June 6, 2000 [HHS Ref. No. D–001–2006/0–US–03].

Licensing Availability: Available for exclusive and non-exclusive licensing.

Licensing Contact: Michelle Booden, PhD.; 301/451–7337; *boodenm@mail.nih.gov*

Collaborative Research Opportunity: The National Cancer Institute's Laboratory of Tumor Immunology and Biology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize anti-carcinoma antibodies. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Enhanced T-cell Activation by Costimulation: an Effective Immunotherapy for Cancer and Infectious Diseases

Description of Technology: Cancer immunotherapy is a recent approach where tumor associated antigens (TAAs), which are primarily expressed in human tumor cells and not expressed or minimally expressed in normal tissues, are employed to generate a tumor specific immune response. Specifically, these antigens serve as targets for the host immune system and elicit responses that result in tumor destruction. The initiation of an effective T-cell immune response to antigens requires two signals. The first one is antigen specific via the peptide/major histocompatibility complex and the second or ''costimulatory'' signal is required for cytokine production, proliferation, and other aspects of T-cell activation.

The present technology describes recombinant poxvirus vectors encoding at least three or more costimulatory molecules and TAAs. The use of three costimulatory molecules such as B7.1, ICAM–1 and LFA–3 (TRICOM®) has been shown to act in synergy with several tumor antigens and antigen epitopes to activate T cells. The effects with TRICOM® were significantly greater than with one or two costimulatory molecules. Laboratory results support the greater effect of TRICOM® to activate both CD4+ and CD8+ T cells. The invention also describes the use of at least one target antigen or immunological epitope as an immunogen or vaccine in conjunction with TRICOM®. The antigens include but are not limited to carcinoembryonic antigen (CEA), prostate-specific antigen (PSA), and MUC–1.

The combination of CEA, MUC–1, and TRICOM® is referred to as PANVAC® and the combination of PSA and TRICOM® is referred to as PROSTVAC®.

Licensing Availability: The technology is available for exclusive and non-exclusive licensing in combinations and for different fields of use. Some potential licensing opportunities are as follows:

1. TRICOM® (alone or with a transgene for a tumor antigen and/or an immunostimulatory molecule);
2. The antigens only, including but not limited to CEA, PSA, and MUC–1;
3. PANVAC® and/or PROSTVAC®; and
4. Recombinant fowlpox-GM–CSF.

Application(s) and Modality: Vector-based TRICOM® (alone or with a transgene for a tumor antigen and/or an immunostimulatory molecule), PANVAC® and PROSTVAC® and combinations thereof can be a potential novel immunotherapeutic approach for the treatment of cancer and infectious diseases.

Advantages

1. The technology is beyond proof-of-concept, supported by laboratory results and publications.
2. Phase I and Phase II clinical data available.
3. Fewer validation studies are required compared to other immunotherapy related technologies.

Development Status: Phase I and Phase II results available for poxvirus recombinants containing transgenes for TRICOM®, CEA–TRICOM®, PANVAC®, and PROSTVAC®. Further clinical studies are ongoing for other combinations.

Inventors: Jeffrey Schlom (NCI) *et al.*

Publications

1. Kaufman HL, Cohen S, Cheung K, DeRaffele, Mitcham J, Moroziewicz D, Schlom J, and Hesdorffer C. Local delivery of vaccinia virus expressing multiple costimulatory molecules for the treatment of established tumors. *Human Gene Ther.* 17:239–244, 2006.
2. Kantoff PW GL, Tannenbaum SI, Bilhartz DL, Pittman WG, Schuetz TJ. Randomized, double-blind, vector-controlled study of targeted immunotherapy in patients (pts) with

hormone-refractory prostate cancer (HRPC). 2006 ASCO Annual Meeting Proceedings, Part I, abstract 2501. *J Clin Oncol.*; 24.

3. Marshall J, Gulley JL, Arlen PM, Beetham PK, Tsang KY, Slack R, Hodge JW, Doren S, Grosenbach DW, Hwang J, Fox E, Odogwa L, Park S, Panicali D, Schlom J. A phase I study of sequential vaccinations with fowlpox-CEA(6D)-TRICOM (B7–1/ICAM–1/LFA–3) alone and sequentially with vaccinia-CEA(6D)-TRICOM, with and without GM–CSF, in patients with CEA-expressing carcinomas. *J Clin Oncol.* 23:720–731, 2005.

4. Palena C, Foon KA, Panicali D, Yafal AG, Chinsangaram J, Hodge JW, Schlom J, and Tsang KY. A potential approach to immunotherapy of chronic lymphocytic leukemia (CLL): enhanced immunogenicity of CLL cells via infection with vectors encoding for multiple costimulatory molecules. *Blood* 106:3515–3523, 2005.

5. Gulley J, Todd N, Dahut W, Schlom J, Arlen P. A phase II study of PROSTVAC–VF vaccine, and the role of GM–CSF, in patients (pts) with metastatic androgen insensitive prostate cancer (AIPC) [abstract]. *J Clin Oncol.* 2005; 23 (16S Pt 1): 2504.

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8. Hodge JW, Chakraborty M, Kudo-Saito C, Garnett CT, Schlom J. Multiple costimulatory modalities enhance CTL avidity. *J Immunol.* 174:5994–6004, 2005.

9. Tsang K–Y, Palena C, Yokokawa J, Arlen PM, Gulley JL, Mazzara GP, Gritz L, Gómez Yafal A, Ogueta S, Greenhalgh P, Manson K, Panicali D, and Schlom J. Analyses of recombinant vaccinia and fowlpox vaccine vectors expressing transgenes for two human tumor antigens and three human costimulatory molecules. *Clin Cancer Res.* 11:1597–1607, 2005.

10. Chakraborty M, Abrams SI, Coleman CN, Camphausen K, Schlom J, Hodge JW. External beam radiation of tumors alters phenotype of tumor cells to render them susceptible to vaccine-mediated T-cell killing. *Cancer Res.* 64:4328–4337, 2004.

11. Zeytin HE, Patel AC, Rogers CJ, et al. Combination of a poxvirus-based vaccine with a cyclooxygenase-2 inhibitor (celecoxib) elicits antitumor immunity and long-term survival in CEA.Tg/MIN mice. *Cancer Res.* 64:3668–3678, 2004.

12. Palena C, Zhu M–Z, Schlom J, and Tsang K–Y. Human B cells that hyperexpress a triad of costimulatory molecules via avipoxvector infection: an alternative source of efficient antigen-presenting cells. *Blood* 104:192–199, 2004.

13. Kudo-Saito C, Schlom J, and Hodge JW. Intratumoral vaccination and diversified subcutaneous/intratumoral vaccination with recombinant poxviruses encoding a tumor antigen and multiple costimulatory molecules. *Clin Cancer Res.* 10:1090–1099, 2004.

14. Hodge JW, Poole DJ, Aarts WM, Gomez Yafal A, Gritz L, and Schlom J. Modified vaccinia virus ankara recombinants are as potent as vaccinia recombinants in diversified prime and boost vaccine regimens to elicit therapeutic antitumor responses. *Cancer Res.* 63:7942–7949, 2003.

15. Hodge JW, Grosenbach DW, Aarts Wm, Poole DJ, and Schlom J. Vaccine therapy of established tumors in the absence of autoimmunity. *Clin Cancer Res.* 9:1837–1849, 2003.

16. Aarts WM, Schlom J, and Hodge JW. Vector-based vaccine/cytokine combination therapy to enhance induction of immune responses to a self-antigen and anti-tumor activity. *Cancer Res.* 62:5770–5777, 2002.

17. Hodge JW, Sabzevari H, Yafal AG, Gritz L, Lorenz MG, Schlom J. A triad of costimulatory molecules synergize to amplify T-cell activation. *Cancer Res.* 59: 5800–5807, 1999.

Patent Status

1. U.S. Patent No. 6,969,609 issued November 29, 2005 as well as issued and pending foreign counterparts [HHS Ref. No. E–256–1998/0];

2. U.S. Patent Application No. 11/321,868 filed December 30, 2005 [HHS Ref. No. E–256–1998/1]; and

3. U.S. Patent No. 6,756,038 issued June 29, 2004 as well as issued and pending foreign counterparts [HHS Ref. No. E–099–1996/0];

4. U.S. Patent No. 6,001,349 issued December 14, 1999 as well as issued and pending foreign counterparts [HHS Ref. No E–200–1990/3–US–01];

5. U.S. Patent No. 6,165,460 issued December 26, 2000; as well as issued and pending foreign counterparts [HHS Ref. No E–200–1990/4–US–01];

6. U.S. Patent No. 7,118,738 issued October 10, 2006 as well as issued and pending foreign counterparts [HHS Ref. No E–154–1998/0–US–07];

7. PCT Application No. PCT/US97/12203 filed July 15, 1997 [HHS Ref. No E–259–1994/3–PCT–02];

8. U.S. Patent Application Nos. 10/197,127 and 08/686,280 filed July 17, 2002 and July 25, 1996 [HHS Ref. No E–259–1994/3–US–08 and /4–US–01];

9. U.S. Patent No. 6,946,133 issued September 20, 2005 as well as issued and pending foreign counterparts [HHS Ref. No E–062–1996/0–US–01];

10. U.S. Patent Application No. 11/606,929 filed December 1, 2006 [E–062–1996/0–US–11];

11. U.S. Patent Nos. 6,893,869, 6,548,068 and 6,045,802 issued May 17, 2005, April 15, 2003 and April 4, 2000 respectively, as well as issued and pending foreign counterparts [HHS Ref. Nos. E–260–1994/1–US–03, US–02, US–01]; and

12. U.S. Patent. Application No. 11/090,686 filed March 8, 2005 [HHS Ref. No E–260–1994/1–US–04].

Licensing Contact: Michelle Booden, PhD, 301/451–7337; *boodenm@mail.nih.gov.*

Cooperative Research and Development Agreement (CRADA) Opportunity: A CRADA partner for the further co-development of this technology is currently being sought by the Laboratory of Tumor Immunology and Biology, Center for Cancer Research, NCI.

The CRADA partner will:

1. Generate and characterize recombinant poxviruses expressing specific tumor-associated antigens, cytokines, and/or T-cell costimulatory factors,

2. Analyze the recombinant poxviruses containing these genes with respect to appropriate expression of the encoded gene product(s),

3. Supply adequate amounts of recombinant virus stocks for preclinical testing,

4. Manufacture and test selected recombinant viruses for use in human clinical trials,

5. Submit Drug Master Files detailing the development, manufacture, and testing of live recombinant vaccines to support the NCI-sponsored INDs,

6. Supply adequate amounts of clinical grade recombinant poxvirus vaccines for clinical trials conducted at the NCI Center for Cancer Research (CCR), and

7. Provide adequate amounts of vaccines for extramural clinical trials through a clinical agreement with the Division of Cancer Treatment and Diagnosis, NCI.

NCI will:

1. Provide genes of tumor-associated antigens, cytokines and other immunostimulatory molecules for incorporation into poxvirus vectors,

2. Evaluate recombinant vectors in preclinical models alone and in combination therapies,

3. Conduct clinical trials of recombinant vaccines alone and in combination therapies, and

4. Provide Drug Master Files currently supporting the clinical use of the recombinant poxvirus vaccines.

If interested in the above described CRADA, please submit a statement of interest and capability to Kevin Chang, PhD, in the NCI Technology Transfer Center at *changke@mail.nih.gov* or 301–496–0477.

Dated: May 11, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–9541 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; Basic Science.

Date: June 11–12, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott, Washingtonian Center, 240 Boardwalk Place (Rio), Gaithersburg, MD 20878.

Contact Person: Dale L. Birkle, Ph.D, Scientific Review Administrator, Office of Scientific Review, National Center for Complementary, and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 451–6570. *birkled@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; Centers of Excellence for Research on Complementary and Alternative Medicine.

Date: June 20–22, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Martina Schmidt, Ph.D, Scientific Review Administrator, Office of Scientific Review, National Center for Complementary, and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594–3456. *schmidma@mail.nih.gov.*

Dated: May 8, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2427 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Open Meeting

The National Eye Institute will host an Ocular Epidemiology Program Planning Panel Meeting to discuss research needs and opportunities in ocular epidemiology. The meeting will be open to the public.

The thoughts and input from this meeting will be given by the panel members individually and incorporated into a report that will be given to the National Eye Institute.

Name of Panel: Ocular Epidemiology Panel.

Date: May 24–25, 2007.

Time: 8 a.m.–5 p.m.

Agenda: To discuss the Ocular Epidemiology Research.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, (7400 Wisconsin Avenue), Bethesda, MD 20814.

Contact Person: Mr. Michael Davis, Associate Director for Science Policy and Legislation, National Eye Institute, Bldg. 31; Room 6A25, 31 Center Drive MSC 2510, Bethesda, MD 20892, (301) 496–4308.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the panel by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: May 8, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2425 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: June 7, 2007.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: 10:30 a.m. to Adjournment.

Agenda: Following opening remarks by the Director, NEI there will be presentations by the staff of the Institute and discussions concerning Institute programs.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Lore Anne McNicol, PhD, Director, Division of Extramural Research, National Eye Institute, National Institutes of Health, Bethesda, MD 20892, (301) 451–2020.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nei.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: May 11, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2452 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; MAP Review Panel.

Date: June 29, 2007.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, (301) 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: May 8, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2429 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEATLH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group; Genome Research Review Committee.

Date: June 8, 2007.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, (301) 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS).

Dated: May 9, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2432 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases B Subcommittee; MID–B, June 2007.

Date: June 6, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Gary S. Madonna, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–496–3528, *gm12w@nih.gov.*

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases Research Committee; MID, June 2007.

Date: June 7–8, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville (Previously the Double Tree), 1750 Rockville Pike, Regency Room, Rockville, MD 20852.

Contact Person: Annie Walker-Abbey, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, RM. 3126, Bethesda, MD 20892–7616, 301–451–2671, *aabbey@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 8, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2426 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meetig will be open to the public as indicated below, with attendance limited to space availalbe. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases initial Review Group, Digestive Diseases and Nutrition C Subcommittee.

Date: June 28–29, 2007.

Open: June 28, 2007, 2 p.m. to 2:30 p.m.

Agenda: To review procedures and discuss policy.

Place: Courtyard by Marriott Crystal City, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Closed: June 28, 2007, 2:30 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Crystal City, 2899 Jefferson David Highway, Arlington, VA 22202.

Closed: June 29, 2007, 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Crystal City, 2899 Jefferson David Highway, Arlington, VA 22202.

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *matsumotod@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 8, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2428 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Integrated Preclinical/Clinical Program for HIV Topical Microbicides.

Date: June 7–8, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton/Washington, DC/Rockville, Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Clayton C. Huntley, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2570, *chuntley@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 8, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2430 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Neurological Disorders and Stroke Council, May 24, 2007, 8 a.m. to May 24, 2007, 10 a.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892 which was published in the **Federal Register** on May 1, 2007, FR: 07–2128; 72.

The Clinical Trials Subcommittee meeting scheduled for May 24, 2007, open and closed sessions have changed to closed from 8–8:45 a.m. and open from 8:45–10 a.m. The meeting is partially closed to the public.

Dated: May 8, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2431 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEATLH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public in indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: June 12, 2007.

Open: 8:30 a.m. to 12 p.m.

Agenda: To discuss administrative details relating to Council business and special reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Madeline K. Turkeltaub, Phd, Deputy Director, Extramural Program, NIH/NIAMS, One Democracy Plaza, 6701 Democracy Blvd., Suite 800, MSC 4872, Bethesda, MD 20892–4872, 301–451–5888, *turkeltm@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passoirt) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistant Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 9, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2433 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Clearinghouse Contract Review.

Date: June 5, 2007.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Helen Lin, PhD, Scientific Review Administrator, NIH/NIAMS/RB, 6701 Democracy Blvd., Suite 800, Plaza One, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS).

Dated: May 9, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2434 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, National Children's Study—East Coast Review.

Date: June 10–12, 2007.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6902, *khanh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 9, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2435 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Biomedical Research Review Subcommittee.

Date: June 4–5, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, Rockville, MD 20852.

Contact Person: Philippe Marmillot, PhD, Scientific Review Administrator, NIH/NIAAA, OEA, room 3045, 5635 Fishers Lane, Rockville, MD 20852, 301–443–2861, *marmillotp@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Developmental Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 9, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2436 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Health Services and Behavioral Research Review Subcommittee.

Date: June 27–28, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel & Executive Meeting Center, Bethesda, MD.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892–9304, 301–443–2369, *lgunzera@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 11, 2007

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2442 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patenable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel HH–91 SEP.

Date: June 27, 2007.

Time: 8:30 a.m. to 9 a.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel and Executive Meeting Center, Bethesda, MD.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892–9304, 301–443–2369, *igunzera@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 92.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 92.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 11, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2443 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on alcohol Abuse and Alcoholism Special Emphasis Panel HH-90 Alcohol Education Project Grants (R25).

Date: July 26, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel and Executive Meeting Center, Bethesda, MD.

Contact Person: Lorraine Gunzerath PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892–9304, 301–443–2369, *lgunzera@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career, Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.892, Alcohol Research Center Grants, National Institutes of Health, HHS).

Dated: May 11, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2444 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 07–61, Review R01s.
Date: June 6, 2007.
Time: 4 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sooyoun (Sonia) Kim, MS, 45 Center Dr, 4An 32B, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institute of Health, Bethesda, MD 20892, (301) 594–4827, *kims&email.nidr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 07–66, Review R21.
Date: June 13, 2007.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sooyoun (Sonia) Kim, MS, 45 Center Dr. 4An 32B, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institute of Health, Bethesda, MD 20892, (301) 594–4827, *kims&email.nidr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 07–63, Review R21.
Date: June 14, 2007.
Time: 3 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sooyoun (Sonia) Kim, MS, 45 Center Dr, 4An 32B, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institute of Health, Bethesda, MD 20892, (301) 594–4827, *kims&email.nidr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 07–64, Review R21.
Date: June 25, 2007.
Time: 3 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Yujing Liu, MD, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN38E, Bethesda, MD 20892, (301) 594–3169, *yujing_liu@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 07–62, Review R21.
Date: June 27, 2007.
Time: 3 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sooyoun (Sonia) Kim, MS, 45 Center Dr., 4An 32B, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–4827, *kims@email.nidr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 07–65, Review R21.
Date: June 28, 2007.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sooyoun (Sonia) Kim, MS, 45 Center Dr., 4An 32B, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–4827, *kims@email.nidr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 07–58, Review R21s.
Date: August 9, 2007.
Time: 1:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–593–4861, *peter.zelazowski@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 11, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2446 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, NIAID Competing Supplements (revisions) for B Cell Immunology and HIV–1 Neutralizing Antibody Projects (R01).
Date: June 11, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott and Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.
Contact Person: Quirijn Vos, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *qvos@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Mechanisms of Autoimmunity Program Project.
Date; June 14, 2007.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3119, Bethesda, MD 20817 (Telephone Conference Call).
Contact Person: Thomas J. Palker, PhD, Scientific Review Administrator, Scientific Review Program, DHHS/NIH/NIAID/DEA, Room 2217, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–2550, *palkert@niadi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 11, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2447 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee.

Date: June 4–5, 2007.

Time: 3 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Louise L. Hsu, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–7705, *hsul@exmur.nia.nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group, Behavior and Social Science of Aging Review Committee.

Date: June 7–8, 2007.

Time: 4 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jon E. Rolf, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue/Room 2C212, Bethesda, MD 20814, (301) 402–7703, *rolfj@nia.nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group, Clinical Aging Review Committee.

Date: June 7–8, 2007.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Alicja L. Markowska, PhD, DSC, National Institute on Aging, National Institutes of Health, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group, Biological Aging Review Committee.

Date: June 15, 2007.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Bldg., Rm. 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bld., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 11, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2448 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: June 19–21, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: The Recombinant DNA Advisory Committee will review and discuss selected human gene transfer protocols as well as related data management acivities. There will be a discussion of recent results regarding immune responses to AAV vectors and a discussion of proposed experiments involving Chlamydia Trachomatis that would require a Major Action under section III–A–1 of the NIH Guidelines for Research.

Place: National Institutes of Health, Building 31, 31 Center Drive, Floor 6C, Room 10, Bethesda, MD 20892.

Contact Person: Laurie Lewallen, Advisory Committee Coordinator, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892–7985, 301–496–9838, *lewallla@od.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www4.od.nih.gov/oba/,* where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing NIH invites readers to direct questions to the information above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS).

Dated: May 11, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2445 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting

Chairpersons, Board of Scientific Counselors for Institutes and Centers at the National Institutes of Health

Notice is hereby given of a meeting scheduled by the Deputy Director for Intramural Research at the National Institutes of Health (NIH) with the Chairpersons of the Boards of Scientific Counselors. The Boards of Scientific Counselors are advisory groups to the

Scientific Directors of the Intramural Research Programs at the NIH. This meeting will take place on June 11, 2007, from 10 a.m. to 3:30 p.m., at the NIH, 9000 Rockville Pike, Bethesda, MD, Building 1, Wilson Hall. The meeting will include a discussion of policies and procedures that apply to the regular review of NIH intramural scientists and their work, with special emphasis on clinical research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Colleen Crone at the Office of Intramural Research, NIH, Building 1, Room 160, Telephone (301) 496–1921 or FAX (301) 402–4273 in advance of the meeting.

Dated: May 11, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2450 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEATLH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Dental Developmental Biology; Special Emphais Panel.

Date: June 1, 2007.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tamizchelvi Thyagarajan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016K, MSC 7814, Bethesda, MD 20892, (301) 451–1327, *tthyagar@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Biology Development and Disease Study Section.

Date: June 3–5, 2007.

Time: 7 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 451–1787, *chenp@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Modeling and Analysis of Biological Systems Study Section.

Date: June 4–5, 2007.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Inn, 1310 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Malgorzata Klosek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, (301) 435–2211, *klosekm@mail.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Intercellular Interactions Study Section.

Date: June 7, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hotel Lombardy, 2019 Pennsylvania Avenue, NW., Washington, DC 20006.

Contact Person: David Balasundaram, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Targeting Protein Misfolding Review Meeting.

Date: June 8, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel at Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7849, Bethesda, MD 20892, 301–435–1245, *chackoge@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Skeletal Muscle Small Business Review.

Date: June 10, 2007.

Time: 6:30 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, Main Building, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, 301–435–6809, *bartletr@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Muscle and Exercise Physiology Study Section.

Date: June 11–12, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, Main Building, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, 301–435–6809, *bartletr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Sensory Integration.

Date: June 11, 2007.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative and Clinical Endocrinology and Reproductive Study Section.

Date: June 14–15, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Krish Krishnan, PhD, Scientific Road Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Vaccines against Microbial Diseases Study Section.

Date: June 14–15, 2007.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jian Wang, MD, PhD, Scientific Road Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7812, Bethesda, MD 20892, (301) 435–2778, *wangjia@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Community Influences on Health Behavior.
Date: June 14–15, 2007.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.
Contact Person: Ellen K. Schwartz, EdD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–0681, *schwarte@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Prion Diseases.
Date: June 18, 2007.
Time: 11 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call.)
Contact Person: Rossana Berti, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3191, MSC 7846, Bethesda, MD 20892, (301) 402–6411, *bertiros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mosquito Vectors.
Date: June 19, 2007.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20814–9692, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Radiation Oncology.
Date: June 19, 2007.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Manzoor Zarger, MS, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Ethical, Legal, and Social Implications of Human Genetics Study Section.
Date: June 21–22, 2007.
Time: 7:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Cheryl M. Corsaro, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiovascular Differentiation and Development Study Section.
Date: June 21–22, 2007.
Time: 8 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Maqsood A. Wani, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7814, Bethesda, MD 20892, 301–435–2270, *wanimaqs@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Clinical Neuroplasticity and Neurotransmitters Study Section.
Date: June 21–22, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Savoy Georgetown, 2505 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Suzan Nadi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Medical Imaging.
Date: June 21–22, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Leonid V. Tsap, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 , Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, 301–435–2507, *tsapl@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Biophysics of Neural Systems Study Section.
Date: June 21–22, 2007.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20032.
Contact Person: Geoffrey G. Schofields, PhD, Scientific Review Administrator, Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.
Date: June 21–22, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20037.
Contact Person: Julius Cinque, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, 301–435–1252, *cinquej@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Innate Immunity and Inflammation Study Section.
Date: June 21–22, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal City Courtyard Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Tina McIntyre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Social Psychology, Personality and Interpersonal Processes Study Section.
Date: June 21–22, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Anna L. Riley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Developmental Brain Disorders Study Section.
Date: June 21–22, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Westin Washington DC City Center (formally Wyndham Washington DC), 1400 M Street, NW., Washington, DC 20005.
Contact Person: Pat Manos, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *manospa@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Instrumentation and Systems Development Study Section.
Date: June 21–22, 2007.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Ping Fan, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301–435–1740, *fanp@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Neurological, Aging and Musculoskeletal Epidemiology Study Section.
Date: June 21–22, 2007.
Time: 8:30 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Heidi B. Friedman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–435–1721, *hfriedman@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Vector Biology Study Section.
Date: June 21, 2007.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: John C. Pugh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1206, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Virology—B Study Section.
Date: June 21–22, 2007.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Tysons Corner Marriott Hotel, 8028 Leesburg Pike, Vienna, VA 22182.
Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov*.

Name of Committee: Health of the Population Integrated Review Group, Social Sciences and Population Studies Study Section.
Date: June 21, 2007.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.
Contact Person: Bob Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694, *wellerr@csr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Clinical Neuroimmunology and Brain Tumors Study Section.
Date: June 21–22, 2007.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Jay Joshi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435–1184, *joshij@csr.nih.gov*.

Name of Committee: Hematology Integrated Review Group, Hemostasis and Thrombosis Study Section.
Date: June 21, 2007.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemoprevention.
Date: June 21, 2007.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Manzoor Zarger, MS, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gene Therapy and Inborn Errors.
Date: June 22, 2007.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1741, *pannierr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Hematology.
Date: June 22, 2007.
Time: 8:30 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chromosomal Instability and Cancer.
Date: June 22, 2007.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Cal).
Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National institutes of Health, HHS)

Dated: May 8, 2007

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2418 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review, Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Central Visual Processing Study Section, June 19, 2007, 8 a.m. to June 20, 2007, 5 p.m. DoubleTree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on May 4, 2007, 72 FR 25324–25325.

The meeting will be held one day only on June 29, 2007. The meeting time and location remains the same. The meeting is closed to the public.

Dated: May 8, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2422 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review, Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neurotoxicology and Alcohol Study Section, June 14, 2007, 8 a.m. to June 15, 2007, 5 p.m., Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009 which was published in the **Federal Register** on April 24, 2007, 72 FR 20352–20354.

The meeting will be held one day only on June 14, 2007. The meeting time and location remains the same. The meeting is closed to the public.

Dated: May 8, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2423 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review, Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 15, 2007, 8 a.m. to June 15, 2007, 5 p.m. Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102 which was published in the **Federal Register** on May 4, 2007, 72 FR 25324–25325.

The meeting will be held one day only on June 14, 2007. The meeting time and location remains the same. The meeting is closed to the public.

Dated: May 8, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2424 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cognitive Neuroscience Study Section, June 5, 2007, 8 a.m. to June 6, 2007, 5 p.m. DoubleTree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on April 5, 2007, 72 FR 16805–16806.

The meeting will be held one day only on June 5, 2007. The meeting time and location remains the same. The meeting is closed to the public.

Dated: May 8, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2437 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer, Diet and Chemoprevention.

Date: May 30, 2007.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eun Ah Co, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cognition, Perception and Imaging.

Date: June 1, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Biological Rhythms and Sleep Study Section.

Date: June 6, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael Selmanoff, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892–7844, 301–435–1119, *mselmanoff@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neuroendocrinology, Neuroimmunology, and Behavior Study Section.

Date: June 7–8, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael Selmanoff, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892, 301–435–1119, *mselmanoff@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Visual Systems Anatomy and Physiology.

Date: June 7, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Anxiety, Feeding and Gastric Function.

Date: June 7, 2007.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Bioengineering and Psychology.

Date: June 11, 2007.

Time: 7 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Pushpa Tandon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104,

MSC 7854, Bethesda, MD 20892, 301–435–2397, *tandonp@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Membrane Biology and Protein Processing Study Section.

Date: June 11–12, 2007.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Ave., NW., Washington, DC 20036.

Contact Person: Janet M. Larkin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7840, Bethesda, MD 20892, 310–435–1026, *larkinja@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Microscopic Imaging Study Section.

Date: June 20, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Ross D. Shonat, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1115, MSC 7849, Bethesda, MD 20892, 301–435–2786, *shonatr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuroimmunology and Oligodendrocyte Differentiation.

Date: June 20, 2007.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Peter B. Guthrie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Neurophysiology, Devices and Neuroprosthetics.

Date: June 21–22, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *etcheber@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 11, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2449 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Plasticity and Biophysics.

Date: May 22, 2007.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2451 Filed 5–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–28121]

Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers: 1625–0025 and 1625–0058

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Requests (ICRs) to the Office of Management and Budget (OMB) requesting an extension of their approval for the following collections of information: (1) 1625–0025, Carriage of Bulk Solids Requiring Special Handling—46 CFR part 148; and (2) 1625–0058, Application for Permit to Transport Municipal and Commercial Waste. Before submitting these ICRs to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before July 16, 2007.

ADDRESSES: To make sure your comments and related material do not enter the docket [USCG–2007–28121] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of aTransportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at 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. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of complete ICRs are available through this docket on the Internet at

http://dms.dot.gov, and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 10–1236 (Attn: Mr. Arthur Requina), 2100 2nd Street SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents; or telephone Ms. Renee V. Wright, Program Manager, Docket Operations, 202–493–0402, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*; they will include any personal information you provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number [USCG–2007–28121], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: View comments and documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* to view at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in 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.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Information Collection Request

1. *Title:* Carriage of Bulk Solids Requiring Special Handling—46 CFR Part 148.

OMB Control Number: 1625–0025.

Summary: The information specified in 46 CFR part 148 for an application for a Special Permit allows Coast Guard to determine the manner of safe carriage of unlisted materials. The information required by Dangerous Cargo Manifests and Shipping Papers permits vessel crews and emergency personnel to properly/safely respond to accidents involving hazardous substances. See §§ 148.02–1 and 148.02–3.

Need: The Coast Guard administers and enforces statutes and rules for the safe transport and stowage of hazardous materials, including bulk solids. See 49 U.S.C. 5103.

Respondents: Owners and operators of vessels that carry certain bulk solids.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 1,130 hours to 899 hours a year.

2. *Title:* Application for Permit to Transport Municipal and Commercial Waste.

OMB Control Number: 1625–0058.

Summary: This information collection provides the basis for issuing or denying a permit for the transportation of municipal or commercial waste in the coastal waters of the United States.

Need: In accordance with 33 U.S.C. 2602, the U.S. Coast Guard issued regulations requiring a vessel owner or operator to apply for a permit to transport municipal or commercial waste in the United States. Accordingly, the vessel owner or operator is required to display an identification number or other marking on their vessel as indicated in 33 CFR part 151, subpart B.

Respondents: Owners and operators of vessels.

Frequency: Every 18 months.

Burden Estimate: The estimated burden has increased from 69 hours to 116 hours a year.

Dated: May 8, 2007.

C.S. Johnson, Jr.,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications Computers and Information Technology.

[FR Doc. E7–9494 Filed 5–16–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–28217]

Relocation of DOT's Docket Operations Facility and Equipment and Temporary Docket Office Closure for the United States Coast Guard Electronic Public Dockets

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces the relocation and service disruption of the Coast Guard's electronic public dockets. The U.S. Department of Transportation (DOT) Docket Operations facility, which manages the Document Management System (DMS) containing the electronic public dockets for the U.S. Coast Guard, is relocating to a new building. This notice also provides the information related to two open Coast Guard rulemaking dockets impacted by this relocation.

DATES: Docket Management Facility will be closed May 25 until May 29, 2007. The Docket Management System will be unavailable from June 13 until 17, 2007.

ADDRESSES: You may submit comments identified by Coast Guard docket numbers USCG–2007–27373 and USCG–2007–27761 to the Docket Management Facility at the U.S. Department of Transportation. Two different locations are listed under the mail and delivery options below because the Document Management Facility is moving May 30, 2007. To avoid duplication, please use only one of the following methods:

(1) Web Site: *http://dms.dot.gov*.

(2) Mail:

- Address mail to be delivered before May 30, 2007, as follows: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.
- Address mail to be delivered on or after May 30, 2007, as follows: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

(3) Fax: 202–493–2251.

(4) Delivery:

• Before May 30, 2007, deliver comments to: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

• On or after May 30, 2007, deliver comments to: Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590.

At either location, deliveries may be made between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Amy Bunk, Attorney-Advisor, Coast Guard, telephone 202–372–3864. If you have questions on viewing or submitting material to the docket, contact Renee V. Wright, Program Manager, Docket Operations, Office of Information Services, Office of the Assistant Secretary for Administration, Office of the Secretary, 400 7th Street, SW., Washington, DC 20590 until May 24, 2007, and at M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE. after that; telephone number: 202–366–9826; e-mail address: *renee.wright@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The notice announces the relocation and service disruption of the Coast Guard's electronic public dockets. The Coast Guard's electronic dockets are currently maintained by the Department of Transportation (DOT) Docket Operations facility, which manages the Document Management System (DMS). This notice also provides the information related to two open Coast Guard rulemaking dockets impacted by this relocation. The DOT Docket Operations facility is moving to 1200 New Jersey Avenue, SE., Washington, DC 20590 and will be located on the West Building Ground Floor, Room W12–140. Hours for the new facility will continue to be 9 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays. The Docket Operations telephone number will continue to be (202) 366–9826.

1. To prepare for the relocation to the new facility, the Docket Operations facility will be closed to the public on Friday, May 25, 2007, through Tuesday, May 29, 2007. The office will reopen to the public on Wednesday, May 30, 2007 at the new facility.

2. To move the computers that host the electronic dockets, the DMS will be unavailable for use from Wednesday, June 13, 2007, through Sunday, June 17, 2007. The electronic docket will be available to users on June 18, 2007.

For more information on how to submit documents to Coast Guard electronic dockets is located in the **ADDRESSES** section of this notice.

As of the date of signature of this document, there are two Coast Guard dockets open for public comment on the DMS system that will be affected by this relocation. They are:

1. Notice of Proposed Rulemaking: Docket number USCG–2007–27373 entitled ''Regattas and Marine Parades; Great Lakes Annual Marine Events,'' comments due on or before June 5, 2007.

2. Interim Rule: Docket number USCG–2007–27761 entitled ''Large Passenger Vessel Crew Requirements,'' comments due on or before July 23, 2007.

Dated: May 11, 2007.

Stefan G. Venckus,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. E7–9485 Filed 5–16–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Federal Emergency Management Agency Housing Inspection Services Customer Satisfaction Survey.

OMB Number: 1660–NW31.

Abstract: FEMA Housing Inspection Services contracts inspectors to assess dwelling damage and verify personal information of applicants for FEMA disaster assistance in federally declared disasters areas. Because FEMA needs to evaluate the inspectors' performance, FEMA conducts surveys to measure the satisfaction level of the applicants with their inspection experience. FEMA Inspection Services Managers and Task Monitors generally use the survey results to gauge and make improvements to disaster services that increase customer satisfaction and program effectiveness. The information is shared with Regional staff specific to the federal declaration for which the survey is conducted.

Affected Public: Individuals and households.

Number of Respondents: 10,608.

Estimated Time per Respondent: 0.25 hours.

Estimated Total Annual Time Burden: 2,652 hours.

Annual Frequency of Response: 1.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, *Attention:* Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before June 18, 2007.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 609, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: May 10, 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. E7–9507 Filed 5–16–07; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1699–DR]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1699–DR), dated May 6, 2007, and related determinations.

EFFECTIVE DATE: May 6, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 6, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Kansas resulting from severe storms, tornadoes, and flooding beginning on May 4, 2007, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine that the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.33(d). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Michael L. Karl, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Kansas to have been affected adversely by this declared major disaster:

Kiowa County for Individual Assistance and Public Assistance. Direct Federal assistance is authorized.

All counties within the State of Kansas 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, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–9509 Filed 5–16–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1693–DR]

Maine; Amendment No. 3 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 Maine (FEMA–1693–DR), dated April 25, 2007, and related determinations.

EFFECTIVE DATE: May 9, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Maine is hereby amended to include the Individual Assistance program for 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 April 25, 2007:

Cumberland and York Counties for Individual Assistance.

(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,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–9502 Filed 5–16–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1695–DR]

New Hampshire; Amendment No. 2 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 New Hampshire (FEMA–1695–DR), dated April 27, 2007, and related determinations.

EFFECTIVE DATE: May 10, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Hampshire 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 April 27, 2007:

Belknap County for Individual Assistance (already designated for Public Assistance.)

Coos County for Public Assistance.

(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,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–9513 Filed 5–16–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1692–DR]

New York; Amendment No. 2 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 New York (FEMA–1692–DR), dated April 24, 2007, and related determinations.

EFFECTIVE DATE: May 9, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York 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 April 24, 2007:

Ulster County for Individual Assistance (already designated for Public Assistance.)

Montgomery County for Public Assistance.

(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,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–9511 Filed 5–16–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1697–DR]

Texas; 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 Texas (FEMA–1697–DR), dated May 1, 2007, and related determinations.

EFFECTIVE DATE: May 7, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 1, 2007:

Denton County for Individual Assistance.

(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,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–9510 Filed 5–16–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1698–DR]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–1698–DR), dated May 4, 2007, and related determinations.

EFFECTIVE DATE: May 4, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 4, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Vermont resulting from severe storms and flooding during the period of April 15–21, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Vermont.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the

Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Vermont to have been affected adversely by this declared major disaster:

Bennington, Caledonia, Essex, Orange, Rutland, Windham, and Windsor Counties for Public Assistance.

All counties within the State of Vermont 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,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–9512 Filed 5–16–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1696–DR]

West Virginia; 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 West Virginia (FEMA–1696–DR), dated May 1, 2007, and related determinations.

EFFECTIVE DATE: May 10, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia 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 May 1, 2007:

Barbour, Gilmer, Grant, Hardy, Lewis, McDowell, Pendleton, Pocahontas, Putnam, Upshur, and Webster Counties for Public Assistance.

(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,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–9508 Filed 5–16–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Holla Bend National Wildlife Refuge in Pope and Yell Counties, AR

AGENCY: Fish and Wildlife Service.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the Fish and Wildlife Service, intend to gather information necessary to prepare a comprehensive conservation plan and associated environmental documents for Holla Bend National Wildlife Refuge. We furnish this notice in compliance with our comprehensive conservation planning policy to advise other agencies and the public of our intentions, and to obtain suggestions and information on the scope of issues to be considered during the planning process.

DATES: To ensure consideration, we must receive your written comments by June 18, 2007.

ADDRESSES: Send your comments or requests for more information to: Ben Mense, Refuge Manager, Holla Bend National Wildlife Refuge, 10448 Holla Bend Road, Dardanelle, AR 72834; Telephone: 479/229–4300; or electronically to: *ben_mense@fws.gov*.

SUPPLEMENTARY INFORMATION: With this notice, we initiate the process for developing a comprehensive conservation plan for Holla Bend National Wildlife Refuge in Dardanelle, AR.

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. § 668dd–668ee), requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing to the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

We establish each unit of the National Wildlife Refuge System with specific purposes. We use these purposes to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission, and to guide which public uses will occur on these refuges. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation efforts of these important wildlife habitats, while providing for wildlife-dependent recreation opportunities that are compatible with the refuge's establishing purpose and the mission of the National Wildlife Refuge System.

We will conduct a comprehensive conservation planning process that will provide opportunity for Tribal, State, and local governments; agencies; organizations; and the public to participate in issue scoping and public comment. We request input for issues, concerns, ideas, and suggestions for management of the Holla Bend National Wildlife Refuge. We invite anyone interested to respond to the following two questions:

1. What problems or issues do you want to see addressed in the comprehensive conservation plan?

2. What improvements would you recommend for the Holla Bend National Wildlife Refuge?

We have provided the above questions for your optional use; you are not required to provide information to us. Our Planning Team developed these questions to gather information about individual issues and ideas concerning this refuge. Our Planning Team will use comments it receives as part of the planning process; however, we will not reference individual comments in our reports or directly respond to them.

We will conduct the environmental review of this project in accordance

with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those regulations. All comments we receive on our environmental assessment become part of the official public record. We will handle requests for such comments in accordance with the Freedom of Information Act, NEPA [40 CFR 1506.6(f)], and other Departmental and Service policies and procedures. When we receive a request, we generally will provide comment letters with the names and addresses of the individuals who wrote the comments.

Holla Bend National Wildlife Refuge was established in 1957, under the Transfer of Real Property Act, as a result of a U.S. Army Corps of Engineers navigation and flood control project. This 6,616-acre refuge is six miles south of Dardanelle, Arkansas, just off of State Highway 155. The refuge lies along the Arkansas River and is bounded by an old oxbow that was created when the Corps of Engineers cut a channel through the bend in the river to promote navigation and flood control. The primary objectives of the refuge are to: (1) Provide habitat for migratory waterfowl; (2) provide habitat for endangered species; (3) provide habitat for resident wildlife; and (4) provide interpretation and recreation to the public.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: March 29, 2007.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E7–9483 Filed 5–16–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Final Comprehensive Conservation Plan for Long Lake National Wildlife Refuge Complex, Moffit, ND

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that a final Comprehensive Conservation Plan (CCP) for the Long Lake National Wildlife Refuge Complex (Complex) is available. This CCP, prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997 and the National Environmental Policy Act of 1969, describes how the Service intends to manage the Complex, which includes Long Lake National Wildlife Refuge (NWR), Slade NWR, Florence Lake NWR, and Long Lake Wetland Management District (WMD), for the next 15 years.

ADDRESSES: A copy of the final CCP or Summary is available by writing to Bernardo Garza, Planning Team Leader, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225; or download from *http://mountain-prairie.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Bernardo Garza, (303) 236–4377, or John Esperance, (303) 236–4369.

SUPPLEMENTARY INFORMATION:

Background

The Complex is located within Burleigh, Emmons and Kidder Counties in south-central North Dakota. The final CCP for this Complex includes three NWRs and one WMD:

- Long Lake NWR (22,310 acres in size) was established on February 25, 1932, ''as a refuge and breeding ground for migratory birds and wild animals''; and ''for use as an inviolate sanctuary, or for any other management purpose, for migratory birds.'' This refuge encompasses 15,000 acres of brackish to saline marsh and lake; 1,000 acres of other wetlands; and approximately 6,000 acres of tame and native grassland, woodland, and cropland. The refuge serves as an important staging area for migrating sandhill cranes, Canada geese and other waterfowl, shorebirds, and other migratory birds. Endangered whooping cranes often utilize refuge marshes during Spring and Fall migrations.
- Slade NWR (3,000 acres in size) was established on October 10, 1944, ''for use as an inviolate sanctuary, or for any other management purpose, for migratory birds.''
- Florence Lake NWR was established on May 10, 1939, ''as a refuge and breeding ground for migratory birds and other wildlife''; and ''for use as an inviolate sanctuary, or for any other management purpose, for migratory birds.'' The fee portion of this refuge consists of 1,468 acres.
- Long Lake WMD manages 1,036 perpetual wetland easements, 93 perpetual grassland easements, 16 Farmers Home Administration perpetual easements, 2,759 upland acres, one Garrison Diversion Unit mitigation tract managed as a Wildlife Development Area, and 78 Waterfowl Production Areas. The WMD was established with the purposes of assuring the long-term viability of the breeding waterfowl population and production through the acquisition and management of Waterfowl Production Areas, while considering the needs of other migratory birds, threatened and endangered species and other wildlife; ''as Waterfowl Production Areas subject to all provisions of the Migratory Bird Conservation Act except the inviolate sanctuary provisions''; and ''for any other management purposes, for migratory birds, and for conservation purposes.''

This final CCP identifies goals, objectives and strategies for the management of the Complex that emphasize restoration and maintenance of Long Lake and other native habitats in vigorous condition to promote biological diversity. The CCP places high importance on the control of invasive plant species with partners and integrated pest management. It seeks to provide habitats in order to contribute to conservation, enhancement and production of migratory bird species, while protecting federally listed species.

The availability of the draft CCP and Environmental Assessment (EA) for a 30-day public review and comment period was announced in the **Federal Register** on July 10, 2006 (71 FR 38892–38893). The draft CCP/EA evaluated four alternatives for managing the Complex for the next 15 years.

The preferred alternative will expand the scope and level of efforts of the current management of habitats by incorporating adaptive resource management. This alternative will seek to improve and develop public use facilities to maximize existing and potential wildlife-dependent priority public use opportunities when they are compatible with other management objectives. Under this alternative, the Complex will strive to develop partnerships; encourage research that provides the necessary knowledge and data to guide habitat management decisions and activities; and to protect and/or restore additional wildlife habitats.

This alternative was selected based on the EA, comments received, and because it best meets the purposes and goals of the Complex, as well as the goals of the National Wildlife Refuge System. The management direction of the Complex is expected to also benefit federally listed species, large ungulates, shore birds, migrating and nesting waterfowl, and neotropical migrants. It identifies increased environmental education and partnerships that are likely to result in improved wildlife-

dependent recreational opportunities. Finally, the CCP places high importance on the protection of cultural and historical resources.

Dated: January 17, 2007.

James J. Slack,

Deputy Regional Director, Region 6, Denver, Colorado.

[FR Doc. E7–9493 Filed 5–16–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Construction of a Health Center in Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice: receipt of application for an incidental take permit; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an incidental take permit (ITP) application and Habitat Conservation Plan (HCP). Parrish Medical Center (applicant) requests an incidental take permit (ITP) for a duration of 2 years pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The applicant anticipates taking approximately 6.93 acre (ac) of Florida scrub-jay (*Alphelocoma coerulescens*)—occupied habitat incidental to constructing a health center in Brevard County, Florida (project). The applicant's HCP describes the mitigation and minimization measures the applicant proposes to address the effects of the project to the scrub-jay.

DATES: We must receive any written comments on the ITP application and HCP on or before June 18, 2007.

ADDRESSES: If you wish to review the application and HCP, you may write the Field Supervisor at our Jacksonville Field Office, 6620 Southpoint Drive South, Suite 310, Jacksonville, FL, 32216, or make an appointment to visit during normal business hours. If you wish to comment, you may mail or hand deliver comments to the Jacksonville Field Office, or you may e-mail comments to *erin_gawera@fws.gov*. For more information on reviewing documents and public comments and submitting comments, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Erin Gawera, Fish and Wildlife Biologist, Jacksonville Field Office (see **ADDRESSES**); telephone: 904/232–2580, ext. 121.

SUPPLEMENTARY INFORMATION:

Public Review and Comment

Please reference permit number TE151083–0 for Parrish Medical Center in all requests or comments. Please include your name and return address in your e-mail message. If you do not receive a confirmation from us that we have received your e-mail message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Background

The Florida scrub-jay (scrub-jay) is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation, which have adversely affected the distribution and numbers of scrub-jays.

The total estimated population is between 7,000 and 11,000 individuals. The decline in the number and distribution of scrub-jays in east-central Florida has been exacerbated by tremendous urban growth in the past 50 years. Much of the historic commercial and residential development has occurred on the dry soils which previously supported scrub-jay habitat. Much of this area of Florida was settled early because few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded due to the exclusion of fire, which is needed to maintain xeric uplands in conditions suitable for scrub-jays.

Applicant's Proposal

The applicant is requesting take of approximately 6.93 ac of occupied scrub-jay habitat incidental to the construction of a health center. The project is located within Section 26 and 27, Township 23 South, Range 35 East, Port St. John, Brevard County, Florida, on the south side of the Port St. John Interchange, west of Grissom Parkway.

Development of the project, including infrastructure, parking areas and landscaping, preclude retention of scrub-jay habitat onsite. Therefore, the applicant proposes to mitigate for the loss of 6.93 ac of occupied scrub-jay habitat by donating $254,051 to the Florida Scrub-jay Fund administered by The Nature Conservancy. Funds in this account are earmarked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management. The applicant also proposed to preserve and manage 6 ac of scrub habitat for scrub-jays on site as described in their HCP.

We have determined that the applicant's proposal, including the proposed mitigation and minimization measures, would have minor or negligible effects on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and qualifies for categorical exclusions under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. A low-effect HCP is one involving (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

We will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets those requirements, we will issue the ITP for incidental take of the Florida scrub-jay. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP.

Authority: We provide this notice under Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

Dated:April 17, 2007.

David L. Hankla,

Field Supervisor, Jacksonville Field Office.

[FR Doc. E7–9481 Filed 5–16–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Construction of an Elementary School in Lake County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice: receipt of application for an incidental take permit; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an Incidental Take Permit (ITP) Application and Habitat Conservation Plan (HCP). The Lake County School Board (applicant) requests an ITP for a duration of 20 years under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The applicant anticipates taking approximately 0.48 acre (ac) of sand skink (*Neoseps reynoldsi*)—occupied habitat incidental to constructing a two-story elementary school and accessory structures, play areas, and infrastructure in Lake County, Florida (Project). The applicant's HCP describes the mitigation and minimization measures the applicant proposes to address the effects of the Project to the sand skink.

DATES: We must receive any written comments on the ITP application and HCP on or before June 18, 2007.

ADDRESSES: If you wish to review the application and HCP, you may write the Field Supervisor at our Jacksonville Field Office, 6620 Southpoint Drive South, Suite 310, Jacksonville, FL 32216, or make an appointment to visit during normal business hours. If you wish to comment, you may mail or hand deliver comments to the Jacksonville Field Office, or you may e-mail comments to *paula_sisson@fws.gov*. For more information on reviewing documents and public comments and submitting comments, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Paula Sisson, Fish and Wildlife Biologist, Jacksonville Field Office (see **ADDRESSES**); telephone: 904/232–2580, ext. 126.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Please reference permit number TE132192–0 for the Lake County School Board Project in all requests or comments. Please include your name and return address in your e-mail message. If you do not receive a confirmation from us that we have received your e-mail message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**.

Background

The sand skink is known to occur in Lake County, primarily within the Lake Wales Ridge, and much less frequently within the Mt. Dora Ridge. Although originally thought to inhabit xeric, scrub habitat exclusively, the sand skink is currently being identified in non-traditional areas with sub-marginal habitat, including pine plantation, abandoned citrus groves, and disturbed areas. Sand skinks require soil moisture for thermoregulation, egg incubation, and prey habitat. High activity periods, which have been associated with the breeding season for this species, range from mid-February to early May, with egg-hatching typically occurring from June through July. Due to the reduction in quality and acreage and the rapid development of xeric upland communities, the sand skink is reportedly declining throughout most of its range. However, biological information regarding the sand skink is limited, due to the cryptic nature of the species.

Applicant's Proposal

The applicant is requesting take of approximately 0.48 acres of occupied sand skink habitat incidental to the Project. The ±19.1 acre Project currently includes an elementary school site and accessory structures, play areas, and infrastructure encompassing ±16.0 acres. In order to mitigate for the loss of 0.48 acres of sand skink habitat, the Applicant proposes to restore and manage ±2.14 acres of occupied sand skink habitat to remain on-site, as well as a ±0.96 acre mitigation area (currently unoccupied by the species). Restoration will be achieved through a combination of tree removal (planted pine and citrus) and a planting effort of scrub oak species. Additional mitigation measures will include incorporation of a natural path with educational signage, to serve as an educational tool for the elementary school students. The conservation areas are expected to increase the overall functional value of the habitat given the existing conditions versus the proposed conditions of these conservation areas.

We have determined that the applicant's proposal, including the proposed mitigation and minimization measures, would have minor or negligible effects on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and qualifies for categorical exclusions under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. A low-effect HCP is one involving (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

We will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets those requirements, we will issue the ITP for incidental take of the sand skink. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in the final analysis to determine whether or not to issue the ITP.

Authority: We provide this notice under Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

Dated: May 10, 2007.

David L. Hankla,

Field Supervisor, Jacksonville Field Office.

[FR Doc. E7–9482 Filed 5–16–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Incidental Take Permit for Four Condominium Complexes in Escambia County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service announces the availability of four habitat conservation plans (HCPs), accompanying applications, and an environmental assessment (EA). One EA has been prepared for the four projects and analyzes the take of Perdido Key beach mice (*Peromyscus polionotus trissyllepsis*) incidental to developing, constructing, and human occupancy of Acropolis Development Enterprises, LLC, Midnight Property, Lorelei Development, LLC, and The Millennium Group I, LLC (Applicants) four condominium complexes in Escambia County, Florida (Projects). The applicants request incidental take permits (ITPs) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The Applicants' HCPs describe the mitigation and minimization measures proposed to address the effects of the Project to the Perdido Key beach mouse.

DATES: Written comments on the ITP applications and HCPs should be sent to the Fish and Wildlife Service's Regional Office (see **ADDRESSES**) and should be received on or before July 16, 2007.

ADDRESSES: Documents will be available for public inspection by appointment during normal business hours at the Fish and Wildlife Service's Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (Attn: Aaron Valenta); or Field Supervisor, Fish and Wildlife Service, 1601 Balboa Avenue, Panama City, FL 32405.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Valenta, Regional HCP Coordinator (see **ADDRESSES**), telephone: 404/679–4144, or Ms. Sandra Sneckenberger, Field Office Project Manager (see **ADDRESSES**), at 850/769–0552, ext. 239.

SUPPLEMENTARY INFORMATION: We specifically request information, views, and opinions from the public via this notice on the Federal action, including the identification of any other aspects of the human environment not already identified in the EA. Further, we specifically solicit information regarding the adequacy of the HCPs as measures against our ITP issuance criteria found in 50 CFR parts 13 and 17.

The EA is an assessment of the likely environmental impacts associated with the Projects and considers the environmental consequences of two alternatives and the proposed action. The proposed action alternative is issuance of the ITPs and implementation of the HCPs as submitted by the Applicants. The HCPs provide for: (1) Minimizing the footprint of the development; (2) restoring, preserving, and maintaining onsite beach mouse habitat at the project site; (3) incorporating requirements in the operation of the residence that provide for the conservation of the beach mouse; (4) monitoring the status of the beach mouse at the project site post-construction; (5) donating funds initially and on an annual basis to Perdido Key beach mouse conservation efforts; (6) including conservation measures to protect nesting sea turtles and non-breeding piping plover; and, (7) funding the mitigation measures.

If you wish to comment, you may submit comments by any one of several methods. Please reference permit numbers TE–143687–0, TE–143686–0, TE–143685–0, and TE–143688–0 in such comments. You may mail comments to the Fish and Wildlife Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to *aaron_valenta@fws.gov*. Please include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION CONTACT**).

Finally, you may hand-deliver comments to either Fish and Wildlife Service office listed (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The areas encompassed under the four ITPs total 5.77 acres along the beachfront of the Gulf of Mexico. Three of the projects are located on the western portion of Perdido Key, a 16.9 mile barrier island, and one project is located centrally on the Key. Perdido Key constitutes the entire historic range of the Perdido Key beach mouse.

We will evaluate the HCPs, applications and any received comments to determine whether the applications meet the requirements of section 10(a) of the Act. If it is determined that those requirements are met, the ITPs will be issued for the incidental take of the Perdido Key beach mouse. We will also evaluate whether issuance of the section 10(a)(1)(B) ITPs comply with section 7 of the Endangered Species Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITPs.

Dated: February 13, 2007.

Jackie Parrish,

Acting Regional Director.

[FR Doc. E7–9484 Filed 5–16–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM220–1430 ES; NM–114207]

Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has determined that land located in Santa Fe County, New Mexico is suitable for classification for lease or conveyance to Santa Fe County under authority of the Recreation and Public Purposes Act (R&PP), as amended (43 U.S.C. 869 *et seq.*). The county plans to use the land for an organized, county recreation area.

DATES: Interested parties may submit comments to the BLM Taos Field Office Manager at the address below. Comments must be received by no later than July 2, 2007.

ADDRESSES: Address all written comments concerning this Notice to Sam DesGeorges, BLM Taos Field Office Manager, 226 Cruz Alta Road, Taos, New Mexico 87571.

FOR FURTHER INFORMATION CONTACT: Francina Martinez, Realty Specialist, at the above address or (505) 758–8851.

SUPPLEMENTARY INFORMATION: In accordance with section 7 of the Taylor Grazing Act, as amended, 43 U.S.C. 315f, the following described land has been examined and found suitable for classification for a non-profit, public purpose—specificially a site for a county owned and operated, organized

recreation area; and the land is hereby classified accordingly. The land is located at:

New Mexico Principal Meridian

T. 20 N., R. 9 E.,
sec. 18, lots 17 and 18.

The area described contains 12.03 acres, more or less, in Santa Fe County.

Santa Fe County proposes to develop the lands to construct a recreational facility for the purpose of meeting a community need for an organized recreational site. The site would be leased for a period of 5 years with option to purchase after the site is developed according to the Santa Fe County Plan of Development. Conveying title to the affected public land is consistent with current BLM land use planning.

The lease or conveyance, when issued, would be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

3. The United States will reserve all minerals together with the right to prospect for, mine, and remove the minerals.

4. Those rights for a road right-of-way granted to New Mexico Department of Transportation by permit No. NMNM 0023278.

Additional detailed information concerning this Notice of Realty Action, including environmental documents, are available for review at the address above.

Upon publication of this notice in the **Federal Register**, the lands described above will be segregated from all other forms of appropriation under the public land laws, including the mining and mineral leasing laws, except for lease or conveyance under the R&PP Act.

Comments may be submitted regarding the proposed classification, lease or conveyance of the land to the Field Office Manager, BLM Taos Field Office, for a period of 45 days from the date of publication of this notice in the **Federal Register**. Only written comments will be accepted. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

You may submit comments regarding the suitability of the lands for a recreation facility site. Comments on the classification are restricted to four subjects:

(1) Whether the land is physically suited for the proposal;

(2) Whether the use will maximize the future use or uses of the land;

(3) Whether the use is consistent with local planning and zoning; and

(4) If the use is consistent with State and Federal programs.

Comments may be submitted regarding the specific use proposed in the application and plan of development, and whether the BLM followed proper administrative procedures in reaching the decision.

The State Director will review any adverse comments. In the absence of adverse comment, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**. The land will not be offered for lease or conveyance until after the classification becomes effective.

(Authority: 43 CFR 2741.5)

Sam DesGeorges,

Field Office Manager.

[FR Doc. E7–9528 Filed 5–16–07; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–090–1310–ES; WYW–48304]

Notice of Realty Action: Recreation and Public Purposes Act (R&PP) Classification; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for conveyance under the provisions of the R&PP Act, as amended, (43 U.S.C. 869 *et seq.*), the following parcel of public lands located in the Bridger Valley area, in Uinta County, Wyoming. The land has been leased under the R&PP Act to Uinta County for use as a sanitary landfill since 1977. The lands are described as follows:

Sixth Principal Meridian

T. 16 N., R. 115 W., sec. 10, W½NE¼SE¼ and E½NW¼SE¼.

The area described contains 39.3 acres in Uinta County.

DATES: Interested persons may submit written comments to the BLM at the address stated below. Comments must be received no later than July 2, 2007.

ADDRESSES: Bureau of Land Management, Kemmerer Field Office, 312 Highway 189 North, Kemmerer, WY 83101.

FOR FURTHER INFORMATION CONTACT: Kelly Lamborn, Realty Specialist, at the address above or at 307–828–4505.

SUPPLEMENTARY INFORMATION: The above described public land in Uinta County, Wyoming has been examined and found suitable for classification for conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*), and is hereby classified accordingly. In accordance with the R&PP Act and implementing regulations, at 43 CFR [art 2740, Uinta County has requested purchase of their existing R&PP lease for the continued operation of the Bridger Valley Landfill. The conveyance of these lands to Uinta County for sanitary landfill purposes is consistent with the BLM Kemmerer Resource Management Plan and would be in the public interest. The planning document and environmental assessment covering the proposed sale are available for review at the BLM, Kemmerer Field Office, Kemmerer, Wyoming. The conveyance, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations, including but not limited to the regulations stated in 43 CFR part 2740, and policy and guidance of the Secretary of the Interior.

2. Reservation of a right-of-way to the United States for ditches and canals pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such minerals from the same under applicable law and such regulations as the Secretary of the Interior may prescribe, including all necessary access and exit rights.

4. No portion of the lands patented shall revert back to the United States under any circumstance. In addition, the patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances (substance as defined in 40 CFR part 302) and indemnify the United States against any legal liability or future costs that may arise out of any violation of such laws.

5. The above-described land has been used for solid waste disposal. Solid waste commonly includes small quantities of commercial hazardous waste and household hazardous waste as determined in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901), and defined in 40 CFR 261.4 and 261.5. Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9620(h)) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988 (100 Stat. 1670), notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances had been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

6. The purchaser (patentee), by accepting a patent, covenants and agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees or their employees, agents, contractors, lessees, or any third party, arising out of or in connection with the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, State, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s), and/or hazardous substance(s), as defined by Federal or State environmental laws, off, on, into or under land, property and other interests of the United States; (5) Activities by which solid waste or hazardous substance(s) or waste, as defined by Federal and State environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substance(s) or waste(s); or (6) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the parcels of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction. Conveyance of these lands to Uinta County is consistent with applicable Federal and county land use plans and will help meet the needs of Uinta County residents for solid waste disposal. Detailed information on this proposed action, including but not limited to documentation relating to compliance with applicable environmental and cultural resource laws, is available for review at the BLM, Kemmerer Field Office, 312 Highway 189 North, Kemmerer, Wyoming 83101, (307) 828–4502.

Until July 2, 2007, interested parties may submit comments regarding the proposed conveyance or classification of the land to the Field Manager, BLM, 312 Highway 189 North, Kemmerer, Wyoming 83101, telephone : 307–828–4505.

On May 17, 2007, the above described lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. Interested parties may submit written comments regarding the proposed conveyance or classification of the lands to the Field Manager, BLM, Kemmerer Field Office, at the address stated above in this notice for that purpose. Comments must be received no later than July 2, 2007.

Classification Comments: Interested parties may submit comments involving the suitability of the lands for conveyance for the landfill. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, and whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application for conveyance and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a sanitary landfill.

Any adverse comments will be reviewed by the BLM State Director, who may sustain, vacate, or modify this realty action. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

In the absence of any adverse comments, the classification will become effective 60 days after May 17, 2007. The land will not be offered for patent until after the classification becomes effective.

(Authority: 43 CFR 2741.5)

Dated: March 26, 2007.

Mary Jo Rugwell,

Field Manager.

[FR Doc. E7–9527 Filed 5–16–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: U.S. Department of Agriculture, Forest Service, Cibola National Forest, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the U.S. Department of Agriculture, Forest Service, Cibola National Forest, Albuquerque, NM that meets the definition of ''sacred object'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In 1973, one pair of leggings was illegally removed from a site located on lands administered by the Cibola National Forest in west central New Mexico. In 2003, the U.S. Department of Agriculture, Forest Service Law Enforcement Officers recovered the leggings as a part of an Archeological Resources Protection Act investigation.

The U.S. Department of Agriculture, Forest Service Law Enforcement Officers held the leggings until they were released by the court to the Cibola National Forest following the successful prosecution of the case in 2006.

The leggings are made from human hair and were made in the late prehistoric to early historic period (approximately A.D. 1100–1700). The site from which the leggings were removed contained pottery sherds of Puebloan manufacture from the late prehistoric and/or early historic periods. Expert witnesses for the court case determined that the leggings were of Puebloan construction from the late prehistoric to early historic period. During consultation, representatives of the Pueblo of Acoma, New Mexico demonstrated that the leggings were of Acoma manufacture and that they were a sacred object associated with the Acoma religion and needed by traditional Acoma religious leaders for the present-day practice of their religion.

Officials of the U.S. Department of Agriculture, Forest Service, Cibola National Forest have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the one cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the U.S. Department of Agriculture, Forest Service, Cibola National Forest also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the sacred object and the Pueblo of Acoma, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 333 Broadway Blvd., SE, Albuquerque, NM 87102, telephone (505) 842–3238, before June 18, 2007. Repatriation of the sacred object to the Pueblo of Acoma, New Mexico may proceed after that date if no additional claimants come forward.

The U.S. Department of Agriculture, Forest Service, Cibola National Forest is responsible for notifying the Pueblo of Acoma, New Mexico and Pueblo of Laguna, New Mexico that this notice has been published.

Dated: March 20, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–9450 Filed 5–16–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Augusta State University, Department of History, and Anthropology, and Philosophy, Archaeology Laboratory, Augusta, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of Augusta State University, Department of History and Anthropology and Philosophy, Archaeology Laboratory, Augusta, GA. The human remains were removed from Columbia County, GA.

A detailed assessment of the human remains was made by Augusta State University professional staff in consultation with the Eastern Band of Cherokee Indians of North Carolina and Muscogee (Creek) Nation of Oklahoma. The following tribe was invited to consult but did not participate: the Poarch Band of Creek Indians of Alabama.

In the early to mid–1980s, human remains representing a minimum of one individual were removed from Stalling's Island (9–CB–1), Columbia County, GA. The human remains were given to the Augusta College (now Augusta State University) anthropology program by a former student. No known individual was identified. No associated funerary objects are present.

The material the student donated consisted of a paper bag containing many fragmentary pieces of bone which at that time were not identified as human remains. No formal records of dates, details, or inventory were made at that time. In 1993, the remains were examined and non-human, osteological material (deer) and human remains were identified. The animal bones are not considered to be associated funerary objects. Based on the donor information and provenience, it is reasonable to believe that the human remains are Native American.

Stalling's Island is a locally well-known late Archaic Period site in the Savannah River above Augusta, GA. During the late Archaic period, pre-Creek or pre-Cherokee peoples occupied the central Savannah River valley which today lies in the states of Georgia and South Carolina. Authoritative sources and descendants of both Creek and Cherokee tribes claim that their ancestors utilized this portion of Savannah River valley in eastern Georgia.

Descendants of the Cherokee are members of the Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and United Keetoowah Band of Cherokee Indians in Oklahoma. Descendants of the Creek are members of the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation of Oklahoma; Poarch Band of Creek Indians of Alabama; and Thlopthlocco Tribal Town, Oklahoma.

Officials of the Augusta State University have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of at least one individual of Native American ancestry. Officials of the Augusta State University also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation of Oklahoma; Poarch Band of Creek Indians of Alabama; Thlopthlocco Tribal Town, Oklahoma; and United Keetoowah Band of Cherokee Indians in Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Christopher Murphy, Augusta State University, 2500 Walton Way, Augusta, GA 30904, telephone (706) 667–4562, before June 18, 2007. Repatriation of the human remains to the Eastern Band of Cherokee Indians of North Carolina and Muscogee (Creek) Nation of Oklahoma may proceed after that date if no additional claimants come forward.

Augusta State University is responsible for notifying the Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation of Oklahoma; Poarch Band of Creek Indians of Alabama; Thlopthlocco Tribal Town, Oklahoma; and United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: April 12, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–9453 Filed 5–16–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC and University of Colorado Museum, Boulder, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC and in the possession of the University of Colorado Museum, Boulder, CO. The human remains were removed from the Crow Indian Reservation, MT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by University of Colorado Museum professional staff in consultation with the Bureau of Indian Affairs professional staff and representatives of the Crow Tribe of Montana.

In 1912, human remains representing a minimum of one individual were removed from the Crow Indian Reservation, 18 miles south of Billings, MT, near Pryor Creek, by Ralph Hubbard. Mr. Hubbard later sent the human remains to the University of Colorado Museum (Catalog number 4799). No known individual was identified. No associated funerary objects are present.

Based on the provenience and physical morphology, the human remains are those of a Native American adult male. Based on the provenience, the human remains are Crow. Descendants of the Crow are members of the Crow Tribe of Montana.

Officials of the U.S. Department of the Interior, Bureau of Indian Affairs and University of Colorado Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the U.S. Department of the Interior, Bureau of Indian Affairs and University of Colorado Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Crow Tribe of Montana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Donald Sutherland, Acting Chief, Division of Environmental and Cultural Resources Management, 1849 C St. NW, Washington, DC 20240, telephone (703) 390–6470, or Steve Lekson, Curator of Anthropology, University of Colorado Museum, Henderson Building, Campus Box 218, Boulder, CO 80309–0218, telephone (303) 492–6671, before June 18, 2007. Repatriation of the human remains to the Crow Tribe of Montana may proceed after that date if no additional claimants come forward.

The University of Colorado Museum is responsible for notifying the Crow Tribe of Montana that this notice has been published.

Dated: April 4, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–9451 Filed 5–16–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Museum of Anthropology, Washington State University, Pullman, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Museum of Anthropology, Washington State University, Pullman, WA. The human remains and associated funerary objects were removed from Grays Harbor County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Museum of Anthropology, Washington State University professional staff in consultation with representatives of the Confederated Tribes of the Chehalis Reservation, Washington.

In 1969 and 1970, human remains representing a minimum of nine individuals were removed from the Minard site (45–GH–15) in Grays Harbor County, WA, by Richard Daugherty, an employee, and Thomas E. Roll, graduate student, of Washington State University. The excavations were conducted under research funds allocated by the Washington State Legislature. No known individuals were identified. The 82 associated funerary objects are 2 nipple topped mauls, 1 ground slate knife, 1 ground stone club, 1 necklace of rolled copper and dentalium beads, 1 straight adze with a carved whale bone handle, 1 knife or small adze-chisel, 1 metal chisel, 1 metal awl, 1 lot of metal fragments from wood working tools, 5 lots of nails, 2 lots of glass beads, 2 lots of tin can fragments, 5 lots of unidentified metal fragments, 2 spoons, 3 lots of wood fragments, 14 thimbles on a string, 1 lot of unidentified plant material, and 38 lots of dishes and dish fragments.

Osteological evidence indicates that the human remains from the Minard site represent nine individuals of Native American ancestry. The associated funerary objects found with one of the individuals indicate an interment during the early 19th century. Stratigraphic information indicates that the other individuals were interred within the last 1,000 years. The Minard site is located at or near the traditional Copalis village of Oyhut. The Copalis are considered to have been a band of the Lower Chehalis whose traditional territory encompassed the lower reaches of the Chehalis River and the present-day county of Grays Harbor. The Minard site is located within the area identified by the Indian Claims Commission as the aboriginal territory of the Confederated Tribes of the Chehalis Reservation, Washington. Continuities within the archeological record and oral tradition, indicates that ancestors of the present-day Confederated Tribes of the Chehalis Reservation, Washington resided at the Minard site during the prehistoric and early historic periods.

Officials of the Museum of Anthropology, Washington State University have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above

represent the physical remains of nine individuals of Native American ancestry. Officials of the Museum of Anthropology, Washington State University also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 82 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Museum of Anthropology, Washington State University have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes of the Chehalis Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Mary Collins, Associate Director, Museum of Anthropology, Washington State University, P.O. Box 62291, Pullman, WA 99164–4910, telephone (509) 335–4314, before June 18, 2007. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Chehalis Reservation, Washington may proceed after that date if no additional claimants come forward.

The Museum of Anthropology, Washington State University is responsible for notifying the Confederated Tribes of the Chehalis Reservation, Washington that this notice has been published.

Dated: April 15, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–9455 Filed 5–16–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Slater Museum of Natural History, University of Puget Sound, Tacoma, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Slater Museum of Natural History, University of Puget Sound, Tacoma, WA. The human remains were probably removed from Oregon.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Slater Museum of Natural History, University of Puget Sound professional staff and a consultant in consultation with representatives of the Confederated Tribes of the Umatilla Reservation, Oregon.

On an unknown date, human remains representing a minimum of one individual were probably removed from Oregon by Robert McManus and given to Stanley G. Jewett. Mr. Jewett donated the human remains to the Slater Museum in 1955. No known individual was identified. No associated funerary objects are present.

Written on the right side of the skull is, ''One of Poker Jim's warriors found near where he was killed. April 1918, Robt. McManus'' and next to it ''SGJ'' circled in ink. Poker Jim was a Umatilla chief (Dorys N. Crow, ''Poker Jim: Chief of the Walla Wallas,'' The Sunday Oregonian Magazine, December 7, 1952; Diana LaSarge, Cultural Affiliation Document for the Cayuse, Umatilla, and Walla Walla Tribes, 2002; Jennifer Karson, Wiyaxayxt/ Wiyaakaa'awn/As Days Go by: Our History, Our Land, Our People: The Cayuse, Umatilla, And Walla Walla, 2006).

The individual is most likely of Native American ancestry as indicated by morphological features. The geographical location where the human remains were presumably recovered is consistent with the historically documented territory of the tribes now represented by the Confederated Tribes of the Umatilla Reservation, Oregon. Information provided during consultation with tribal representatives, indicates that the human remains share a common ancestry with members of tribes now represented by the Confederated Tribes of the Umatilla Reservation, Oregon.

Officials of the Slater Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Slater Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes of the Umatilla Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. John Finney, Associate Dean, University of Puget Sound, 1500 N. Warner, Tacoma, WA 98416, telephone (253) 879–3207, before June 18, 2007. Repatriation of the human remains to the Confederated Tribes of the Umatilla Reservation, Oregon may proceed after that date if no additional claimants come forward.

The Slater Museum of Natural History is responsible for notifying the Confederated Tribes of the Umatilla Reservation, Oregon that this notice has been published.

Dated: March 27, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–9449 Filed 5–16–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Texas Archeological Research Laboratory, The University of Texas at Austin, Austin, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the Texas Archeological Research Laboratory, The University of Texas at Austin, Austin, TX. The human remains and associated funerary objects were removed from Fisher and Lubbock Counties, TX.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Texas Archeological Research Laboratory professional staff in consultation with representatives of the Comanche Nation, Oklahoma. The Kiowa Tribe of Indians of Oklahoma did not respond when

invited to consult with the Texas Archeological Research Laboratory professional staff.

In 1951, human remains representing a minimum of one individual were removed out of a wall of the Yellowhouse Canyon, east of Lubbock, Lubbock County, TX, by Dr. Grayson Meade, a geologist at Texas Technological College. Subsequently, the human remains were given to the Texas Memorial Museum at The University of Texas at Austin. The human remains were recently discovered in an unrelated department and transferred to Texas Archeological Research Laboratory in 2006. No known individual was identified. The 136 associated funerary items are 1 lot moccasin fragments; 6 copper bell fragments; 1 belt cap box; 1 hinge-clasp ring; 1 metal bucket; 1 metal buckle with a fragment of leather belt; 1 piece of glass; 1 Remington-Beals cap and ball revolver (first manufactured in 1858); 12 buttons; 1 lot of hair and twine; 2 grommets on wool fabric; 2 conglomerates of leather, soil, cloth, and rock; 2 metal ornaments; 1 lot of metal pieces; 63 separate metal pieces; 3 iron rings; 1 bridle bit; 4 metal and leather fragments; 4 metal pins and ring fragments; 1 iron knife with a wooden handle in a leather scabbard; 6 metal conchos; 2 lots of leather fragments; 7 separate grommeted leather pieces; 7 metal fragments with leather strips; 1 lot of tubular bone pipe beads; 1 lot of glass trade beads; 1 lot of leather, metal, and fabric fragments; 1 antler flaking tool; and 1 piece of cinnabar (mercury ore).

The mode of interment and the associated funerary objects indicate a late Historic Southern Plains association.

In 1960, human remains representing a minimum of one individual were removed from the Watson site (41FS1), Fisher County, TX, by an amateur archeologist. The burial was in a standing position in a crevice in the ground facing to the southwest. No known individual was identified. The 140 associated funerary objects are 13 brass bracelets, 1 brass button, 8 brass rings, 15 cloth fragments, 1 lot of glass beads, 1 piece of hammered copper, 42 hawk bells, 1 iron axe, 3 iron nails, 9 leather fragments, approximately 40 metal fragments, 1 mirror glass, and 5 pieces of wood.

Dr. Doug Owsley, Forensic Anthropologist, National Museum of Natural History, reports that the physical characteristics of this individual indicate a Comanche or Kiowa affiliation. The associated funerary objects indicate the human remains are from the historic period. The Fisher and Lubbock Counties are within the territory inhabited by both the Comanche and Kiowa Indians during the 1800s.

Officials of the Texas Archeological Research Laboratory have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Texas Archeological Research Laboratory also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 276 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Texas Archeological Research Laboratory have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Comanche Nation, Oklahoma and Kiowa Indian Tribe of Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Darrell Creel, Director, Texas Archeological Research Laboratory, 1 University Station R7599, Austin, TX 78712, telephone (512) 471–6007, before June 18, 2007. Repatriation of the human remains and associated funerary objects to the Comanche Nation, Oklahoma may proceed after that date if no additional claimants come forward.

The Texas Archeological Research Laboratory is responsible for notifying the Comanche Nation, Oklahoma and Kiowa Indian Tribe of Oklahoma that this notice has been published.

Dated: April 12, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–9454 Filed 5–16–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Washington State Parks and Recreation Commission, Olympia, WA and Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the Washington State Parks and Recreation Commission, Olympia, WA and in the physical custody of the Thomas Burke Memorial Washington State Museum (Burke Museum), University of Washington, Seattle, WA. The human remains and associated funerary objects were removed from Old Man House State Park, Kitsap County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Washington State Parks and Recreation Commission and Burke Museum professional staff in consultation with representatives of the Port Gamble Indian Community of the Port Gamble Reservation, Washington and Suquamish Indian Tribe of the Port Madison Reservation, Washington.

In 1951, human remains representing a minimum of three individuals were removed from Old Man House (45–KP–2) in Kitsap County, WA, by Warren Snyder, as part of a University of Washington field expedition. The human remains were transferred to the Burke Museum where they were later accessioned (Burke Accn. #1966–81). No known individuals were identified. The 29 associated funerary objects are 28 shells and 1 cedar wood fragment.

Archeological information suggests that the Old Man House site was used for over 2000 years. The human remains were buried in a semi-flexed position and covered with red ochre. One burial had a group of dentalium shells placed over the individual. The burial practices are consistent with burial practices of the Puget Sound Coast Salish.

The Lushootseed name for the Old Man House site is D'Suq'wub. Members of the Suquamish tribe speak the Lushootseed language. The site is also the location of the long house where ''Chief'' Sealth, also known as Chief Seattle, a leader of the Suquamish, once lived. The earliest written ethnographic information describing the longhouse referred to as Old Man House was by George Gibbs in 1855. Descendants of the Puget Sound Coast Salish and Suquamish are members of the

Suquamish Indian Tribe of the Port Madison Reservation, Washington.

In 1855, the Point Elliot Treaty allocated the land where Old Man House was to the Suquamish. The Suquamish were later removed from these lands in 1904 and 1905, when the United States government seized the land. By 1950, Washington State Parks and Recreation Commission acquired the land where site 45–KP–2 is located.

Based on archeological, historic, ethnographic, and morphological evidence the human remains are determined to be culturally affiliated with the Suquamish Indian Tribe of the Port Madison Reservation, Washington.

Officials of the Washington State Parks and Recreation Commission and Burke Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of three individuals of Native American ancestry. Officials of the Washington State Parks and Recreation Commission and Burke Museum also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 29 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Washington State Parks and Recreation Commission and Burke Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Suquamish Indian Tribe of the Port Madison Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Cindy Sulenes Farr, Washington State Parks & Recreation Commission, 7150 Cleanwater Lane, P.O. Box 42650, Olympia, WA 98504, telephone (360) 902–8623 before June 18, 2007. Repatriation of the human remains and associated funerary objects to the Suquamish Indian Tribe of the Port Madison Reservation, Washington may proceed after that date if no additional claimants come forward.

The Burke Museum is responsible for notifying the Port Gamble Indian Community of the Port Gamble Reservation, Washington and Suquamish Indian Tribe of the Port Madison Reservation, Washington that this notice has been published.

Dated: March 15, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–9452 Filed 5–16–07; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–604]

In the Matter of Certain Sucralose, Sweeteners Containing Sucralose, and Related Intermediate Compounds Thereof; Correction

AGENCY: U.S. International Trade Commission.

ACTION: Correcting amendment.

SUMMARY: This correcting amendment corrects a typographical error in the institution of investigation notice published in the **Federal Register** on May 10, 2007 (72 FR 26645). The notice published in the **Federal Register** on May 10 inadvertently cited the incorrect section of the U.S. Code. Therefore, the Commission is amending the second sentence in the third from the last paragraph to read ''In instituting this investigation, the Commission has not made any determination as to the scope of 19 U.S.C. 1337(a)(1)(B)(ii) or whether 337(a)(1)(B)(ii) is sufficiently broad as to encompass such processes.''

DATES: Effective on May 17, 2007.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott, Secretary to the Commission, 202–205–2000 (e-mail: *marilyn.abbott@usitc.gov*).

Issued: May 11, 2007.

By Order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–9456 Filed 5–16–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on May 2, 2007, a proposed consent decree with defendant F.A.G. Bearings LLC was lodged in the civil action *United States* v. *F.A.G. Bearings LLC,* Civil Action No. 3:07–cv–5036, in the United States District Court of the Western District of Missouri.

In this action the United States seeks, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9607, natural resources damages and assessment costs incurred in response to releases of hazardous substances at the Newton County Wells Superfund Site (''the Site''), in Newton and Jasper counties, Missouri. The proposed consent decree will resolve the United States' natural resource damages claims against defendant F.A.G. Bearings LLC under Section 107 of CERCLA, 42 U.S.C. 9607, at the Site. Under the terms of the proposed consent decree, defendant F.A.G. Bearings will make cash payments of $6,739 and $130,724 to the United States. The funds will be paid to the Department of Interior's Natural Resource Damage and Restoration Fund.

In return, the United States will grant F.A.G. Bearings a covenant not to sue for natural resource damages under CERCLA with respect to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the proposed consent decree with defendant F.A.G. Bearings LLC in *United States* v. *F.A.G. Bearings LLC,* D.J. Ref. 90–11–3–08871.

The proposed consent decree may be examined at the office of the United States Attorney, 901 St. Louis, Suite 500, Springfield, Missouri 65806. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.udoj.gov/enrd/Consent_Decrees.html* and at the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the U.S. Treasury.

Public comments may be submitted by e-mail to the following e-mail address: *pubcomment-ees.enrd@usdoj.gov.*

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 07–2412 Filed 5–16–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulated Order Under the Clean Water Act

Notice is hereby given that on May 8, 2007, a proposed Stipulated Order in *United States and State of Hawaii* v. *City and County of Honolulu*, Case No. CV 07–00235 HG–KS (D. Hawaii), relating to the City and County of Honolulu's (CCH) sanitary sewage collection system, was lodged with the United States District Court for the District of Hawaii.

The proposed Stipulated Order is a settlement of claims for injunctive relief brought against CCH pursuant to the Clean Water Act, 33 U.S.C. 1251–1387, for the unauthorized discharge of pollutants into waters of the United States. The proposed Stipulated Order requires CCH to: (1) Construct replacement force mains; (2) assess the condition of specific force mains and a pump station and implement necessary repairs; and (3) submit site-specific spill contingency plans for designated force mains.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Stipulated Order. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov*, or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, with a copy to Robert Mullaney, U.S. Department of Justice, 301 Howard Street, Suite 1050, San Francisco, CA 94105, and should refer to *United States and State of Hawaii* v. *City and County of Honolulu*, D.J. Ref. 90–5–1–1–3825/1.

The Stipulated Order may be examined at U.S. EPA Region 9, Office of Regional Counsel, 75 Hawthorne Street, San Francisco, California. During the public comment period, the Stipulated Order may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Stipulated Order may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $9.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–2407 Filed 5–16–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on April 30, 2007, a proposed Consent Decree in *United States* v. *Hudson Sand and Gravel, Inc., et al.,* Civil Action No. 07–CV–00128–SM, was lodged with the United States District Court for the District of New Hampshire.

In this action, the United States sought a civil penalty and injunctive relief for violations of the Clean Water Act, 33 U.S.C. 1251, *et seq.*, and its implementing regulations, in connection with a sand and gravel mining operation located off Pettingill Road in the town of Londonderry, New Hampshire owned and/or operated by the settling defendants. Specifically, the United States alleged that the settling defendants discharged stormwater from the property into waters of the United States without an appropriate permit, in violation of 33 U.S.C. 1311 and 1318, and that the settling defendants discharged pollutants into waters of the United States without a permit from the United States Army Corps of Engineers, in violation of 33 U.S.C. 1344. The Consent Decree requires the settling defendants to implement injunctive relief, including obtaining a proper stormwater permit for the property and delineating all wetlands on the property and undertaking appropriate restoration, if necessary. The Decree also requires the settling defendants to pay $250,000 civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov*, or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Hudson Sand and Gravel, Inc., et al.,* D.J. Ref #90–5–1–1–08363.

The Consent Decree may be examined at the Office of the United States Attorney for the District of New Hampshire, 55 Pleasant Street, Room 352, Concord, New Hampshire 03301, and at U.S. EPA Region 1, 1 Congress Street, Suite 1100, Boston, Massachusetts 02114 (contact John Kilborn). During the public comment period, the Consent Decree also may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $11.00 (25 cents per page reproduction cost) payable to the U.S. Treasury, or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–2411 Filed 5–16–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on April 19, 2007, a proposed Settlement Agreement in *In Re Keystone Environmental Services, Inc.* Bankruptcy Petition: 04–24279, was lodged with the United States Bankruptcy Court for the Eastern District of Pennsylvania.

In this bankruptcy proceeding brought under Chapter 7 of Title 11 of the United States Code, 11 U.S.C. 101 *et seq.,* the United States filed a general unsecured claim pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.,* for approximately $2 million in unreimbursed environmental response costs incurred by the United States at the Malvern Superfund Site, located in Chester County, Pennsylvania, and at the Spectron Superfund Site, located in Cecil County, Maryland. Under the Settlement Agreement, the Debtor will make a payment of $440,000, of which the United States will receive $233,200. The remainder will be paid to the

private parties that are performing the remedial work at these Superfund sites.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Settlement Agreement. Comments should be addressed to the assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov,* or mailed to: P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: In Re Keystone Environmental Services, Inc., D.J. Ref. 90–11–3–1731/7.

The Settlement Agreement may be examined at U.S. EPA Region III, Office of Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103–2029, c/o Joan A. Johnson or Humane Zia. During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–2410 Filed 5–16–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'')

Consistent with Section 122(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA'') 42 U.S.C. 9622(d), and 28 CFR 50.7, notice is hereby given that on May 3, 2007, a proposed Settlement Agreement with Pursue Energy Corporation in *United States* v. *Pursue Energy Corporation*, No. 3:03–CV–00325–HTW–JCS (S.D. Miss.), was lodged with the United States District Court for the Southern District of Mississippi.

In this action, the United States sought to establish the amount of the defendant's liability, pursuant to Section 107 of CERCLA, 42 U.S.C. 9607, for the costs incurred and to be incurred by the United States in responding to the release and/or threatened release of hazardous substances at and from the Industrial Pollution Control Site in Jackson, Hinds County, Mississippi. Under the proposed Settlement Agreement, Defendant Pursue Energy Corporation a debtor in the Chapter 11 backruptcy proceeding *In re: Pursue Energy Corporation*, Chap. 11, Bankr. No. 3–02–05339–JEE (Bankr. S.D. Miss.), will pay $25,000 to the Hazardous Substances Superfund in reimbursement of costs incurred by the United States at the Site. The Bankruptcy Court has approved the debtor's entry into the proposed Settlement Agreement, and under the terms of the proposed Settlement agreement the United States will have an allowed general unsecured claim of $25,000. According to the debtor's debtor's confirmed bankruptcy plan of reorganization, allowed general unsecured claims are to be paid in full.

The Department of Justice will receive for a period of thirty (30) day from the date of this publication comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Pursue Energy Corporation* (Settlement Agreement with Pursue Energy Corporation, DOJ Ref. No. 90–11–3–06625/2).

The Settlement Agreement may be examined at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303 (contact Matthew Hicks, Esq (404) 562–9670). During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611 or by faxing e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 512–0097, phone confirmation number (202) 514–1547.

In requesting a copy from the Consent Decree Library, please refer to *United States* v. *Pursue Energy Corporation* (Settlement Agreement with Pursue Energy Corporation, DOJ Ref. No. 90–11–3–06625/2), and enclose a check in the amount of $2.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the states address.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–2409 Filed 5–16–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *The Tire Depot, Inc., et al.,* Civil Action No. CV–07–50–M–DWM, was lodged with the United States District Court for the District of Montana on May 1, 2007. This proposed consent decree would resolve the United States' CERCLA claims against The Tire Depot, Inc., Vernon Reum, and Roxanne Reum related to the Pablo Tire Fire Site in and near Ronan, Montana.

Under the terms of the proposed consent decree, the defendants will pay the United States $50,000 to reimburse the Environmental Protection Agency for cleanup costs incurred at the Site. The settlement is based in part on defendants' ability to pay.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, for the Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *The Tire Depot, Inc., et al.,* Civil Action No. CV–07–50–M–DWM, and Department of Justice Reference No. 90–11–3–08429.

The decree may be examined on the following Department of Justice Web site *http://www.usdoj.gov/enrd/open.html.* A copy of the decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington,

DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.75 ($.25 per page) payable to the U.S. Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–2408 Filed 5–16–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI).

ACTION: Meeting Notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is a Federal advisory committee established pursuant to the Federal Advisory Committee Act. This meeting announcement is being published as required by Section 10 of the FACA.

The CJIS APB is responsible for reviewing policy issues and appropriate technical and operational issues related to the programs administered by the FBI's DJIS Division, and thereafter, making appropriate recommendations to the FBI Director. The program administered by the CJIS Division are the Integrated Automated Fingerprint Identification System, the Interstate Identification Index, Law Enforcement Online, National Crime Information Center, the National Instant Criminal Background Check System, the National Incident-Based Reporting System, Law Enforcement National Data Exchange, and Uniform Crime Reporting.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the CJIS Division programs or wishing to address this session should notify Senior CJIS Advisor Roy G. Weise at (304) 625–2730 at least 24 hours prior to the start of the session. The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed no more than 15 minutes to present a topic.

DATES: The APB will meet in open session from 8:30 a.m. until 5 p.m., on June 13–14, 2007.

ADDRESSES: The meeting will take place at the Adam's Mark Buffalo Niagra, 120 Church Street, Buffalo, New York, (716) 845–5100.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mrs. Rebecca S. Durrett, Management and Program Analyst, Advisory Groups Management Unit, Programs Support Section, FBI CJIS Division, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149, telephone (304) 625–2617, facsimile (304) 625–5090.

Dated: May 7, 2007.

Roy G. Weise,

Senior CJIS Advisor, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 07–2455 Filed 5–16–07; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,260]

Bayer Clothing Group, Target Sales Corp., Frisco, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 6, 2007 in response to a worker petition filed by a company official on behalf of workers at Bayer Clothing Group, Target Sales Corp., Frisco, Texas.

The petitioning group of workers is covered by an active certification, (TA–W–59,299C as amended) which expires on May 31, 2008. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 8th day of May 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–9474 Filed 5–16–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 29, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 29, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 9th day of May 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 4/30/07 AND 5/4/07

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
61393	Best Artex, LLC (Wkrs)	Highland, IL	04/30/07	04/26/07
61394	Aavid Thermalloy LLC (Wkrs)	Laconia, NH	04/30/07	04/24/07
61395	Federal Mogul (USW)	Exton, PA	04/30/07	04/27/07
61396	Rayolite (Comp)	Newark, OH	04/30/07	04/18/07
61397	Hamlin Tool & Machine Co., Inc. (Wkrs)	Rochester, MI	04/30/07	04/16/07
61398	Commercial Vehicle Group (Comp)	Statesville, NC	04/30/07	04/27/07
61399	Wehadkee Yarn Mills (Comp)	Talladega, AL	04/30/07	04/27/07
61400	Smart Papers/West Chicago IDC Converting (State)	Hamilton, OH	04/30/07	04/26/07
61401	Victor Plastics Inc., Kalona Division (Comp)	Kalona, IA	04/30/07	04/26/07
61402	Advanced Decorative Systems, Inc. (Wkrs)	Millington, MI	04/30/07	04/26/07
61403	WestPoint Home, Opelika Finishing Plant (Comp)	Opelika, AL	04/30/07	04/24/07
61404	Air System Comonents, Inc. (Comp)	El Paso, TX	04/30/07	04/20/07
61405	Jarden Consumer Solutions (Wkrs)	Milford, MA	04/30/07	04/26/07
61406	Texas Instruments Kilby Fab (Wkrs)	Dallas, TX	05/01/07	04/30/07
61407	General Electric Consumer & Industrial (State)	Bridgeport, CT	05/01/07	04/30/07
61408	Toro Company (Wkrs)	El Paso, TX	05/01/07	04/23/07
61409	Delphi Rochester New York (Union)	Rochester, NY	05/01/07	04/24/07
61410	CGI Circuits, Inc. (Comp)	Taunton, MA	05/01/07	04/20/07
61411	Surprise Technologies (Wkrs)	Marion, OH	05/01/07	04/24/07
61412	Carlisle Finishing International Textile Group (Wkrs)	Carlisle, SC	05/01/07	04/27/07
61413	Nautel Maine Inc. (Wkrs)	Bangor, ME	05/02/07	04/05/07
61414	Mercury Marine (Union)	Fond du Lac, WI	05/02/07	04/23/07
61415	Robinson Anton Textile Company Dye Operatrion (Comp)	Bloomsburg, PA	05/02/07	04/23/07
61416	Golden Manufacturing Company, Inc. (Comp)	Marietta, MS	05/02/07	04/05/07
61417	Edenton Dyeing & Finishing LLC (Comp)	Edenton, NC	05/02/07	04/30/07
61418	Temco Metal Products (State)	Clackamas, OR	05/02/07	04/27/07
61419	Firestone Tube Co. (USW)	Russellville, AR	05/02/07	04/30/07
61420	Byer Manufacturing (Wkrs)	Orono, ME	05/02/07	04/23/07
61421	Filtrona Richmond, Inc. (Comp)	Richmond, VA	05/02/07	04/20/07
61422	WestPoint Home, Fairfax Manufacturing (Comp)	Valley, AL	05/02/07	04/30/07
61423	Lane Furniture Industries, Inc. (Comp)	Tupelo, MS	05/02/07	04/30/07
61424	Hewlett Packard (Wkrs)	Corvaillis, OR	05/02/07	04/27/07
61425	The Oak Mine, Inc. (Wkrs)	Grant Pass, OR	05/02/07	04/23/07
61426	Badger (Wkrs)	Wausau, WI	05/02/07	04/30/07
61427	Iron Age Corporation (Wkrs)	Westborough, MA	05/02/07	05/01/07
61428	Dana Corporation (Comp)	Statesville, NC	05/02/07	04/30/07
61429	Burns Best, Inc. (Wkrs)	Spooner, WI	05/02/07	04/09/07
61430	Thomasville Furniture Plant 4 (Comp)	Troutman, NC	05/02/07	04/30/07
61431	Thomasville Furniture Industrial Plant C (Comp)	Thomasville, NC	05/02/07	04/30/07
61432	Deluxe Media Services, LLC (Wkrs)	Pleasant Prairie, WI	05/03/07	05/02/07
61433	Nacom Corporation (Wkrs)	Griffin, GA	05/03/07	04/11/07
61434	Judith Lieber (Wkrs)	New York, NY	05/03/07	04/18/07
61435	Sanmina-SCI, USA (Comp)	Phoenix, AZ	05/03/07	05/01/07
61436	U.P. Plastics Inc. (Comp)	Baraga, MI	05/03/07	05/01/07
61437	Freightliner, LLC (Wkrs)	Cleveland, NC	05/03/07	05/02/07
61438	TMP Directional Marketing (Wkrs)	Fort Wayne, IN	05/03/07	04/09/07
61439	Rugg Manufacturing Company, Inc. (Comp)	Greenfield, MA	05/03/07	05/01/07
61440	Numatics (Comp)	Highland, MI	05/03/07	05/02/07
61441	Reither and Schefenacker USA LP (Wkrs)	Selmer, TN	05/04/07	04/02/07
61442	Connor Manufacturing Services (Comp)	Portland, OR	05/04/07	05/03/07
61443	Seagate Technology (State)	Shakopee, MN	05/04/07	05/03/07
61444	Bilt Best Products, Inc. (State)	Sainte Genevieve, MO	05/04/07	05/03/07
61445	United Airlines (Comp)	Elk Grove Village, IL	05/04/07	05/03/07
61446	Bosal Industries, Tennessee (Comp)	Columbia, TN	05/04/07	04/24/07
61447	Stretchline USA, Inc. (Comp)	Rocky Mount, NC	05/04/07	04/07/07
61448	CST Powertrain Components, Inc. (UAW)	Chesterfield, MI	05/04/07	05/02/07
61449	Delphi Corporation (Comp)	Wichita Falls, TX	05/04/07	04/30/07

[FR Doc. E7–9475 Filed 5–16–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,083]

Intel Corporation, Optical Platform Division, Newark, CA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated April 20, 2007, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The denial notice was signed on April 6, 2007 and published in the **Federal Register** on April 24, 2007 (72 FR 20371).

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 misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Intel Corporation, Optical Platform Division, Newark, California engaged in production of optical modules for networking and communication equipment was denied because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974 was not met. The investigation revealed that production of optical modules for networking and communication equipment was shifted to Thailand, however, there were no imports of optical modules into the United States in 2005 and 2006.

In the request for reconsideration, the petitioner stated that the subject firm also manufactured transponders and that this production was shifted to Malaysia in 2003. The petitioner further stated that the subject firm has been importing transponders back into the United States.

A contact with the company official confirmed what was revealed during the initial investigation. It was determined that the subject firm ceased production of transponders at the end of 2005, when all production of transponders was shifted to Malaysia.

In its investigation, the Department must conform to the Trade Act and associated regulations. Therefore, the Department considers production and imports that occurred within a year prior to the date of the petition. Thus the events occurring in 2005 are outside of the relevant period as established by the current petition date of February 28, 2007. Shift in production of transponders and imports of transponders are irrelevant for this investigation as Intel Corporation, Optical Platform Division, Newark, California did not manufacture transponders for sale in 2006 and January through February of 2007.

The request for reconsideration also states that production of optical modules for networking and communication equipment was shifted to Thailand and that the subject firm has been progressively increasing imports of optical modules from Thailand into the United States.

The review of the initial investigation and further contact with the company official did reveal that the subject firm shifted production of optical modules to Thailand. However, Thailand is not a country that is a party to a free trade agreement with the United States or is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act. The company official stated that modules, which are manufactured in Thailand are not sold directly to customers, with the exception of one customer in Japan. All modules are shipped from Thailand to Intel's facility in Malaysia to be further integrated into finished product, transponders. Transponders are further sold to customers, who might import them into the United States.

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 company official verified that Intel Corporation, Optical Platform Division, Newark, California did not import optical modules for networking and communication equipment in 2006 and January through February of 2007. Any imports of transponders are not like or directly competitive with optical modules as required by the Trade Act.

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 9th day of May, 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–9477 Filed 5–16–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *April 30 through May 4, 2007.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or

subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–61,215; Tool Dex, Inc., Warren, MI: March 29, 2006

TA–W–61,247; Anderson Corporation, Bayport Division, Bayport, MN: April 4, 2006

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–61,320; TK Holdings/Moses Lake Inflator Operations, Airbag Inflator Workers, Moses Lake, WA: April 16, 2006

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,249; Cintas Corporation, Digitized Logo Worker Group, Mason, OH: March 4, 2006

TA–W–61,250; Thomasville Furniture Industries, Upholstery Plant #8, Hickory, NC: April 4, 2006

TA–W–61,297; Melcor Corporation, Thermal Division, dba Laird Technologies, Trenton, NJ: April 5, 2006

TA–W–61,300; McKinney Products Co., Scranton, PA: April 12, 2006

TA–W–61,301; Lexington Furniture Industries, Lexington Home Brands Division, Plant 15, Lexington, NC: April 6, 2006

TA–W–61,305; La-Z-Boy Manufacturing, Inc., Lincolnton, NC: April 10, 2006

TA–W–61,310; Global Heating Solutions, Inc., dba Truheat, Inc., dba Truheat SJB, dba Electro Heat, Inc., Allegan, MI: April 10, 2006

TA–W–61,332; Cooper Tire and Rubber Company, Texarkana, AR: April 17, 2006

TA–W–61,335; Mr. Gasket, Inc., On-Site Leased Workers of Express Personnel and Spherion Staffing, Carson City, NV: April 16, 2006

TA–W–60,945; Missbrenner Wet Printing, Inc., Clifton, NJ: February 7, 2006

TA–W–61,017; Catawissa Lumber and Specialty Co., Plant #1, Catawissa, PA: February 15, 2006

TA–W–61,017A; Catawissa Lumber & Specialty Co., Plant #2, Paxinos, PA: February 15, 2006

TA–W–61,096; Portac, Inc., Tacoma Division, Tacoma, WA: March 6, 2006

TA–W–61,130; Bauhaus USA, Inc., A Division of LA-Z-Boy, Inc., Iuka, MS: March 15, 2006

TA–W–61,183; Duro Textiles LLC, Duro Finishing, Plant 2 and Duro Textile Printers Division, Fall River, MA: April 2, 2007

TA–W–61,186; New London Textile, Inc., Newark, DE: March 20, 2006

TA–W–61,194; Triana Industries, Inc., Leased Workers of Automotive Staffing Agency, Madison, AL: March 26, 2006

TA–W–61,200; Neff Perkins Company, Perry, OH: March 9, 2006

TA–W–61,353; Skip's Cutting, Inc., On-Site Leased Workers of Gage Personnel and JFC Temp, Ephrata, PA: April 30, 2006.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,965; Eaton Aviation Corporation, Aviation and Aerospace Components, Aurora, CO: February 13, 2006

TA–W–61,196; Avx Corporation, Raleigh, NC: March 26, 2006

TA–W–61,257; Marathon Electronic Mfg. Corp, A Subsidiary of Regal—Beloit Corporation, Lima, OH: April 5, 2006

TA–W–61,270; CNH American LLC, Leased Workers From Armstrong's CNH Meridian, FBG Service Corp., Belleville, PA: April 9, 2006

TA–W–61,278; ExxonMobil Chemical Co., Films Division, Leased Workers From Express Personnel, Stratford, CT: April 9, 2006

TA–W–61,282; Amphenol Phoenix Interconnect, A Wholly Owned Subsidiary of Amphenol Corp., Tustin, CA: April 10, 2006

TA–W–61,286; Nevamar LLC, Subsidiary of Panolam Industries Int'l Inc., Tarboro, NC: April 2, 2006

TA–W–61,289; The Siemon Company, Watertown, CT: April 10, 2006

TA–W–61,296; Valeo Engine Cooling, Jamestown, NY: April 11, 2006

TA–W–61,307; Simply Asia Foods, Inc., Union City, CA: April 4, 2006

TA–W–61,321; Starkey Labs, Starkey—East Division, Mt. Laural, NJ: April 16, 2006

TA–W–61,331; FiberTech Group, Inc., A Subsidiary of Polymer Group Incorporated, Rogers, AR: April 17, 2006

TA–W–61,333; Coats American, Inc., Cherokee Plant, Marble, NC: April 16, 2006

TA–W–61,343; Wentworth Corporation, dba Liberty Textiles, Eden, NC: April 19, 2006

TA–W–61,359; Bayer Clothing Group, Inc., MacClenny Products Facility, MacClenny, FL: March 29, 2006

TA–W–61,398; Commercial Vehicle Group, Statesville Operation Division, Statesville, NC: April 27, 2006

TA–W–61,295; Spang and Company, Magnetics Division, East Butler, PA: April 10, 2006

TA–W–61,387; Yamaha Music Manufacturing, Inc., On-Site Leased Workers of Personnel Options, Thomaston, GA: April 11, 2006

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,152; Precision Laser, Inc., High Point, NC: March 19, 2006

TA–W–61,399; Wehadkee Yarn Mills, Talladega Division, Talladega, AL: April 27, 2006

TA–W–61,347; Wellman, Inc., Administrative Offices, Fort Mill, SC: April 11, 2006

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–61,215; Tool Dex, Inc., Warren, MI

TA–W–61,320; TK Holdings/Moses Lake Inflator Operations, Airbag Inflator Workers, Moses Lake, WA

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–61,247; Anderson Corporation, Bayport Division, Bayport, MN

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance And Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–61,206; The Hershey Company, Hershey Plant, Hershey, PA

TA–W–61,234; Penn Mould Industries, Inc., Washington, PA

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–60,825; Golden Ratio Woodworks, Emigrant, MT

TA–W–60,849; C and D Technologies, Power Electronics Division, Milwaukie, OR

TA–W–60,950; Northern Hardwoods, Hardwood Lumber and Logs Division, South Range, MI

TA–W–60,965A; Eaton Aviation Corporation, Group Support Equipment, Aurora, CO

TA–W–61,146; Watson Laboratories, Inc, Phoenix, AZ

TA–W–61,160; Bruce Plastics, Inc., Pittsburgh, PA

TA–W–61,213; Stark Ceramics, Inc., East Canton, OH

TA–W–61,228; Form Tools, Inc., Jackson, MI

TA–W–61,271; J.H. Baxter and Company, Eugene, OR

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country under a free trade agreement or a beneficiary country under a preferential trade agreement, or there has been or is likely to be an increase in imports).

None.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–61,269; Auto Truck Transport Corp., Portland, OR

TA–W–61,298; American Manufacturing International, Inc., Patterson, NJ

TA–W–61,345; Arvato Services, Inc., Melbourne, FL

TA–W–61,384; Collezione Europa, USA, Claremont, NC

TA–W–61,304; Securitas, Working on the Site at Bosch—Sumter Plant, Sumter, SC

TA–W–61,366; Staples, Inc., Information Systems Division, Framingham, MA

TA–W–61,383; Kasle Steel Corporation, Corporate Office, Dearborn, MI

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of *April 30 through May 4, 2007.* Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 10, 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–9476 Filed 5–16–07; 8:45 am]

BILLING CODE 4510–FN–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on May 22, 2007 via conference call. The meeting will begin at 2 p.m. (EST), and continue until conclusion of the Board's agenda.

LOCATION: 3333 K Street, NW., Washington, DC 20007, 3rd Floor Conference Center.

STATUS OF MEETING: Open. Directors will participate by telephone conference in such a manner as to enable interested members of the public to hear and identify all persons participating in the meeting. Members of the public wishing to observe the meeting may do so by joining participating staff at the location indicated above. Members of the public wishing to listen to the meeting by telephone should call 1–888–795–2173 and enter 58581 on the key pad when prompted. To enhance the quality of your listening experience as well as that of others and to eliminate background noises that interfere with the audio recording of the proceeding, please mute your telephone during the meeting.

Matters To Be Considered

1. Approval of the agenda.
2. Consider and act on Board of Directors' response to the Inspector General's Semiannual Report to Congress for the period of October 1, 2006 through March 31, 2007.
3. Consider and act on other business.
4. Public comment.

CONTACT PERSON FOR INFORMATION: Patricia Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 295–1500.

Dated: May 15, 2007.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 07–2491 Filed 5–15–07; 3:20 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–035)]

NASA Advisory Council; Science Committee; Heliophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Heliophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Wednesday, June 13, 2007, 8:30 a.m. to 5 p.m., Thursday, June 14, 2007, 8:30 a.m. to 5 p.m. and Friday, June 15, 2007, 8:30 a.m. to noon Eastern Daylight Time.

ADDRESSES: NASA Headquarters, room 6H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Heliophysics Division Overview and Program Status
—New Heliophysics Data Policy
—Low Cost Access to Space Program
—Final review and approval of Heliophysics Science at the Moon Report
—Assessment of Heliophysics Fiscal Year 2007 Science Accomplishments

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information no less than 5 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 5 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

Dated: May 10, 2007.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E7–9447 Filed 5–16–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–036)]

NASA Advisory Council; Science Committee; Planetary Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Thursday, June 7, 2007, 8:30 a.m. to 5 p.m. and Friday, June 8, 2007, 8:30 a.m. to 3 p.m. Eastern Daylight Time.

ADDRESSES: NASA Headquarters, room 9H40, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Reports from Analysis Groups
—Review of Government Performance and Results Act Metrics
—Planetary Science Division Overview and Program Status
—Mars Program Update

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information no less than 5 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 5 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

Dated: May 10, 2007.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E7–9448 Filed 5–16–07; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271–LR; ASLBP No. 06–849–03–LR]

Atomic Safety and Licensing Board; In the Matter of Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station); Notice of Hearing (Application for License Renewal)

May 11, 2007.

Before Administrative Judges: Alex S. Karlin, Chairman, Dr. Richard E. Wardwell, Dr. Thomas S. Elleman.

This proceeding concerns the January 25, 2006, application of Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc. (collectively, Entergy), to renew the operating license for the Vermont Yankee Nuclear Power Station in Windham County, Vermont (Operating License No. DPR–28). Entergy seeks to extend this license for an additional twenty years beyond the current expiration date of March 21, 2012. On March 27, 2006, the Commission published a notice of acceptance for docketing of the Entergy renewal application and a notice of opportunity to request a hearing on the application. 71 FR 15,220 (Mar. 27, 2006). Requests for hearings and petitions to intervene were filed on or before May 26, 2006, by four entities: The Vermont Department of Public Service (DPS), the Attorney General of the Commonwealth of Massachusetts, the Town of Marlboro, Vermont, and the New England Coalition (NEC). On June 14, 2006, this Atomic Safety and Licensing Board was established to conduct this adjudication. 71 FR 34,397 (June 14, 2006).

On August 1 and 2, 2006, the Board heard oral argument from the petitioners, Entergy, and the NRC Staff in Brattleboro, Vermont, relating to the admissibility of the proposed contentions. The standing of the petitioners to intervene was uncontested. On September 22, 2006, the Board issued a Memorandum and Order admitting contentions submitted by DPS and NEC, thereby granting two of the requests for a hearing and admitting DPS and NEC as parties to the proceeding. LBP–06–20, 64 NRC 131, 143 (2006). At the same time, the Board also granted these two organizations' requests to adopt one another's contentions under 10 CFR 2.309(f)(3). On November 17, 2006, the Board granted the request by the State of New Hampshire to participate in this proceeding as an interested state under 10 CFR 2.315(c).

In light of the foregoing, please take notice that an evidentiary hearing will be conducted in this proceeding. Subject to a Board determination regarding any request to employ formal hearing procedures under 10 CFR part 2, subpart G or expedited hearing procedures under 10 CFR part 2, subpart N, *see* 10 CFR 2.310, the evidentiary hearing on all admitted contentions will be governed by the informal hearing procedures set forth in 10 CFR part 2, subpart L, 10 CFR 2.1200—2.1213. During the course of the proceeding, the Board may also hear oral arguments as provided in 10 CFR 2.331, may hold various prehearing conferences pursuant to 10 CFR 2.329, and may conduct evidentiary hearings in accordance with 10 CFR 2.1206–2.1208. These may be held via teleconference, video-conference, and/or in person. The public may attend any oral argument, prehearing conference, or evidentiary hearing. Notices of these sessions will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and through the NRC Web site, *http://www.nrc.gov.*

Additionally, as provided in 10 CFR 2.315(a), any ''person who is not a party'' to the proceeding may submit a written limited appearance statement. Limited appearance statements do not constitute evidence, but they are placed in the docket for the hearing and provide members of the public with an opportunity to make the Board and/or the parties aware of their concerns about matters at issue in the proceeding. A written limited appearance statement can be submitted at any time and should be sent to the Office of the Secretary using one of the following methods: (1) *Mail* to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, with a copy to the Chairman of this Licensing Board at Mail Stop T–3F23, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; (2) *e-mail* to the Office of the Secretary at *hearingdocket@nrc.gov*, with a copy to the Board Chairman (c/o Marcia Carpentier, *mxc7@nrc.gov*); or (3) *fax* to the Office of the Secretary at 301–415–1101 (facsimile verification number: 301–415–1966), with a copy to the Board Chairman at 301–415–5599 (facsimile verification number: 301–415–7550).

At a later date, the Board may, at its discretion, hear oral limited appearance statements at a location in the vicinity of the Vermont Yankee facility. Notice of any oral limited appearance sessions will be published in the **Federal Register** and/or made available to the public at the NRC PDR and on the NRC Web site, *http://www.nrc.gov.*

The deadline for this Board's receipt of limited appearance statements (written or oral) will be the day preceding the commencement of the evidentiary hearing. The evidentiary hearing will occur after the NRC Staff issues its final environmental report and final safety evaluation report on this application. Thus, the evidentiary hearing has not yet been specifically scheduled, but will probably commence in early 2008.

Documents relating to this proceeding are available for public inspection at the Commission's PDR or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by

telephone at 1–800–397–4209 or 301–415–4737, or by e-mail at *pdr@nrc.gov.*

It is so *ordered.*

Dated: May 11, 2007.

For the Atomic Safety and Licensing Board.[1]

Alex S. Karlin,

Chairman, Administrative Judge, Rockville, Maryland.

[FR Doc. E7–9524 Filed 5–16–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–19324]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 25–19852–01 For Unrestricted Release Of Building 7 of the Glaxosmithkline Biologicals-Hamilton Facility in Hamilton, MT

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of environmental assessment and finding of no significant impact for license amendment.

FOR FURTHER INFORMATION CONTACT: Janine F. Katanic, Ph.D., Health Physicist, Nuclear Materials Inspection Branch, Division of Nuclear Materials Safety, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011; telephone: (817) 860–8151; fax number: (817) 860–8188; or by e-mail: *jfk@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 25–19852–01. The license is held by GlaxoSmithKline Biologicals-Hamilton (the Licensee), for its Hamilton facility (the Facility), located at 553 Old Corvallis Road in Hamilton, Montana. Issuance of the amendment would authorize release of Building 7 of the Facility for unrestricted use. The Licensee requested this action in a letter dated June 8, 2006. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's June 8, 2006, license amendment request, resulting in the release of Building 7 of the Facility for unrestricted use. License No. 25–19852–01 was issued on June 24, 1988, pursuant to 10 CFR Part 30, and has been amended periodically since that time. This license authorizes the Licensee to possess and use small quantities of byproduct material, in both sealed and unsealed form, for laboratory research in immunological and biochemical studies. Additionally, the license authorizes the Licensee to possess and use a self-shielded irradiator device and to possess and use sealed sources for the purposes of performing instrument calibration.

The Facility is situated on 35 acres (14 hectares) and consists of a main building comprised of office space and laboratories as well as several smaller buildings used for various purposes. The Facility is located in a mixed residential/commercial area. The Licensee's June 8, 2006, license amendment request specifically addressed the release of Building 7 of the Facility for unrestricted use. Building 7 was constructed of filled concrete block walls set on a concrete floor, and its dimensions were 30 feet (9.1 meters) long by 15 feet (4.6 meters) wide and 8 feet (2.4 meters) in height. The building had a filled concrete block wall down the center which separated the building into an East Room and a West Room. Each room had a separate entry door on the south side of the building. Within Building 7, licensed materials were confined to the East Room. The East Room was an area of approximately 15 feet (4.6 meters) by 13 feet (4 meters) and had been used by the Licensee for the storage of licensed materials.

On May 30, 2006, the Licensee ceased licensed activities in Building 7 and initiated a survey and decontamination of the East Room of Building 7. Based on the Licensee's historical knowledge of the site and the conditions of the East Room of Building 7, the Licensee determined that only routine decontamination activities, in accordance with their radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC. The Licensee conducted surveys of the East Room of Building 7 and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities in Building 7 of the Facility and seeks the unrestricted use of Building 7.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at Building 7 of the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: hydrogen-3, carbon-14, and calcium-45. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of Building 7 affected by these radionuclides.

The Licensee conducted a final status survey during May-June 2006. This survey covered the East Room of Building 7. The final status survey report was attached to the Licensee's amendment request dated June 8, 2006. NRC regulation 10 CFR 20.1402, Radiological Criteria for Unrestricted Use, states in part that a site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a total effective dose equivalent not to exceed 25 millirems per year (0.25 milliSeiverts per year) to an average member of the critical group (the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances). The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by referencing Regulatory Guide 1.86, Table 1, Acceptable Surface Contamination Levels, and NUREG–1556, Volume 11, Table S.5, Acceptable Surface Contamination Levels. Both tables provide a maximum contamination limit for uncontrolled release of facilities. Because these values were not dose-based calculations as required by the license termination rule in 10 CFR Part 20, they were compared to the screening values documented in NUREG–1757, Volume 1, Revision 1, Consolidated NMSS

[1] Copies of this order were sent this date by Internet e-mail transmission to counsel for (1) licensees Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc.; (2) intervenors Vermont Department of Public Service and New England Coalition of Brattleboro, Vermont; (3) the Staff and (4) the State of New Hampshire.

Decommissioning Guidance, Table B.1. NUREG–1757 provides screening values for building surface contamination which are equivalent to 25 millirem per year. The surface contamination levels as submitted by the Licensee are significantly lower than the acceptable screening values as documented in NUREG–1757. Accordingly, the Licensee's final status survey results were thus acceptable.

The NRC staff conducted a confirmatory survey on August 3, 2006. As documented in the inspection report, none of the confirmatory survey results revealed any radiation distinguishable from accepted background radiation levels.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). Further, no incidents were recorded involving spills or releases of radioactive material in Building 7 of the Facility. Accordingly, there were no significant environmental impacts from the use of radioactive material at the Facility.

The NRC staff finds that the proposed release of the portion of the Facility described above for unrestricted use is in compliance with 10 CFR 20.1402. The NRC has found no other activities in the area that could result in cumulative environmental impacts. Based on its review, the staff considered the impact of the residual radioactivity at Building 7 of the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would simply deny the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. Additionally, this denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this EA to the State of Montana Department of Public Health and Human Services for review on October 23, 2006. On January 8, 2007, the State of Montana Department of Public Health and Human Services responded by telephone and had no comments on the draft EA.

The NRC staff has determined that the proposed action is of a procedural nature and will not affect listed species or critical habitat. Therefore, no consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers, if applicable.

1. **Federal Register** Notice, Volume 65, No. 114, page 37186, dated Tuesday, June 13, 2000, ''Use of Screening Values to Demonstrate Compliance With The Federal Rule on Radiological Criteria for License Termination;''

2. NRC, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities,'' NUREG–1496, July 1997 (ML042310492, ML042320379, and ML042330385);

3. NRC, ''Consolidated NMSS Decommissioning Guidance,'' NUREG–1757, Volume 1, Revision 1, September 2003 (ML053260027);

4. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''

5. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''

6. Poletti, Brian, GlaxoSmithKline Biologicals—Hamilton, License Amendment Request, June 8, 2005 (ML062920087);

7. Whitten, Jack E., Acknowledgment of Receipt of Final Status Survey, July 14, 2006 (ML061950672);

8. NRC Inspection Report 030–19324/06–001, August 25, 2006 (ML062370479);

9. NRC, Telephone Conversation Record with State of Montana Department of Public Health and Human Services, January 8, 2007 (ML071130330); and,

10. E-mail correspondence between Katanic, Janine F. and Poletti, Brian, Questions Regarding June 8, 2006 Amendment Request, April 24–25, 2007 (ML071160054).

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Arlington, Texas this 8th day of May 2007.

For The Nuclear Regulatory Commission.

C. L. Cain,

Senior Management Analyst, Division of Nuclear Materials Safety, Region IV.

[FR Doc. E7–9522 Filed 5–16–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATE: Week of May 28, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of May 28, 2007—Tentative

Wednesday, May 30, 2007

9:25 a.m. Affirmation Session (Public Meeting) (Tentative):

a. USEC Inc. (American Centrifuge Plant), LBP–07–06 (Initial Decision Authorizing License), Geoffrey Sea Letter ''in preparation of late-filed contentions'' (Tentative).

b. Shieldalloy Metallurgical Corp. (Licensing Amendment Request for Decommissioning of the Newfield, New Jersey Facility), Docket No. 40–7102–MLA, Appeal of Loretta Williams from LBP–07–05 (Tentative).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

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• The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. Braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: May 14, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–2467 Filed 5–15–07; 12:27 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27821; File No. 812–13287]

Lincoln Variable Insurance Products Trust, et al.; Notice of Application

May 11, 2007.

AGENCY: The Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an exemption pursuant to Section 6(c) of the Investment Company Act of 1940, as amended (the ''1940 Act'') from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

APPLICANTS: Lincoln Variable Insurance Products Trust (the ''Trust''), the Lincoln National Life Insurance Company (''Lincoln Life'') and Lincoln Investment Advisors Corporation (''LIAC'') (collectively, ''Applicants'').

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 6(c) of the 1940 Act, granting exemptions from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder (including any comparable provisions of a permanent rule that replaces Rule 6e–3(T)), to the extent necessary to permit shares of the Trust and shares of any other existing or future investment company (''Other Investment Companies'') that is designed to fund insurance products and for which Lincoln Life, or any of its affiliates, may serve as administrator, investment manager, principal underwriter or sponsor (the Trust and Other Investment Companies being hereinafter referred to, collectively, as ''Insurance Investment Companies''), or shares of any current or future series of any Insurance Investment Company (''Insurance Fund''), to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (2) trustees of qualified group pension and group retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans''); (3) LIAC and any affiliate of LIAC that serves as an investment adviser, manager, principal underwriter, sponsor or administrator for the purpose of providing seed capital (collectively, the ''Manager''); and (4) any insurance company general account that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5 (''General Account'') under the circumstances described in the application.

DATES: *Filing Date:* The application was filed on May 1, 2006, and amended on May 11, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 1, 2007, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o Colleen E. Tonn, Lincoln National Life Insurance Company, 1300 South Clinton Street, Fort Wayne, IN 46802; copies to Keith T. Robinson, Dechert LLP, 1775 I Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Ellen J. Sazzman, Senior Counsel, at (202) 551–6762, or Harry Eisenstein, Branch Chief, at (202) 551–6795, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the SEC's Public Reference Branch, 100 F Street, NE., Washington, DC 20549 ((202) 551–8090).

Applicants' Representations

1. The Trust is organized as a Delaware statutory trust and is registered with the Commission as an open-end management investment company under the 1940 Act. The Trust currently consists of, and offers shares of beneficial interest in, thirty-one investment portfolios that are sold only to separate accounts of insurance companies in conjunction with variable

life and variable annuity contracts, or to other registered investment companies that sell their shares only to such separate accounts as part of a ''fund-of-funds'' arrangement. LIAC, a Tennessee corporation and a wholly-owned subsidiary of Lincoln National Corporation, is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended, and serves as investment adviser to the Trust. The Trust may offer one or more additional investment portfolios or classes of shares in the future.

2. The Trust sells its shares directly or indirectly to Lincoln Life and its affiliate, Lincoln Life & Annuity Company of New York, each of which holds the shares in its separate accounts to support variable annuity and variable life insurance contracts. Lincoln Life is an Indiana insurance company that serves as administrator and sponsor of the Trust. Lincoln Life is licensed to do business in all states (except New York) and the District of Columbia, Guam, and the Virgin Islands. Lincoln Life is a wholly owned subsidiary of Lincoln National Corporation, a publicly held insurance holding company incorporated under the laws of the State of Indiana.

3. Shares of the Trust are not offered directly to the public, but currently are sold directly or indirectly only to the separate accounts of Lincoln Life and Lincoln Life & Annuity Company of New York (collectively, the ''Life Companies'') to fund benefits under flexible premium variable life insurance policies or variable annuity contracts. Each Life Company is an affiliated person of the other Life Company. The separate accounts of the Life Companies include both separate accounts that are registered as investment companies under the 1940 Act and separate accounts that are not registered as investment companies under the 1940 Act in reliance on an exclusion from the definition of ''investment company'' provided by Section 3 of the 1940 Act.

4. The Insurance Investment Companies propose to also offer shares of the Insurance Funds to registered and unregistered separate accounts of unaffiliated insurance companies (collectively with separate accounts of affiliated insurance companies, ''Separate Accounts'') in order to fund various types of insurance products. These products may include, but are not limited to, variable annuity contracts, scheduled premium variable life insurance contracts, single premium variable life insurance contracts, and flexible premium variable life insurance contracts (collectively referred to herein as ''variable contracts'' or ''contracts''). Insurance companies whose Separate Account(s) may now or in the future own shares of the Insurance Funds are referred to herein as ''Participating Insurance Companies.''

5. The Participating Insurance Companies established or will establish their own Separate Accounts and designed or will design their own variable contracts. Each Participating Insurance Company has or will have the legal obligation to satisfy all applicable requirements under both state and federal law. Participating Insurance Companies may rely on Rule 6e–2 or Rule 6e–3(T) under the 1940 Act in connection with the establishment and maintenance of variable life insurance Separate Accounts, although some Participating Insurance Companies, in connection with variable life insurance contracts, may rely on individual exemptive orders as well.

6. Each Participating Insurance Company will enter into a participation agreement with the applicable Insurance Investment Company on behalf of the Insurance Funds in which the Participating Insurance Company invests. The role of the Insurance Funds under this arrangement, insofar as federal securities laws are applicable, will consist of offering their shares to the Separate Accounts and fulfilling any conditions that the Commission may impose upon granting the order requested herein.

7. The Insurance Investment Companies propose to offer shares of the Insurance Funds directly to Qualified Plans outside of the separate account context. Qualified Plans may choose any of the Insurance Funds that are offered as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given an investment choice depending on the terms of the Plan itself. Shares of any of the Insurance Funds sold to such Qualified Plans would be held or deemed to be held by the trustee(s) of said Plans. Certain Qualified Plans, including Section 403(b)(7) Plans and Section 408(a) Plans, may vest voting rights in Plan participants instead of Plan trustees. Exercise of voting rights by participants in any such Qualified Plans, as opposed to the trustees of such Plans, cannot be mandated by the Applicants. Each Plan must be administered in accordance with the terms of the Plan and as determined by its trustee or trustees.

8. Shares of each Insurance Investment Company also may be offered to a Manager and to General Accounts. Treasury Regulation 1.817–5(f)(3)(ii) permits such sales as long as, *inter alia,* the return on shares held by the Manager is computed in the same manner as for shares held by the Separate Accounts, and the Manager does not intend to sell to the public shares of the Insurance Investment Company that it holds. Applicants represent that sales in reliance on these provisions of the Treasury Regulation will be made to a Manager consistent with these two conditions and for the purpose of providing seed capital. Any shares of an Insurance Fund purchased by the Manager will automatically be redeemed if and when the Manager's investment advisory agreement terminates.

9. Applicants propose that the Insurance Funds also be permitted to offer and/or sell shares to General Accounts. Treasury Regulation 1.817–5(f)(3) permits sales to general accounts of insurance companies and their corporate affiliates as long as the return on shares held by such persons is computed in the same manner as for shares held by a Separate Account, such persons do not intend to sell to the public shares of the Insurance Fund that they hold, and a segregated asset account of the life insurance company whose general account holds those shares also holds or will hold a beneficial interest in the Insurance Fund. Applicants represent that sales to General Accounts will be made consistent with these provisions.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account organized as a unit investment trust (''Trust Account''), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. Section 9(a)(2) of the 1940 Act makes it unlawful for any company to serve as a depositor or principal underwriter of any Trust Account (among other things), if an affiliated person of that company is subject to disqualification enumerated in Section 9(a)(1) or (2) of the 1940 Act. Sections 13(a), 15(a), and 15(b) of the 1940 Act have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying investment company's shares.

2. The exemptions granted to an insurance company by Rule 6e–2(b)(15) are available only where each registered management investment company underlying the Trust Account (''underlying fund'') offers its shares ''exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company * * *.'' Therefore, the relief granted by

Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same company or of any affiliated life insurance company. The use of a common underlying fund as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.''

3. In addition, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common underlying fund as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as ''shared funding.''

4. Because the relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to variable life insurance separate accounts, additional exemptive relief may be necessary if the shares of the Insurance Investment Companies are also to be sold to a General Account, a Qualified Plan, or the Manager under the circumstances described in the Application. Applicants note that if shares of the Insurance Funds are sold only to variable annuity separate accounts, a Qualified Plan, the Manager, and a General Account, exemptive relief under Rule 6e–2 would not be necessary. The relief provided for under this section does not relate to such proposed purchasers or to a registered investment company's ability to sell its shares to such proposed purchasers. The use of a common management investment company as the underlying investment vehicle for variable annuity and variable life separate accounts of affiliated and unaffiliated insurance companies, a Qualified Plan, the Manager, and a General Account, is referred to herein as ''extended mixed and shared funding.''

5. In connection with the funding of flexible premium variable life insurance contracts issued through a Trust Account, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more underlying funds which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies.

6. The relief provided by Rule 6e–3(T) is not relevant to the purchase of shares of the Insurance Investment Companies by Qualified Plans, the Manager or General Accounts. However, because the relief granted by Rule 6e–3(T)(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Insurance Investment Companies are also to be sold to Qualified Plans, the Manager, or General Accounts.

7. Applicants maintain that none of the relief provided for in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Qualified Plans, the Manager or General Accounts, or to an underlying fund's ability to sell its shares to such purchasers. It is only because some of the Separate Accounts that may invest in the Insurance Investment Companies may themselves be investment companies that rely upon the relief provided by Rules 6e–2 and 6e–3(T) and wish to continue to rely upon that relief provided in those Rules, that the Applicants are applying for the requested relief.

8. Applicants represent that if and when a material irreconcilable conflict arises between the Separate Accounts or between Separate Accounts on the one hand and Qualified Plans, the Manager or General Accounts on the other hand, the Participating Insurance Companies, Qualified Plans and the Manager must take whatever steps are necessary to remedy or eliminate the conflict, including eliminating the Insurance Funds as eligible investment options. Applicants submit that investment by the Manager or the inclusion of Qualified Plans or General Accounts as eligible shareholders should not increase the risk of material irreconcilable conflicts among shareholders. Applicants further maintain that even if a material irreconcilable conflict involving the Qualified Plans, Manager or General Accounts arose, the Qualified Plans, Manager or General Accounts, unlike the Separate Accounts, can simply redeem their shares and make alternative investments. By contrast, insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Time consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Applicants submit that allowing the Manager, Qualified Plans or General Accounts to invest directly in the Insurance Investment Companies should not increase the opportunity for conflicts of interest.

9. Applicants state that paragraph (3) of Section 9(a) provides, among other things, that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (a)(2). Rule 6e–2(b)(15)(i) and (ii) under the 1940 Act and Rule 6e–3(T)(b)(15)(i) and (ii) under the 1940 Act provide exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying fund.

10. Applicants submit that the relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) under the 1940 Act permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) under the 1940 Act permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that

none of the insurer's personnel who are ineligible, pursuant to Section 9(a), are participating in the management or administration of the underlying fund. The partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act from the requirements of Section 9 of the 1940 Act limits, in effect, the amount of monitoring of an insurer's personnel, which would otherwise be necessary to ensure compliance with Section 9, to that which is appropriate in light of the policy and purposes of Section 9. Those rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it is also unnecessary to apply Section 9(a) of the 1940 Act to the many individuals employed by Participating Insurance Companies (or affiliated companies of Participating Insurance Companies) who do not directly participate in the administration or management of the Insurance Investment Companies.

11. Applicants submit that there is no regulatory purpose in extending the monitoring requirements to embrace a full application of Section 9(a)'s eligibility restrictions because of mixed funding or shared funding. Many of the Participating Insurance Companies are not expected to play any role in the management or administration of the Insurance Investment Companies. Those individuals who participate in the management or administration of the Insurance Investment Companies will remain the same regardless of which separate accounts, or insurance companies use the Insurance Investment Companies. Therefore, applying the monitoring requirements of Section 9(a) to the thousands of individuals employed by the Participating Insurance Companies would not serve any regulatory purpose. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contract owners and Plan participants. Applicants submit the relief requested should not be affected by the sale of shares of the Insurance Investment Companies to Qualified Plans, the Manager or General Accounts under the circumstances described in the application. The insulation of the Insurance Investment Companies from those individuals who are disqualified under the 1940 Act remains in place. Because Qualified Plans, the Manager and General Accounts are not investment companies and will not be deemed to be affiliated with the Insurance Investment Companies solely by virtue of their shareholdings, no additional relief is necessary.

12. Sections 13(a), 15(a), and 15(b) of the 1940 Act have been deemed by the Commission to require ''pass-through'' voting with respect to underlying fund shares held by a separate account. Applicants maintain that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide partial exemptions from those sections to permit the insurance company to disregard the voting instructions of its contract owners in certain limited circumstances. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A)(1) under the 1940 Act provide that the insurance company may disregard the voting instructions of its contract owners in connection with the voting of shares of an underlying fund if such instructions would require such shares to be voted to cause such underlying funds to make (or refrain from making) certain investments that would result in changes in the subclassification or investment objectives of such underlying funds or to approve or disapprove any contract between an underlying fund and its investment manager, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of such Rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) under the 1940 Act provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any change in such underlying fund's investment policies, principal underwriter, or any investment manager (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of Rules 6e–2 and 6e–3(T)).

13. Applicants maintain Rule 6e–2 recognizes that a variable life insurance contract is an insurance contract; it has important elements unique to insurance contracts; and it is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission therefore deemed such exemptions necessary ''to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, Rule 6e–3(T)'s corresponding provisions presumably were adopted in recognition of the same factors.

14. Applicants submit that the Insurance Investment Companies' sale of shares to Qualified Plans, the Manager or General Accounts under the circumstances described in the Application will not have any impact on the relief requested in this regard. Shares of the Insurance Investment Companies sold to Qualified Plans would be held by the trustees of such Plans. The exercise of voting rights by Qualified Plans, whether by the trustees, by participants, by beneficiaries, or by investment managers engaged by the Plans, does not present the type of issues respecting the disregard of voting rights that are presented by variable life separate accounts. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Similarly, the Manager and General Accounts are not subject to any pass-through voting requirements. Accordingly, unlike the case with Separate Accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans, the Manager or General Accounts.

15. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

16. Applicants assert that shared funding by unaffiliated Participating Insurance Companies, is, in this respect, no different than the use of the same

investment company as the funding vehicle for affiliated Participating Insurance Companies, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit under various circumstances. Affiliated Participating Insurance Companies may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions discussed below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce.

17. Applicants assert that Rules 6e–2(b)(15) and 6e–3(T)(b)(15) give the insurance company the right to disregard the voting instructions of the contract owners. Applicants assert that the right under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) of an insurance company to disregard contract owners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items and under certain specified conditions. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations. However, a particular Participating Insurance Company's disregard of voting instructions, nevertheless, could conflict with the majority of contract owner voting instructions. The Participating Insurance Company's action could arguably be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the contract owners' voting instructions should prevail, and could either preclude a majority vote approving the change or could represent a minority view. If the Participating Insurance Company's judgment represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at an Insurance Investment Company's election, to withdraw its separate account's investment in that Insurance Investment Company and no charge or penalty would be imposed as a result of such withdrawal.

18. With respect to voting rights, Applicants submit that it is possible to provide an equitable means of giving such voting rights to contract owners and to Qualified Plans, the Manager or General Accounts. The transfer agent(s) for the Insurance Investment Companies will inform each shareholder, including each separate account, each Qualified Plan, the Manager and each General Account, of its share ownership, in an Insurance Investment Company. Each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement. Investment by Qualified Plans or General Accounts in any Insurance Investment Company will similarly present no conflict. The likelihood that voting instructions of insurance company contract owners will ever be disregarded or the possible withdrawal referred to above is extremely remote and this possibility will be known, through prospectus disclosure, to any Qualified Plan or General Account choosing to invest in an Insurance Fund. Moreover, even if a material irreconcilable conflict involving Qualified Plans or General Accounts arises, the Qualified Plans or General Accounts may simply redeem their shares and make alternative investments.

19. Applicants assert that there is no reason that the investment policies of an Insurance Fund would or should be materially different from what they would or should be if such Insurance Fund funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Similarly, the investment strategy of Qualified Plans and General Accounts (*i.e.*, long-term investment) coincides with that of variable contracts and should not increase the potential for conflicts. Each of the Insurance Funds will be managed to attempt to achieve its investment objective, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product or other investor. There is no reason to believe that different features of various types of contracts will lead to different investment policies for different types of variable contracts. The sale and ultimate success of all variable insurance products depends, at least in part, on satisfactory investment performance, which provides an incentive for the Participating Insurance Company to seek optimal investment performance.

20. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance needs, and investment goals. An Insurance Fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the growth of the Insurance Investment Company. In addition, permitting mixed and shared funding will broaden the base of contract owners, which will facilitate the establishment of additional Insurance Funds serving diverse goals. The broader base of contract owners and shareholders can also be expected to provide economic justification for the creation of additional series of each Insurance Investment Company with a greater variety of investment objectives and policies.

21. Applicants note that Section 817(h) is the only section in the Code where separate accounts are discussed. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. Applicants submit that Treasury Regulation 1.817–5, which establishes the diversification requirements for such portfolios, specifically permits, in paragraph (f)(3), among other things, ''qualified pension or retirement plans,'' ''the general account of a life insurance company,'' ''the manager * * * of an investment company'' and separate accounts to share the same underlying management investment company. The Applicants, therefore, have concluded that neither the Code nor the Treasury Regulations nor Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, Separate Accounts, the Manager and General Accounts all invest in the same underlying fund.

22. Applicants assert that the ability of the Insurance Investment Companies to sell their shares directly to Qualified Plans, the Manager or General Accounts does not create a ''senior security'' as such term is defined under Section 18(g) of the 1940 Act with respect to any variable contract, Qualified Plan, Manager or General Account. Regardless of the rights and benefits of contract owners or Qualified Plan participants, the Separate Accounts, Qualified Plans, the Manager, and the General Accounts

have rights only with respect to their respective shares of the Insurance Investment Companies. They can only redeem such shares at net asset value. No shareholder of any of the Insurance Investment Companies has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

23. Applicants assert that permitting an Insurance Investment Company to sell its shares to the Manager in compliance with Treasury Regulation 1.817–5 will enhance Insurance Investment Company management without raising significant concerns regarding material irreconcilable conflicts.

24. Given the conditions of Treasury Regulation 1.817–5(f)(3) under the Code and the harmony of interest between an Insurance Investment Company, on the one hand, and its Manager(s) or a Participating Insurance Company, on the other, Applicants assert that little incentive for overreaching exists. Applicants assert that such investments should not implicate the concerns discussed regarding the creation of material irreconcilable conflicts. Applicants assert that permitting investment by the Manager or General Accounts will encourage the orderly and efficient creation and operation of the Insurance Investment Companies, and reduce the expense and uncertainty of using outside parties at the early stages of Insurance Investment Company operations.

25. Applicants assert that various factors have limited the number of insurance companies that offer variable contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain Participating Insurance Companies as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Use of the Insurance Investment Companies as a common investment medium for variable contracts, Qualified Plans and General Accounts would help alleviate these concerns, because Participating Insurance Companies, Qualified Plans and General Accounts will benefit not only from the administrative expertise of Lincoln Life and its affiliates, as well as the investment expertise of any investment manager to an Insurance Fund, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Insurance Investment Companies available for mixed and shared funding and permitting the purchase of Insurance Investment Company shares by Qualified Plans and General Accounts may encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Mixed and shared funding also may benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Furthermore, granting the requested relief should result in an increased amount of assets available for investment by the Insurance Investment Companies. This may benefit variable contract owners by promoting economies of scale, by reducing risk through greater diversification due to increased money in the Insurance Investment Companies, or by making the addition of new Insurance Funds more feasible.

Applicants' Conditions

Applicants and the Manager agree that the order granting the requested relief shall be subject to the following conditions, which shall apply to the Trust as well as any future Insurance Investment Company that relies on the order:

1. A majority of the Board of Trustees or Board of Directors (''Board'') of each Insurance Investment Company shall consist of persons who are not ''interested persons'' of the Insurance Investment Company, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission (''Independent Board Members''), except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (i) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (ii) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application or by future rule.

2. The Board of each Insurance Investment Company will monitor the Insurance Investment Company for the existence of any material irreconcilable conflict among and between the interests of the contract owners of all Separate Accounts, participants of Qualified Plans, the Manager or General Accounts investing in that Insurance Investment Company, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (i) An action by any state insurance regulatory authority; (ii) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (iii) an administrative or judicial decision in any relevant proceeding; (iv) the manner in which the investments of any Insurance Fund are being managed; (v) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of the Qualified Plans; (vi) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (vii) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies (on their own behalf, as well as by virtue of any investment of General Account assets in all Insurance Investment Companies), a Manager, and any trustee on behalf of any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of an Insurance Investment Company (''Participating Qualified Plan'') (collectively, ''Participants'') will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each trustee for a Qualified Plan that is a Participant to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Insurance Investment Company, and such responsibilities will be carried out with a view only to the interests of the

contract owners. The responsibility to report such information and conflicts and to assist the Board also will be contractual obligations of all Participating Qualified Plans under their agreements governing participation in the Insurance Investment Company, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Qualified Plan participants.

4. If it is determined by a majority of the Board of an Insurance Investment Company, or a majority of its Independent Board Members, that a material irreconcilable conflict exists, the relevant Participant shall, at its expense and to the extent reasonably practicable (as determined by a majority of the Independent Board Members), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (i) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Insurance Investment Company or any series therein and reinvesting such assets in a different investment medium (including another Insurance Fund, if any); (ii) in the case of Participating Insurance Companies, submitting the question of whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (iii) withdrawing the assets allocable to some or all of the Qualified Plans from the affected Insurance Investment Company or any Insurance Fund and reinvesting those assets in a different investment medium; and (iv) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the Insurance Investment Company's election, to withdraw its Separate Account's investment in the Insurance Investment Company, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Investment Company, to withdraw its investment in the Insurance Investment Company, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participants under their agreements governing participation in the Insurance Investment Company, and these responsibilities will be carried out with a view only to the interests of the contract owners or Plan participants.

For the purposes of this Condition (4), a majority of the Independent Board Members shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Insurance Investment Company or its Manager be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this Condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially and adversely affected by the material irreconcilable conflict. No Qualified Plan shall be required by this Condition (4) to establish a new funding medium for such Qualified Plan if (i) a majority of Qualified Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer or (ii) pursuant to governing Qualified Plan documents and applicable law, the Qualified Plan makes such decision without Qualified Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications shall be made known promptly in writing to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through a registered Separate Account as required by the 1940 Act as interpreted by the Commission. However, as to variable contracts issued by unregistered Separate Accounts, pass-through voting privileges will be extended to contract owners to the extent granted by the issuing insurance company. Accordingly, such Participating Insurance Companies, where applicable, will vote shares of each Insurance Fund held in their Separate Accounts in a manner consistent with voting instructions timely received from such contract owners. Participating Insurance Companies shall be responsible for assuring that each of their Separate Accounts investing in an Insurance Investment Company calculates voting privileges in a manner consistent with all other Participating Insurance Companies.

The obligation to calculate voting privileges as provided in the application shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Insurance Investment Company. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares held in its General Account or otherwise attributed to it, in the same proportion as it votes those shares for which it has received voting instructions. Each Plan will vote as required by applicable law and governing Plan documents.

7. As long as the 1940 Act requires pass-through voting privileges to be provided to variable contract owners, a Manager and any General Account will vote their respective shares in the same proportion as all variable contract owners having voting rights with respect to that Insurance Investment Company or Insurance Fund, as the case may be; provided, however, that a Manager or any General Account shall vote its shares in such other manner as may be required by the Commission or its staff.

8. An Insurance Fund will make its shares available to a Separate Account and/or Qualified Plans at or about the same time it accepts any seed capital from any Manager or any General Account of a Participating Insurance Company.

9. An Insurance Investment Company will notify all Participants that disclosure regarding potential risks of mixed and shared funding may be appropriate in prospectuses for any of the Separate Accounts and in Plan disclosure documents. Each Insurance Investment Company will disclose in its prospectus that: (i) Shares of the Insurance Investment Company may be offered to insurance company Separate Accounts that fund both variable annuity and variable life insurance contracts, and to Qualified Plans; (ii) due to differences of tax treatment or other considerations, the interests of various contract owners participating in the Insurance Investment Company and the interests of Qualified Plans or General Accounts investing in the Insurance Investment Company might at

some time be in conflict; and (iii) the Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

11. If and to the extent Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in the application, then each Insurance Investment Company and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

12. Each Insurance Investment Company will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of that Insurance Investment Company or Insurance Fund, as the case may be), and in particular each Insurance Investment Company will either provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although each Insurance Investment Company is not, or will not be, one of the trusts described in Section 16(c) of the 1940 Act) as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Insurance Investment Company will act in accordance with the Commission's interpretation of the requirements of Section 16(a) of the 1940 Act with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

13. Each Participant shall at least annually submit to the Board of an Insurance Investment Company such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by the conditions contained in the application. Such reports, materials and data shall be submitted more frequently, if deemed appropriate, by the Board. The obligations of the Participants to provide these reports, materials and data to the Board of the Insurance Investment Company when it so reasonably requests, shall be a contractual obligation of the Participants under their agreements governing participation in each Insurance Investment Company.

14. Each Insurance Investment Company will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan an owner of 10% or more of the assets of the Insurance Investment Company unless the trustee for such Plan executes a participation agreement with such Insurance Investment Company which includes the conditions set forth herein to the extent applicable. A trustee for a Qualified Plan will execute an application containing an acknowledgment of this condition at the time of such Plan's initial purchase of the shares of any Insurance Investment Company or Insurance Fund.

Conclusion

Applicants submit, for the reasons stated above, that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Nancy M. Morris,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55744; File No. 4–429]

Joint Industry Plan; Order Approving Joint Amendment No. 22 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage Relating to Response Time for Certain Orders Sent Through the Linkage

May 11, 2007.

I. Introduction

On February 2, 2007, February 15, 2007, February 5, 2007, February 7, 2007, January 30, 2007, and February 13, 2007, the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Incorporated (''CBOE''), the International Securities Exchange, LLC (''ISE''), the NYSE Arca, Inc. (''NYSE Arca''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') (collectively, ''Participants''), respectively, filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 thereunder [2] an amendment (''Joint Amendment No. 22'') to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'').[3] In Joint Amendment No. 22, the Participants propose to reduce (i) the amount of time a member must wait after sending a Linkage Order [4] to a market before the member [5] can trade through that market and (ii) the timeframe within which a Participant must respond to a Linkage Order after receipt of that Order. On March 8, 2007, the Commission summarily put into effect Joint Amendment No. 22 on a temporary basis not to exceed 120 days and solicited comment on Joint Amendment No. 22 from interested persons.[6] The Commission received no comments on Joint Amendment No. 22. This order approves Joint Amendment No. 22.

II. Description of the Proposed Amendment

In Joint Amendment No. 22, the Participants proposed to reduce the amount of time a member must wait after sending a Linkage Order to a market before the member can trade through that market. The Participants proposed to decrease this time period

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[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (''Linkage'') proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, Pacific Exchange, Inc. (n/k/a NYSE Arca), and BSE joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[4] *See* Section 2(16) of the Linkage Plan. For the purposes of this Joint Amendment No. 22 only, references to ''Linkage Orders'' herein pertain to P/A Orders and Principal Orders. For definitions of ''P/A Order'' and ''Principal Order,'' *see* Section 2(16)(a) and (b) of the Linkage Plan, respectively.

[5] The term ''member,'' as used herein, includes NYSE Arca OTP Holders and OTP Firms and Boston Options Exchange (''BOX'') Options Participants. *See* NYSE Arca Rules 1.1(q) and 1.1(r) and Chapter I, Sec. 1(a)(40) of BOX Rules, respectively.

[6] *See* Securities Exchange Act Release No. 55436, 72 FR 12639 (March 16, 2007).

from 20 seconds to 5 seconds. The Participants also proposed to reduce the time frame in which a Participant must respond to a Linkage Order from 15 to 5 seconds after receipt of that Order.

III. Discussion and Commission Findings

The Commission previously determined, pursuant to Rule 608 under the Act,[7] to put into effect summarily on a temporary basis not to exceed 120 days, the changes to the Linkage Plan detailed above in Joint Amendment No. 22.[8] After careful consideration of Joint Amendment No. 22, the Commission finds that approving Joint Amendment No. 22 is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that Joint Amendment No. 22 is consistent with Section 11A of the Act[9] and Rule 608 thereunder[10] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets. The Commission believes that reducing the time required by a Participant to respond to a Linkage Order and the amount of time a member sending a Linkage Order must wait before trading through a nonresponsive Participant should facilitate the more timely execution of orders across the options exchanges.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act[11] and Rule 608 thereunder,[12] that Joint Amendment No. 22 is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E7–9437 Filed 5–16–07; 8:45 am]

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[7] 17 CFR 242.608.

[8] *See supra* note 6.

[9] 15 U.S.C. 78k–1.

[10] 17 CFR 242.608.

[11] 15 U.S.C. 78k–1.

[12] 17 CFR 242.608.

[13] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55752; File No. SR–CBOE–2007–44]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade the streetTRACKS Gold Shares Fund Pursuant to Unlisted Trading Privileges

May 11, 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 May 8, 2007, the Chicago Board Options Exchange, Incorporated (the ''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 substantially prepared by the Exchange. This notice and order provides notice of the proposed rule change and approves the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Board Options Exchange, Incorporated proposes to: (1) trade on its stock trading facility, CBOE Stock Exchange (''CBSX''), the streetTRACKS Gold Shares (''GLD'' or ''Shares'') pursuant to unlisted trading privileges (''UTP''), and (2) adopt Exchange Rule 54.8, which governs the trading of commodity-based trust shares. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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, 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to trade the Shares on CBSX pursuant to UTP. The Shares represent fractional, undivided beneficial ownership interests in the streetTRACKS Gold Trust (''Trust''). The Trust is an investment trust, the sole assets of which are gold bullion, and from time to time, cash.[3] The Commission previously approved the original listing and trading of the Shares on the New York Stock Exchange (''NYSE'').[4] The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The trading hours for the Shares on the Exchange would be from 8:15 a.m. until 3:15 p.m. (Central Time).

The last-sale price for the Shares is disseminated over the Consolidated Tape. Gold pricing information based on the spot price for a troy ounce of gold from various financial information service providers, such as Reuters and Bloomberg, is available on a 24-hour basis. Complete real-time data for gold futures and options prices traded on the COMEX (a division of the NYMEX) is available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. CBOE, via a link from its own public Web site (*http://www.cboe.com*) to the Trust Web site (*http://www.streettracksgoldshares.com*), will provide at no charge continuously updated bids and offers indicative of the spot price of gold.[5]

The Trust Web site also will provide a calculation of the estimated NAV (also known as the Intraday Indicative Value or IIV) of a Share as calculated by multiplying the indicative spot price of gold by the quantity of gold backing

[3] Additional information regarding the streetTRACKS Gold Shares is at *http://www.streettracksgoldshares.com.*

[4] *See* Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22).

[5] The gold spot price at the Trust's Web site will be provided by The Bullion Desk (*http://www.thebulliondesk.com*). The Trust's Web site will indicate that there are other sources for obtaining the gold spot price. If the Trust's Web site should cease to provide this indicative spot price from an unaffiliated source (and the intraday indicative value) of the Shares, CBOE would cease to trade the Shares.

each Share. Comparing the IIV with the last sale price of the Shares helps an investor to determine whether, and to what extent, Shares may be selling at a premium or a discount to the NAV. Although provided free of charge, the indicative spot price and IIV per Share will be provided on an essentially real-time basis.[6] The Trust Web site provides the NAV of the Trust as calculated each business day by the Sponsor. In addition, the Trust Web site contains the following information, on a per-Share basis, for the Trust: (a) The IIV as of the close of the prior business day and the midpoint of the bid/ask price[7] in relation to such IIV (''Bid/Ask Price''), and a calculation of the premium or discount of such price against such IIV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the IIV, within appropriate ranges, for each of the four previous calendar quarters. The Trust Web site also provides the Trust's prospectus, as well as the two most recent reports to stockholders. The Trust Web site provides the last sale price of the Shares as traded in the U.S. market, subject to a 20-minute delay.[8]

In connection with the trading of the Shares, CBOE would inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares, such as loss, damage, or theft of the Trust's gold, and unanticipated problems related to the mechanisms and procedures that were specifically developed for this relatively new securities product. CBOE also would require its members to deliver a prospectus or product description to investors purchasing Shares prior to or concurrently with a transaction in Shares. In addition, CBOE Rule 53.6 requires member organizations to have a reasonable basis for recommending the Shares when recommending a transaction in the Shares.

CBOE believes that its surveillance procedures are adequate to address any concerns about the trading of the Shares on the Exchange because those procedures will be comparable to those used for exchange-traded funds and trust-issued receipts currently trading on the Exchange, and will incorporate and rely upon existing Exchange surveillance procedures governing equities. In addition, for intermarket surveillance purposes, the Exchange has entered into a reciprocal Memorandum of Understanding with NYMEX for the sharing of information related to any financial instrument based, in whole or in part, upon an interest in or performance of gold.

Further, proposed CBOE Rule 54.8 would impose certain obligations on Market-Makers that would apply in connection with trading the Shares. CBOE Rule 54.8(e) would require that a Market-Maker in the Shares provide the Exchange with information related to its trading in physical gold, gold futures contracts, options on gold futures, or any other gold derivatives. CBOE Rule 54.8(g) would prohibit a Market-Maker in the Shares from using any material non-public information received from any person associated with the Market-Maker or employee of such person regarding trading by such person or employee in physical gold, gold futures contracts, options on gold futures, or any other gold derivatives. In addition, CBOE Rule 54.8(d) would prohibit a Market-Maker in the Shares from being affiliated with a market maker in physical gold, gold futures contracts, options on gold futures, or any other gold derivatives unless the specified information barriers are in place.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. In addition, trading in the Shares would be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[9]

Moreover, the Exchange represents that it would cease trading the Shares if the listing market stops trading the Shares because of a regulatory halt similar to a halt based on CBOE Rule 6.3. UTP trading in the Shares is also governed by the trading halts provisions of CBOE Rule 52.3 relating to temporary interruptions in the calculation or wide dissemination of the IIV.

2. Statutory Basis

CBOE believes that the proposal is consistent with Section 6(b) of the Act[10] in general, and Section 6(b)(5) of the Act[11] in particular, in that the proposal is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. In addition, CBOE believes that the proposal is consistent with Rule 12f–5 under the Act[12] because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

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 not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

III. 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–2007–44 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–2007–44. 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

[6] The Trust's Web site, to which the CBOE Web site will link, will disseminate an indicative spot price of gold and the IIV, and indicate that these values are subject to an average delay of five to ten seconds.

[7] The bid/ask price is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day IIV.

[8] The last sale price of the Shares in the secondary market is available on a real-time basis for a fee from regular data vendors.

[9] CBOE Rule 6.3B.

[10] 15 U.S.C. 78s(b).

[11] 15 U.S.C. 78s(b)(5).

[12] 17 CFR 240.12f–5.

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–44 and should be submitted on or before June 7, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[15] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[16] The Commission notes that it previously approved the listing and trading of the Shares on the NYSE.[17] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[18] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[19] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last-sale information regarding the Shares are disseminated through the facilities of the CTA and the Consolidated Quotation System. Furthermore, as noted by the Exchange, various means exist for investors to obtain reliable gold price information and thereby to monitor the underlying spot market in gold relative to the NAV of their Shares. In addition, the IIV of each Fund is disseminated every 15 seconds throughout the trading day by the national securities exchange on which the Fund is listed or by other information providers or market data vendors.

Furthermore, the Commission believes that the proposal is reasonably designed to preclude trading of the Shares when transparency is impaired. CBOE Rule 52.3 sets forth trading halt procedures when CBOE trades an ETF pursuant to UTP. Under this rule, if the listing market halts trading when the IIV is not being calculated or disseminated, CBOE also would halt trading in the Shares. This rule is substantially similar to those recently adopted by other exchanges and found by the Commission to be consistent with the Act.[20]

The Commission notes that, if the Shares should be delisted by the listing market, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares and to deter and detect violations of Exchange rules. Among other things, the Exchange entered into a reciprocal Memorandum of Understanding with NYMEX for the sharing of information related to any financial instrument based, in whole or in part, upon an interest in or performance of gold.

2. Prior to the commencement of trading, the Exchange would inform its members and member organizations in an Information Circular of the special characteristics and risks associated with trading the Shares.

3. The Information Circular would include the requirement that members and member firms deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction.

This approval order is conditioned on the Exchange's adherence to these representations.

Finally, the Commission believes that proposed CBOE Rule 54.8, which imposes information barriers and trading restrictions on a member acting as a registered market maker in the Shares, is consistent with the Act. The Commission notes that CBOE Rule 54.8 is substantially similar to rules of other exchanges that previously have been approved by the Commission.[21]

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Shares on the NYSE is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–CBOE–2007–

[13] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78l(f).

[16] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[17] *See supra* note 4.

[18] 17 CFR 240.12f–5.

[19] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[20] *See e.g.*, NYSE Arca Equities Rule 7.34; Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006).

[21] *See, e.g.*, Nasdaq Rule 4630; Securities Exchange Act Release No. 54765 (November 16, 2006), 71 FR 67668 (November 22, 2006) (approving SR–Nasdaq–2006–009).

[22] 15 U.S.C. 78s(b)(2).

44) be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E7–9464 Filed 5–16–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55736; File No. SR–CBOE–2007–37]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 to Trade the iShares MSCI Index Funds and the S&P Europe 350 Index Fund Pursuant to UTP

May 10, 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 April 20, 2007, the Chicago Board Options Exchange, Incorporated (the ''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 substantially prepared by the Exchange. On May 7, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. This notice and order provides notice of the proposed rule change, as amended, and approves the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Board Options Exchange, Incorporated proposes to trade on its subsidiary, the CBOE Stock Exchange (''CBSX''), shares of 15 international exchange-traded funds (''ETFs'' or ''Funds'') pursuant to unlisted trading privileges (''UTP''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

[23] 17 CFR 200.30–3(a)(12).

[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, 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, 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 trade on CBSX shares of 15 international ETFs (the ''Shares'') pursuant to UTP. These Funds are:

- iShares MSCI Australia Index Fund
- iShares MSCI Brazil Index Fund
- iShares MSCI EAFE Index Fund
- iShares MSCI Emerging Markets Index Fund
- iShares MSCI Germany Index Fund
- iShares MSCI Hong Kong Index Fund
- iShares MSCI Malaysia Index Fund
- iShares MSCI Mexico Index Fund
- iShares MSCI Pacific ex-Japan Index Fund
- iShares MSCI Singapore Index Fund
- iShares MSCI South Africa Index Fund
- iShares MSCI South Korea Index Fund
- iShares MSCI Taiwan Index Fund
- iShares MSCI United Kingdom Index Fund
- iShares S&P Europe 350 Index Fund

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to existing CBSX rules governing the trading of equity securities.

a. Description of the Funds

The following funds are listed on the American Stock Exchange (''Amex''):

- iShares MSCI Australia Index Fund
- iShares MSCI Brazil Index Fund
- iShares MSCI Germany Index Fund
- iShares MSCI Hong Kong Index Fund
- iShares MSCI Malaysia Index Fund
- iShares MSCI Mexico Index Fund
- iShares MSCI Singapore Index Fund
- iShares MSCI South Korea Index Fund
- iShares MSCI Taiwan Index Fund
- iShares MSCI United Kingdom Index Fund
- iShares S&P Europe 350 Index Fund

The following funds are listed on the New York Stock Exchange (''NYSE''):[3]

- iShares MSCI EAFE Index Fund
- iShares MSCI Emerging Markets Index Fund
- iShares MSCI Pacific ex-Japan Index Fund
- iShares MSCI South Africa Index Fund

In addition to being listed on the Amex or NYSE, the Shares[4] are traded on those and other securities exchanges and in the over-the-counter market.[5] The information below is intended to provide a description of how the Shares were created and are traded.[6]

The Shares are issued by iShares, Inc., except for iShares MSCI EAFE and S&P Europe 350, which are issued by iShares Trust. iShares, Inc. and iShares Trust are open-ended management investment companies. Each Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the applicable

[3] Effective February 16, 2007, the iShares MSCI Index Funds for EAFE, Emerging Markets, Pacific ex-Japan, and South Africa transferred their primary listing to the NYSE and are no longer listed on Amex. *See* Supplement dated February 16, 2007 to the Prospectus dated January 1, 2007 for the iShares MSCI Series, and Supplement dated February 16, 2007 to the Prospectus dated December 1, 2006 for the iShares Goldman Sachs Series and the iShares MSCI EAFE Series.

[4] The Funds (with the exception of the MSCI EAFE and S&P Europe 350 Funds) were formerly known as World Equity Benchmark Shares or WEBS. An initial series of WEBS, including the iShares MSCI Australia, Germany, Hong Kong, Malaysia, Mexico, Singapore, and United Kingdom Index Funds were initially approved for listing and trading on Amex in 1996. *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (SR–Amex–95–43). Additional WEBS series were approved for listing and trading in 2000, including iShares MSCI Brazil, iShares MSCI Taiwan, iShares MSCI South Africa and iShares MSCI South Korea. *See* Securities Exchange Act Release No. 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000) (SR–Amex–98–49). iShares MSCI EAFE and iShares S&P Europe 350, issued by iShares Trust, were approved for Amex listing and trading in, respectively, in 2001. *See* Securities Exchange Release No. 44700 (August 14, 2001), 66 FR 43927 (August 21, 2001) (SR–Amex–2001–34); Securities Exchange Act Release No. 42786 (May 15, 2000), 65 FR 33586 (May 24, 2000) (SR–Amex–99–49) (collectively, ''Listing Approval Orders'').

[5] *See, e.g.*, Securities Exchange Act Release No. 50142 (August 3, 2004), 69 FR 48539 (August 10, 2004) (SR–NYSE–2004–27) (approving trading of the Shares pursuant to UTP).

[6] Much of the information in this filing was taken from the Prospectuses and Statements of Additional Information of iShares, Inc. dated January 1, 2007, the Prospectus of iShares S&P Europe 350, dated August 1, 2006, the Prospectus of iShares Trust MSCI EAFE, dated December 1, 2006, and the Web sites of Amex (*http://www.amex.com*), the NYSE (*http://www.nyse.com*), and iShares (*http://www.ishares.com*). Fund information relating to net asset value (''NAV''), returns, dividends, component stock holdings, and the like is updated on a daily basis on the Web sites.

underlying index. The Funds utilize representative sampling to invest in a representative sample of securities in the applicable underlying index. Barclays Global Fund Advisors (''BGFA''), a subsidiary of Barclays Global Investors, N.A. (''BGI''), is the investment advisor for each Fund. BGI is a wholly owned indirect subsidiary of Barclays Bank PLC of the United Kingdom. BGFA and its affiliates are not affiliated with the index providers (MSCI and Standard & Poor's). Investors Bank and Trust Company serves as administrator, custodian, and transfer agent for the Funds, and SEI Investments Distribution Co. is distributor for the Funds. The distributor is not affiliated with BGFA.

b. MSCI and S&P Indexes

The MSCI Indexes are calculated by MSCI for each trading day in the applicable foreign exchange markets based on official closing prices in such exchange markets. For each trading day, MSCI publicly disseminates the MSCI Index values for the previous day's close. The S&P Europe 350 Index is calculated by Standard & Poor's (''S&P''), and is publicly disseminated by S&P for the previous day's close. The indexes are reported periodically in major financial publications, and the intra-day values of the Indexes, disseminated every 15 seconds throughout the trading day, are available through vendors of financial information as further described in the Listing Approval Orders.

c. Tracking Error

The Funds have chosen to pursue a representative sampling strategy that, by its very nature, entails some risk of tracking error. (It should also be noted that Fund expenses, the timing of cash flows, and other factors all contribute to tracking error.) The Web site for the Funds, *http://www.iShares.com*, contains detailed information on the performance and tracking error for each Fund.

d. Availability of Information Regarding Funds

The Web site for the Funds (*http://www.iShares.com*) contains the prior business day's NAV and the reported closing price, and a calculation of the premium or discount of such price against NAV; and data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV.

The intra-day values of the indexes will be disseminated every 15 seconds throughout the trading day by organizations authorized by the index providers and are available through major financial information vendors.

The intraday indicative value (''IIV'') of each Fund will be disseminated every 15 seconds throughout the trading day by the national securities exchange on which the Fund is listed or by other information providers or market data vendors. The IIV likely will not reflect the value of all securities included in the applicable indexes. In addition, the IIV will not necessarily reflect the precise composition of the current portfolio of securities held by the Funds at a particular moment. The IIV disseminated throughout the trading day should not be viewed as a real-time update of the NAV of the Funds, which is calculated only once a day. It is expected, however, that during the trading day the IIV will closely approximate the value per share of the portfolio of securities for the Funds, except under unusual circumstances.

For the iShares MSCI Australia, Hong Kong, Malaysia, Pacific ex-Japan, Singapore, South Korea, and Taiwan Funds, there is no overlap in trading hours between the foreign and U.S. markets. Therefore, for each of these Funds, the IIV calculator utilizes closing prices (denominated in the applicable foreign currency) in the principal foreign market for securities in the applicable Fund's portfolio and converts the price to U.S. dollars. This IIV is updated every 15 seconds, during the trading hours of the national securities exchange on which the Fund is listed, to reflect changes in currency exchange rates between the U.S. dollar and the applicable foreign currency. The IIV also includes the estimated cash component for each Fund.

For the iShares MSCI Brazil, EAFE, Germany, Mexico, South Africa, and United Kingdom Funds, and the S&P Europe 350 Fund, there is an overlap in trading hours between the foreign and U.S. markets. Therefore, the IIV calculator updates the applicable IIV every 15 seconds to reflect price changes in the applicable foreign market or markets and converts such prices into U.S. dollars based on the currency exchange rate. When a relevant foreign market is closed but the U.S. markets are open, the IIV is updated every 15 seconds to reflect changes in currency exchange rates after the foreign market closes. The IIV also includes the applicable cash component for each Fund.

e. Information Circular

In connection with the trading of the Shares, the Exchange will inform members and member organizations in an Information Circular of certain characteristics of certain Funds, as discussed below. The circular will discuss the special characteristics and risks of trading this type of security. Specifically, the circular, among other things, will discuss what the Funds are, how they are created and redeemed, the requirement that members and member firms deliver a prospectus or Product Description to investors purchasing Shares prior to or concurrently with the confirmation of a transaction, applicable Exchange rules, dissemination information, trading information, and the applicability of suitability rules.[7]

In addition, the circular will note Exchange responsibilities, including that before an Exchange member, member organization, or employee thereof recommends a transaction in the Shares, a determination must be made that the recommendation is in compliance with all applicable Exchange and federal rules and regulations. The circular will also discuss exemptive, no-action, and interpretive relief granted by the Commission from Section 11(d)(1) and certain rules under the Act, including Rule 10a–1, Rule 10b–10, Rule 14e–5, Rule 10b–17, Rule 11d1–2, Rules 15c1–5 and 15c1–6, and Rules 101 and 102 of Regulation M under the Act.

The NAV for the iShares MSCI Malaysia, South Korea, and Taiwan Index Funds will be calculated every day that the listing exchange is open for trading, normally as of 10 a.m. Central Time. This is in contrast to the other Funds, for which the NAV is normally calculated at 3 p.m. Central Time.

f. Other Issues

i. Surveillance Procedures

The Exchange intends to utilize its existing surveillance procedures applicable to equity securities to monitor trading in the Shares. The Exchange represents that these procedures are adequate to monitor Exchange trading of the Shares.

ii. Trading Hours

The trading hours for the Shares on CBSX will be 8:15 a.m. until 3:15 p.m. Central Time (unless the value of a Fund is not being calculated and widely disseminated before 8:30 a.m., in which case trading in that Fund will begin at 8:30 a.m.; and unless the original listing

[7] The Commission issued an order (''Order'') granting the Funds an exemption from Section 24(d) of the Investment Company Act of 1940. *See, e.g.*, Investment Company Act Release No. 25623 (June 25, 2002). Any Product Description used in reliance on the Section 24(d) exemptive order will comply with all representations made and all conditions contained in the Application for the Order.

exchange closes trading of a Fund at 3 p.m., in which case trading in that Fund will end at 3 p.m.).

iii. Trading Halts

The Exchange proposes to modify its Rule 52.3 to provide that (i) From 8:15 to 8:30 Central Time, if a security described in Rules 54.1, 54.2, and 54.3 (an ''ETF'') (the Shares are among the securities covered by this provision) begins trading on CBSX and subsequently a temporary interruption occurs in the calculation or wide dissemination of the IIV or the value of the underlying index, as applicable, to such ETF, by a major market data vendor, CBSX may continue to trade the ETF for the remainder of the 8:15 to 8:30 session; and, (ii) during normal market hours, if a temporary interruption occurs in the calculation or wide dissemination of the applicable IIV or value of the underlying index by a major market data vendor and the listing market halts trading in the ETF, CBSX, upon notification by the listing market of such halt due to such temporary interruption, also shall immediately halt trading in the ETF on CBSX.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [8] requirements that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. In addition, CBOE believes that the proposal is consistent with Rule 12f–5 under the Act [9] because it deems each Share to be an equity security, thus rendering trading in each Fund subject to the Exchange's existing rules governing the trading of equity securities.[10]

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 not necessary or appropriate in furtherance of the purposes of the Act.

[8] 15 U.S.C. 78(f)(b)(5).

[9] 17 CFR 240.12f–5.

[10] *See* e-mail dated May 8, 2007 from Brian Jung, Law Clerk, CBOE, to Geoffrey Pemble, Special Counsel, Division of Market Regulation, Commission.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

III. 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–2007–37 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–2007–37. 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–CBOE–2007–37 and should be submitted on or before June 7, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[13] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[14] The Commission notes that it previously approved the listing and trading of each of the Shares on either Amex or the NYSE.[15] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[16] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section

[11] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78*l*(f).

[14] Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[15] *See supra* notes 3–5.

[16] 17 CFR 240.12f–5.

11A(a)(1)(C)(iii) of the Act,[17] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last-sale information regarding the Shares are disseminated through the facilities of the CTA and the Consolidated Quotation System. In addition, the IIV of each Fund is disseminated every 15 seconds throughout the trading day by the national securities exchange on which the Fund is listed or by other information providers or market data vendors.

Furthermore, the Commission believes that the proposal is reasonably designed to preclude trading of the Shares when transparency is impaired. New CBOE Rule 52.3 sets forth trading halt procedures when CBOE trades an ETF pursuant to UTP. Under this rule, if the listing market halts trading when the IIV is not being calculated or disseminated, CBOE also would halt trading in the Shares. This rule is substantially similar to those recently adopted by other exchanges and found by the Commission to be consistent with the Act.[18]

The Commission notes that, if the Shares should be delisted by the listing market, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares and to deter and detect violations of Exchange rules.

2. Prior to the commencement of trading, the Exchange would inform its members and member organizations in an Information Circular of the special characteristics and risks associated with trading the Shares.

3. The Information Circular would include the requirement that members and member firms deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction.

This approval order is conditioned on the Exchange's adherence to these representations.

[17] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[18] *See e.g.*, NYSE Arca Equities Rule 7.34; Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006).

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Shares on either Amex or the NYSE is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–CBOE–2007–37), as modified by Amendment No. 1 thereto, be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E7–9465 Filed 5–16–07; 8:45 am]

BILLING CODE 8010–01–P

[19] 19 15 U.S.C. 78s(b)(2).

[20] 20 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55747; File No. SR–CBOE–2007–48]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade the iShares MSCI Canada Index Fund Pursuant to UTP

May 10, 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 May 10, 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 substantially prepared by the Exchange. This notice and order provides notice of the proposed rule change and approves the proposal on an accelerated basis.

[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 trade, on the CBOE Stock Exchange (''CBSX''), shares (''Shares'') of iShares MSCI Canada Index Fund (''Fund'') pursuant to unlisted trading privileges (''UTP''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to trade Shares of the Fund pursuant to UTP. The Fund seeks to provide investment results that correspond generally to the price and yield performance, before fees and expenses, of publicly traded securities in the Canadian market, as measured by the MSCI Canada Index (''Index'').

The Commission previously approved the original listing and trading of the Shares on the American Stock Exchange (''Amex'').[3] Subsequently, the Commission approved the listing and trading of the Shares on the Pacific Exchange, which is now known as NYSE Arca (''NYSE Arca'').[4]

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The trading hours for

[3] *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996).

[4] *See* Securities Exchange Act Release No. 53230 (February 6, 2006), 71 FR 7594 (February 13, 2006) (approving SR–PCX–2005–116, which permitted the listing and trading on the Pacific Exchange of the Shares, as well as shares of other iShares MSCI international index funds).

the Shares on CBSX will be 8:15 a.m. until 3:15 p.m. Central Time (''CT''), unless the intraday indicative value (''IIV'') of the Fund is not being calculated and widely disseminated before 8:30 a.m. CT, in which case trading will begin at 8:30 a.m. CT; and unless Amex closes trading at 3 p.m. CT, in which case trading will end at 3 p.m. CT.

Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Quotation System. The value of the Index is updated intra-day on a real-time basis as individual component securities of the Index change in price. The intraday value of the Index is disseminated every 15 seconds throughout the trading day. In addition, a value for the Index is disseminated once each trading day, based on closing prices in the relevant exchange markets.

To provide updated information relating to the Shares for use by investors, professionals, and persons wishing to create or redeem them, Amex disseminates through the facilities of the Consolidated Tape Association the IIV for the Fund as calculated by a securities information provider. The IIV is disseminated on a per-share basis every 15 seconds during regular trading hours. CBOE Rule 52.3 provides that, if the IIV ceases to be widely available, CBSX would cease trading the Shares.

In connection with the trading of the Shares, the Exchange would inform members and member organizations in an Information Circular of the special characteristics and risks associated with trading the Shares, including how they are created and redeemed, the prospectus or product description delivery requirements applicable to the Shares, applicable Exchange rules, how information about the value of the underlying Index is disseminated, and trading information. In addition, before a member recommends a transaction in the Shares, the member must determine that the Shares are suitable for the customer as required by CBOE Rule 53.6.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the underlying index and/or financial instruments of the Fund, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the Shares would be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[5]

Moreover, the Exchange represents that it would cease trading the Shares if the listing market stops trading the Shares because of a regulatory halt similar to a halt based on CBOE Rule 6.3. UTP trading in the Shares is also governed by the trading halts provisions of CBOE Rule 52.3 relating to temporary interruptions in the calculation or wide dissemination of the IIV or the value of the underlying index.

The Exchange intends to utilize its existing surveillance procedures applicable to equity security products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to monitor Exchange trading of the Shares.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. In addition, CBOE believes that the proposal is consistent with Rule 12f–5 under the Act[7] because it deems Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

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 not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

III. 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–2007–48 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–2007–48. 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–CBOE–2007–48 and should be submitted on or before June 7, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

[5] CBOE Rule 6.3B.

[6] 15 U.S.C. 78(f)(b)(5).

[7] 17 CFR 240.12f–5.

securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[10] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[11] The Commission notes that it previously approved the listing and trading of the Shares on Amex and NYSE Arca.[12] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[13] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[14] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last-sale information regarding the Shares are disseminated through the facilities of the CTA and the Consolidated Quotation System. In addition, the IIV of the Fund is disseminated every 15 seconds throughout the trading day by the national securities exchange on which the Fund is listed or by other information providers or market data vendors.

Furthermore, the Commission believes that the proposal is reasonably designed to preclude trading of the Shares when transparency is impaired. CBOE Rule 52.3 sets forth trading halt procedures when CBOE trades the Shares pursuant to UTP. Under this rule, if the listing market halts trading when the IIV is not being calculated or widely disseminated, CBOE also would halt trading in the Shares. This rule is substantially similar to those recently adopted by other exchanges and found by the Commission to be consistent with the Act.[15]

The Commission notes that, if the Shares should be delisted by the listing market, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares and to deter and detect violations of Exchange rules.

2. Prior to the commencement of trading, the Exchange would inform its members and member organizations in an Information Circular of the special characteristics and risks associated with trading the Shares.

3. The Information Circular would include the requirement that members and member firms deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found the listing and trading of the Shares on Amex and NYSE Arca to be consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–CBOE–2007–48) be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E7–9468 Filed 5–16–07; 8:45 am]

BILLING CODE 8010–01–P

[8] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78*l*(f).

[11] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[12] *See supra* notes 3 and 4.

[13] 17 CFR 240.12f–5.

[14] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[15] *See, e.g.*, NYSE Arca Equities Rule 7.34; Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55750; File No. SR–CBOE–2007–46]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Trade the SPDR DJ Global Titans ETF Pursuant to UTP

May 11, 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 May 9, 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 substantially prepared by the Exchange. This notice and order provides notice of the proposed rule change and approves the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') proposes to trade shares (''Shares'') of the SPDR DJ Global Titans ETF (''Fund'') pursuant to unlisted trading privileges (''UTP''). The text of the proposed rule change is available on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to trade Shares of the Fund pursuant to UTP. The Fund's investment objective is to replicate as closely as possible, before expenses, the performance of the Dow Jones Global Titans Index (''Index''), using an indexing investment approach.

The Commission previously approved the original listing and trading of the Shares on the American Stock Exchange (''Amex'').[3] The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The trading hours for the Shares on CBSX will be 8:15 a.m. until 3:15 p.m. Central Time, unless the intraday indicative value (''IIV'') of the Fund is not being calculated and widely disseminated before 8:30 a.m., in which case trading will begin at 8:30 a.m.; and unless the Amex closes trading at 3 p.m., in which case trading will end at 3 p.m.

Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Quotation System. The value of the Index is updated intra-day on a real-time basis as individual component securities of the Index change in price. The intraday value of the Index is disseminated every 15 seconds throughout the trading day. In addition, a value for the Index is disseminated once each trading day, based on closing prices in the relevant exchange markets.

To provide updated information relating to the Shares for use by investors, professionals, and persons wishing to create or redeem them, Amex disseminates through the facilities of the Consolidated Tape Association the IIV for the Fund as calculated by a securities information provider. The IIV is disseminated on a per-share basis every 15 seconds during regular trading hours. CBOE Rule 52.3 provides that, if the IIV ceases to be widely available, CBSX would cease trading the Shares.

In connection with the trading of the Shares, the Exchange would inform members and member organizations in an Information Circular of the special characteristics and risks associated with trading the Shares, including how they are created and redeemed, the prospectus or product description delivery requirements applicable to the Shares, applicable Exchange rules, how information about the value of the underlying Index is disseminated, and trading information. In addition, before a member recommends a transaction in the Shares, the member must determine that the Shares are suitable for the customer as required by CBOE Rule 53.6.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Fund inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the underlying index and/or financial instrument of the Fund, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the Shares would be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[4]

Moreover, the Exchange represents that it would cease trading the Shares if the listing market stops trading the Shares because of a regulatory halt similar to a halt based on CBOE Rule 6.3. UTP trading in the Shares is also governed by the trading halts provisions of CBOE Rule 52.3 relating to temporary interruptions in the calculation or wide dissemination of the IIV or the value of the underlying index.

The Exchange intends to utilize its existing surveillance procedures applicable to equity security products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to monitor Exchange trading of the Shares.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. In addition, CBOE believes that the proposal is consistent with Rule 12f–5 under the Act[6] because it deems each Share to be an equity security, thus rendering trading in each Fund subject to the Exchange's existing rules governing the trading of equity securities.

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 not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

III. 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–2007–46 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.

[3] *See* Securities Exchange Act Release No. 43338 (September 25, 2000), 65 FR 59235 (October 4, 2000) (SR–Amex–00–53).

[4] CBOE Rule 6.3B.

[5] 15 U.S.C. 78(f)(b)(5).

[6] 17 CFR 240.12f–5.

All submissions should refer to File Number SR–CBOE–2007–46. 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–CBOE–2007–46 and should be submitted on or before June 7, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[9] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[10] The Commission notes that it previously approved the listing and trading of each of the Shares on Amex.[11] The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,[12] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[13] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last-sale information regarding the Shares are disseminated through the facilities of the CTA and the Consolidated Quotation System. In addition, the IIV of each Fund is disseminated every 15 seconds throughout the trading day by the national securities exchange on which the Fund is listed or by other information providers or market data vendors.

Furthermore, the Commission believes that the proposal is reasonably designed to preclude trading of the Shares when transparency is impaired. CBOE Rule 52.3 sets forth trading halt procedures when CBOE trades an ETF pursuant to UTP. Under this rule, if the listing market halts trading when the IIV is not being calculated or disseminated, CBOE also would halt trading in the Shares. This rule is substantially similar to those recently adopted by other exchanges and found by the Commission to be consistent with the Act.[14]

The Commission notes that, if the Shares should be delisted by the listing market, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares and to deter and detect violations of Exchange rules.

2. Prior to the commencement of trading, the Exchange would inform its members and member organizations in an Information Circular of the special characteristics and risks associated with trading the Shares.

3. The Information Circular would include the requirement that members and member firms deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Shares on Amex is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–CBOE–2007–46) be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E7–9469 Filed 5–16–07; 8:45 am]

BILLING CODE 8010–01–P

[7] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78*l*(f).

[10] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[11] *See supra* note 3.

[12] 17 CFR 240.12f–5.

[13] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[14] *See e.g.*, NYSE Arca Equities Rule 7.34; Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55746; File No. SR–CBOE–2007–49]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Trade Certain iShares MSCI International Index Funds Pursuant to UTP

May 11, 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 May 10, 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 substantially prepared by the Exchange. This notice and order provides notice of the proposed rule change and approves the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to trade, on the CBOE Stock Exchange (''CBSX''), shares (''Shares'') of eight iShares MSCI international index funds (''Funds'') pursuant to unlisted trading privileges (''UTP''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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, 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to trade Shares of the following Funds pursuant to *UTP*:

- iShares MSCI Belgium (Symbol: EWK)
- iShares MSCI France (EWQ)
- iShares MSCI Italy (EWI)
- iShares MSCI Japan (EWJ)
- iShares MSCI Netherlands (EWN)
- iShares MSCI Spain (EWP)
- iShares MSCI Sweden (EWD)
- iShares MSCI Switzerland (EWL)

The Funds seek to provide investment results that correspond generally to the price and yield performance, before fees and expenses, of publicly traded securities in the aggregate in the respective country's markets, as measured by the applicable MSCI Index (each, an ''Index'').

The Commission previously approved the original listing and trading of the Shares on the American Stock Exchange (''Amex'').[3] The Commission subsequently approved listing of the Shares on the New York Stock Exchange (''NYSE'').[4] Consequently, Shares of each Fund are listed on both Amex and NYSE.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The trading hours for the Shares on CBSX will be 8:15 a.m. until 3:15 p.m. Central Time (''CT''), unless the intraday indicative value (''IIV'') of a Fund is not being calculated and widely disseminated before 8:30 a.m. CT, in which case trading will begin at 8:30 a.m. CT; and unless the Amex closes trading at 3 p.m. CT, in which case trading will end at 3 p.m. CT.

Quotations for and last-sale information regarding the Shares are disseminated through the Consolidated Quotation System. The value of each Index is updated intra-day on a real-time basis as individual component securities of each Index change in price. The intraday value of each Index is disseminated every 15 seconds throughout the trading day. In addition, a value for each Index is disseminated once each trading day, based on closing prices in the relevant exchange markets.

To provide updated information relating to the Shares for use by investors, professionals, and persons wishing to create or redeem them, Amex disseminates through the facilities of the Consolidated Tape Association the IIV for each Fund as calculated by a securities information provider. The IIV for each Fund is disseminated on a per-share basis every 15 seconds during regular trading hours. CBOE Rule 52.3 provides that, if the IIV ceases to be widely available, CBSX would cease trading the Shares.

In connection with the trading of the Shares, the Exchange would inform members and member organizations in an Information Circular of the special characteristics and risks associated with trading the Shares, including how they are created and redeemed, the prospectus or product description delivery requirements applicable to the Shares, applicable Exchange rules, how information about the value of the underlying Index is disseminated, and trading information. In addition, before a member recommends a transaction in the Shares, the member must determine that the Shares are suitable for the customer as required by CBOE Rule 53.6.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the underlying index and/or financial instruments of the Funds, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the Shares would be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[5]

Moreover, the Exchange represents that it would cease trading the Shares if the listing market stops trading the Shares because of a regulatory halt similar to a halt based on CBOE Rule 6.3. UTP trading in the Shares is also governed by the trading halts provisions of CBOE Rule 52.3 relating to temporary

[3] *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (SR–Amex–95–43). The Shares were formerly known as World Equity Benchmark Shares or WEBS.

[4] *See* Exchange Act Release No. 52816 (November 21, 2005), 70 FR 71574 (November 29, 2005) (SR–NYSE–2005–70) (approving the listing and trading on NYSE of the shares of iShares MSCI Index Funds for Belgium, France, Italy, Netherlands, Spain, Sweden, and Switzerland). *See also* Securities Exchange Act Release No. 52761 (November 10, 2005), 70 FR 70010 (November 18, 2005) (SR–NYSE–2005–76) (approving the listing and trading on NYSE of the shares of iShares MSCI Japan Index Fund, among other index funds).

[5] CBOE Rule 6.3B.

interruptions in the calculation or wide dissemination of the IIV or the value of the underlying index.

The Exchange intends to utilize its existing surveillance procedures applicable to equity security products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to monitor Exchange trading of the Shares.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. In addition, CBOE believes that the proposal is consistent with Rule 12f–5 under the Act[7] because it deems Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

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 not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

III. 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–2007–49 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–2007–49. 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–CBOE–2007–49 and should be submitted on or before June 7, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[10] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[11] The Commission notes that it previously approved the listing and trading of the Shares on Amex and NYSE.[12] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[13] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[14] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last-sale information regarding the Shares are disseminated through the facilities of the CTA and the Consolidated Quotation System. In addition, the IIV of each Fund is disseminated every 15 seconds throughout the trading day by the national securities exchange on which the Fund is listed or by other information providers or market data vendors.

Furthermore, the Commission believes that the proposal is reasonably designed to preclude trading of the Shares when transparency is impaired. CBOE Rule 52.3 sets forth trading halt procedures when CBOE trades the

[6] 15 U.S.C. 78(f)(b)(5).

[7] 17 CFR 240.12f–5.

[8] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78*l*(f).

[11] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[12] *See supra* notes 3 and 4.

[13] 17 CFR 240.12f–5.

[14] 15 U.S.C. 78k–1(a)(1)(C)(iii).

Shares pursuant to UTP. Under this rule, if the listing market halts trading when the IIV is not being calculated or widely disseminated, CBOE also would halt trading in the Shares. This rule is substantially similar to those recently adopted by other exchanges and found by the Commission to be consistent with the Act.[15]

The Commission notes that, if the Shares should be delisted by the listing market, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares and to deter and detect violations of Exchange rules.

2. Prior to the commencement of trading, the Exchange would inform its members and member organizations in an Information Circular of the special characteristics and risks associated with trading the Shares.

3. The Information Circular would include the requirement that members and member firms deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found the listing and trading of the Shares on Amex and NYSE to be consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–CBOE–2007–49) be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

J. Lynn Taylor,

Deputy Secretary.

[FR Doc. E7–9470 Filed 5–16–07; 8:45 am]

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[15] *See, e.g.*, NYSE Arca Equities Rule 7.34; Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55741; File No. SR–CME–2007–01]

Self-Regulatory Organization; Chicago Mercantile Exchange; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Listing Standards for Security Futures Products

May 10, 2007.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on April 19, 2007, Chicago Mercantile Exchange (''CME'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CME also has certified the proposed rule change with the Commodity Futures Trading Commission (''CFTC'') under Section 5c(c) of the Commodity Exchange Act (''CEA'')[3] on April 19, 2006.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to enact a technical amendment with respect to the identification of the subject of a contract. Specifically, futures on Nasdaq-100 Tracking Stock℠ (''QQQQ'') shall henceforth be known as PowerShares QQQ™ (''QQQQ''). The name change is occasioned by the fact that PowerShares Capital Management LLC assumed sponsorship of the NASDAQ–100 Trust, which tracks the NASDAQ–100 Index® commencing April 12, 2007. Note further that the CUSIP number associated with the ETF is amended to ''73935A 104.''

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 or such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to enact a technical amendment with respect to the identification of the subject of a contract. Specifically, futures on Nasdaq-100 Tracking Stock℠ (''QQQQ'') shall henceforth be known as PowerShares QQQ™ (''QQQQ''). The name change is occasioned by the fact that PowerShares Capital Management LLC assumed sponsorship of the NASDAQ–100 Trust, which tracks the NASDAQ–100 Index® commencing April 12, 2007. Note further that the CUSIP number associated with the ETF is amended to ''73935A 104.''

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[4] and, in particular, furthers the objectives of Section 6(b)(5)[5] of the Act insofar as it is designed to prevent fraudulent and manipulative acts and to promote just and equitable principles of trade. The Exchange further believe that the proposed rule change is consistent with Section 6(h)(3)[6] of the Act which contains detailed requirements for listing standards and conditions for trading applicable to security futures products. The information below is offered in support of these statements.

Section 6(h)(3) of the Act[7] contains detailed requirements for listing standards and conditions for trading applicable to security futures products. Set forth below is a summary of each such requirement or condition, followed by a brief explanation of how CME will comply with it, whether by particular

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 7a–2(c).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(h)(3).

[7] 15 U.S.C. 78f(h)(3).

provisions in the CME Listing Standards or otherwise.

Clause (A) of Section 6(h)(3)[8] requires that any security underlying a security future be registered pursuant to Section 12 of the Act.[9] This requirement is addressed by CME Rules 70001.2, 70002.1.a., 70003.2.b., and 70004.2.a.

Clause (B) of Section 6(h)(3)[10] requires that a market on which a physically settled security futures product is traded have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the security futures product. CME has reached an agreement with a member of DTC, a registered clearing agency, to facilitate the delivery-versus-payment transactions which result from an agreement to make or take delivery of the underlying security by the market participant. This DTC member will provide CME with a dedicated DTC account. This account will be a sub-account of the DTC member's main account and will be utilized solely for CME activity with respect to the delivery of, and payment for, securities delivered against CME security futures products. CME will act as a contra party to each delivery transaction. CME's Clearing House will submit delivery instructions to DTC through the DTC member. Market participants will be required to provide proof to CME outlining their operational and legal ability to make or take delivery of the underlying. These agreements and relevant procedures will be fully operational prior to any possible delivery event associated with such security futures products.

Clause (C) of Section 6(h)(3)[11] provides that listing standards for security futures products must be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association registered pursuant to Section 15A(a) of the Act.[12] For the reasons discussed above, notwithstanding specified differences between the Sample Listing Standards and the CME Listing Standards, CME believes that the latter are no less restrictive than comparable listing standards for exchange-traded options.

Clause (D) of Section 6(h)(3)[13] requires that each security future be based on common stock or such other equity securities as the Commission and the CFTC jointly determine are appropriate. This requirement is addressed by Rules 70001.1, 70002.1, 70003.2, and 70004.2.

Clause (E) of Section 6(h)(3)[14] requires that each security futures product be cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on one market and offset on another market that trades such product. CME intends to clear security futures products traded through Exchange facilities through the CME Clearing House Division. The Clearing House Division will have in place all provisions for linked and coordinated clearing as mandated by law and statute as of the effective date of such laws and statutes. CME will facilitate deliveries with a registered clearing agency to facilitate the payment and delivery of securities underlying security futures products, through the facilities of a third party agent.

Clause (F) of Section 6(h)(3)[15] requires that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act[16] effect transactions in a security futures product.

CME clearing members, and their correspondents, are bound by the applicable sales practice rules of the National Futures Association (''NFA''), which is a national securities association. As such, the sales practice rules of NFA are, perforce, comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act.[17] The application of NFA sales practice rules is extended beyond the CME clearing membership to the extent that NFA By-Law 1101 provides that ''[n]o member may carry an account, accept an order or handle a transaction in commodity futures contracts for or on behalf of any non-Member of NFA.''

Clause (G) of Section 6(h)(3)[18] requires that each security futures product be subject to the prohibition against dual trading in Section 4j of the CEA[19] and the rules and regulations thereunder or the provisions of Section 11(a) of the Act[20] and the rules and regulations thereunder. Exchange Rule 123 requires Exchange members to comply with all applicable ''provisions of the Commodity Exchange Act and regulations duly issued pursuant thereto by the CFTC.''

Note that the prohibition of dual trading in security futures products per Regulation § 41.27[21] adopted pursuant to Section 4j(a) of the CEA,[22] generally, applies to a contract market operating an electronic trading system if such market provides floor brokers executing customer orders through open outcry a contemporaneous placement of orders on behalf of specified accounts on an electronic trading platform and a time or place advantage or the ability to override a predetermined matching algorithm. The Exchange offers security futures products exclusively on its CME Globex electronic trading platform. Thus, the conditions cited above are inapplicable in this context and the CME Rulebook contains no specific rule relating to dual trading in an electronic forum.

Clause (H) of Section 6(h)(3)[23] provides that trading in a security futures product must not be readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities. CME Listing Standards are designed to ensure that CME products and the underlying securities will not be readily susceptible to price manipulation. Exchange Rule 432 defines activity ''to manipulate prices or to attempt to manipulate prices'' as a ''major offense,'' punishable, per Exchange Rule 430, by ''expulsion, suspension, and/or a fine of not more than $1,000,000 plus the monetary value of any benefit received as a result of the violative action.''

Clause (I) of Section 6(h)(3)[24] requires that procedures be in place for coordinated surveillance amongst the market on which a security futures product is traded, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading.

The Exchange has surveillance procedures in place to detect manipulation on a coordinated basis with other markets. In particular, CME is an affiliate member of the Intermarket Surveillance Group (''ISG'') and is party

[8] 15 U.S.C. 78f(h)(3)(A).
[9] 15 U.S.C. 78l.
[10] 15 U.S.C. 78f(h)(3)(B).
[11] 15 U.S.C. 78f(h)(3)(C).
[12] 15 U.S.C. 78o–3(a).
[13] 15 U.S.C. 78f(h)(3)(D).
[14] 15 U.S.C. 78f(h)(3)(E).
[15] 15 U.S.C. 78f(h)(3)(F).
[16] 15 U.S.C. 78o–3(a).
[17] 15 U.S.C. 78o–3(a).
[18] 15 U.S.C. 78f(h)(3)(G).
[19] 7 U.S.C. 6j.
[20] 15 U.S.C. 78k(a).
[21] 17 CFR 41.27.
[22] 7 U.S.C. 6j(a).
[23] 15 U.S.C. 78f(h)(3)(H).
[24] 15 U.S.C. 78f(h)(3)(I).

to an affiliate agreement and an agreement to share market surveillance and regulatory information with the other ISG members. Further, CME is party to a supplemental agreement with the other ISG members to address the concerns expressed by the Commission with respect to affiliate ISG membership.[25]

Note that CME Rule 424, as shown in the Appendix below, permits CME to enter into agreements for the exchange of information and other forms of mutual assistance with domestic or foreign self-regulatory organizations, associations, boards of trade and their respective regulators.

Clause (J) of Section 6(h)(3)[26] requires that a market on which a security futures product is traded have in place audit trails necessary or appropriate to facilitate the coordinated surveillance referred to in the preceding paragraph.

The Exchange relies upon its Market Regulation Department and its large, highly trained staff to actively monitor market participants and their trading practices; and to enforce compliance with Exchange Rules. Market Regulation Department staff is organized into the Compliance and the Market Surveillance Groups. In performing its functions the Market Regulation Department routinely works closely with the Audit Department, the Clearing House, the Legal Department, the Globex Control Center, and the Information Technology Department.

The Compliance area is responsible for enforcing the trading practice rules of the Exchange through detection, investigation, and prosecution of those who may attempt to violate those rules. Further, the area is responsible for handling customer complaints, ensuring the integrity of the Exchange's audit trail and administering an arbitration program for the resolution of disputes. The area employs investigators, attorneys, trading floor investigators, data analysts and a computer programming and regulatory systems design staff.

The Market Regulation Department has created some of the most sophisticated tools in the world to assist with the detection of possible rule violations and monitoring of the market. Among the systems it uses are The Regulatory Trade Browser (''RTB''), the Virtual Detection System (''VDS''), The Reportable Position System (''RPS''), and the RegWeb Profile System (''RegWeb''). These systems include information on all Globex users, all transactions, large positions, and statistical information on trading entities.

The Market Surveillance area is dedicated to the detection and prevention of market manipulation and other similar forms of market disruption. As part of these responsibilities, the group enforces the Exchange's position limit rules, administers the hedge approval process and maintains the Exchange's RPS system.

The foundation of the Exchange's Market Surveillance program is the deep knowledge of its staff about the major users, brokers, and clearing firms, along with its relationship with other regulators. Day-to-day monitoring of market positions is handled by a dedicated group of surveillance analysts assigned to specific market(s). Each analyst develops in-depth expertise of the factors that influence the market in question. The Exchange estimates that perhaps 90% of the market users at any single time are known to the Exchange. Daily surveillance staff activities include:

- Monitoring positions for size based on percentage of open interest and historic user participation in each contract.
- Aggregation of positions across clearing members, with the use of CME trade reporting systems, to account for all positions held by any single participant. This daily review permits the surveillance analyst promptly to identify unusual market activity.
- As a contract approaches maturity, large positions are scrutinized to determine whether such activity is consistent with prior experience, allowing prompt regulatory intervention if necessary.
- Analysts closely monitor market news through on-line and print media.
- Staff conducts on-site visits to large market participants periodically.

Market Regulation staff investigates possible misconduct and, when appropriate, initiates disciplinary action. Exchange Rule 430 empowers the Exchange's disciplinary committees to discipline, limit, suspend, or terminate a member's activities for cause, amongst other sanctions. Note further that the Exchange requires, per Rule 123, that members shall be responsible for ''the filing of reports, maintenance of books and records, and permitting inspection and visitation'' in order to facilitate such investigations by Exchange staff.

CME Rule 536 requires that certain information be recorded with respect to each order which includes: time entered, terms of the order, order type, instrument and contract month, price, quantity, account type, account designation, user code, and clearing firm. This information may be recorded manually on timestamped order tickets, electronically in a clearing firms system, or by entering the orders with the required information into Globex immediately upon receipt. A complete Globex electronic audit trail is archived and maintained by CME for at least a five year period. Clearing firms must also maintain any written or electronic order records for a period of five years.

Clause (K) of Section 6(h)(3)[27] requires that a market on which a security futures product is traded have in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded.

The Exchange filed with the Commission, pursuant to Rule 19b–7 under the Act,[28] rules establishing a generalized framework for the trade of security futures products.[29] Specifically, these rules establish a framework for the trade of Physically Delivered Single Security Futures.

In particular, Rule 71001.F. provides, in accordance with Regulation § 41.25(a)(2) of CEA,[30] that ''[t]rading of Physically Delivered Single Security Futures shall be halted at all times that a regulatory halt, as defined per SEC Rule 6h–1(a)(3) and CFTC Regulation § 41.1(l), has been instituted for the underlying security.''

Clause (L) of Section 6(h)(3)[31] requires that the margin requirements for a security futures product comply with the regulations prescribed pursuant to Section 7(c)(2)(B) of the Act.[32] CME submitted margin requirement rules[33] to the Commission per Rule 19b–4 under the Act.[34] Thus, CME believes that its rules regarding customer margin are consistent with the requirements of the Act.

For the reasons described above, CME believes that the rules submitted herewith, satisfy the requirements set forth in Section 6(h)(3) of the Act.[35]

[25] *See* Securities Exchange Act Release No. 45956 (May 17, 2002), 67 FR 36740 (May 24, 2002).

[26] 15 U.S.C. 78f(h)(3)(J).

[27] 15 U.S.C. 78f(h)(3)(K).

[28] 17 CFR 240.19b–7.

[29] *See* Securities Exchange Act Release No. 51957 (June 30, 2005), 70 FR 39820 (July 11, 2005) (SR–CME–2005–03).

[30] 17 CFR 41.25(a)(2).

[31] 15 U.S.C. 78f(h)(3)(L).

[32] 15 U.S.C. 78g(c)(2)(B).

[33] *See* Securities Exchange Act Release No. 46637 (October 10, 2002), 67 FR 64672 (October 21, 2002) (SR–CME–2002–01).

[34] 17 CFR 240.19b–4.

[35] 15 U.S.C. 78f(h)(3).

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that this amendment will have an impact on competition, because it represents a technical change in reference to the security underlying the futures contract.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change have not been solicited.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(7) of the Act.[36] Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[37]

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–CME–2007–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–CME–2007–01. 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 CME. 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–CME–2007–01 and should be submitted on or before June 7, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E7–9501 Filed 5–16–07; 8:45 am]

BILLING CODE 8010–01–P

[36] 15 U.S.C. 78s(b)(7).

[37] 15 U.S.C. 78s(b)(1).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55751; File No. SR–ISE–2007–29]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Conforming Certain Rules With Comparable NASD Rules

May 11, 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 May 1, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the ISE. On May 8, 2007, the Exchange filed 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 certain ISE rules to conform them to the rules of the National Association of Securities Dealers, Inc. (''NASD'') for purposes of the Plan for the Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2[3] under the Act entered into between the parties (''17d–2 Agreement'').[4] The text of the proposed rule change is available on the Exchange's Web site (*http://www.iseoptions.com*), at the Exchange, 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 Exchange proposes to amend certain ISE rules to conform them to the rules of the NASD for purposes of the 17d–2 Agreement between the parties and the related certification by the Exchange which states that the requirements contained in certain ISE rules are identical to, or substantially similar to, certain NASD rules that have been identified as comparable.[5] Specifically, the Exchange proposes to amend Rules 604, 624, 626, and 1407.

The Exchange proposes to amend ISE Rule 604, ''Continuing Education for Registered Persons,'' to remove the provision that exempts certain registered persons from the continuing education requirements if they have been continuously registered for ten (10) years as of July 1, 1998 and have not been the subject of a disciplinary action

[3] 17 CFR 240.17d–2.

[4] *See* Securities Exchange Act Release No. 55367 (February 27, 2007), 72 FR 9983 (March 6, 2007) (approving and declaring effective the 17d–2 Agreement between ISE and NASD) (''17d–2 Order'').

[5] *See* 17d–2 Order, *supra* note 4.

during the last ten (10) years so that it is consistent with NASD Rule 1120, ''Continuing Education Requirements.''

The Exchange proposes to amend ISE Rule 624, ''Brokers' Blanket Bonds,'' by changing the number of days to make necessary adjustments to the minimum coverage from thirty (30) days to sixty (60) days following the anniversary to mirror the requirements in NASD Rule 3020, ''Fidelity Bonds.''

The Exchange proposes to amend ISE Rule 626, ''Telephone Solicitation,'' by changing the number of months from twelve (12) to eighteen (18) that an associated person must be servicing an account to establish such account as a ''customer account'' for the purpose of being exempt from the call restrictions set forth in the rule. This amendment will mirror the requirements set forth in NASD Rule 2212, ''Telemarketing.''

The Exchange proposes to amend ISE Rule 1407, ''Short Sales in Nasdaq National Market Securities,'' to change the cross-reference in the rule from NASD 3350 to NASD Rule 5100 to reflect the recent numbering change.

2. Statutory Basis

The basis under the Act for this proposed rule change is found in Section 6(b)(5).[6] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, serve 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 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 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) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

The Exchange has asked the Commission to waive the 30-day operative delay and allow the proposed rule change to become operative immediately. The Commission hereby grants that request.[9] The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay so that the ISE may immediately conform its rules to the NASD's rules to facilitate the effectiveness of the 17d–2 Agreement recently approved by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2007–29 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–2007–29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–29 and should be submitted on or before June 7, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E7–9500 Filed 5–16–07; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). As required by Rule 19b-4(f)(6)(iii) under the Act, the Exchange also provided with the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the proposed rule change.

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on May 8, 2007, the date the ISE filed Amendment No. 1.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55739; File No. SR–NASDAQ–2007–049]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Trade Shares of the PowerShares DB G10 Currency Harvest Fund Pursuant to Unlisted Trading Privileges

May 10, 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 May 7, 2007, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This notice and order provides notice of the proposed rule change and approves the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to trade, pursuant to unlisted trading privileged (''UTP''), shares (''Shares'') of the PowerShares DB G10 Currency Harvest Fund (the ''Trust'' or ''Fund'').

The text of the proposed rule change is available from Nasdaq's Web site at *nasdaq.complinet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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, 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

Nasdaq is proposing to trade the Shares on a UTP basis. The Shares are currently trading on Nasdaq on a three-month pilot basis.[3] Approval of this filing will allow the Shares to continue to trade after the expiration of the pilot. The Commission previously approved the listing and trading of the Shares on the American Stock Exchange (''Amex'').[4] Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities, including Nasdaq Rule 4630. The trading hours for the Shares on Nasdaq will be 9:30 a.m. to 4:15 p.m. Eastern Time (''ET'').

The Shares represent beneficial ownership interests in the Fund's net assets, consisting solely of the common units of beneficial interests of the DB G10 Currency Harvest Master Fund (the ''Master Fund''). The Master Fund is a statutory trust created under Delaware law whose investment portfolio consists primarily of futures contracts on the currencies comprising the Deutsche Bank G10 Currency Future Harvest Index™ (the ''DBCHI'' or ''Index'') and includes cash and U.S. Treasury securities for margin purposes, and other high-credit-quality short-term fixed income securities. Both the Fund and the Master Fund are commodity pools operated by DB Commodity Services LLC (the ''Managing Owner'').[5]

The investment objective of the Fund and the Master Fund is to reflect the performance of the Index, over time, less the expenses of the operation of the Fund and the Master Fund. The Fund pursues its investment objective by investing substantially all of its assets in the Master Fund. Each Share correlates with a Master Fund share issued by the Master Fund and held by the Fund. The Master Fund pursues its investment objective by taking futures positions in currencies represented in the Index and adjusts its holdings quarterly as the Index is adjusted. The Master Fund also holds cash and U.S. Treasury securities for deposit with futures commission merchants as margin, and other high-credit-quality short-term fixed income securities. The Fund is not managed on a discretionary basis but instead seeks to track the Index pursuant to established rules and procedures.

The Index, at any time, is comprised of six currencies from The Group of Ten (''G10'') countries,[6] futures contracts on which are traded on the Chicago Mercantile Exchange (''CME''). The notional amounts of each currency included in the Index (''Index Currency'') are based on the Index closing level as of the period in which the Index is re-weighted.[7] The Index closing level reflects an arithmetic weighted average of the change in the futures positions on the Index Currencies' exchange rates against the U.S. dollar since March 12, 1993. On such date, the Index closing level was $100. The sponsor of the Index is Deutsche Bank AG London (''DB London'' or the ''Index Sponsor'').

Issuances of Shares are made only in one or more blocks of 200,000 Shares (''Basket Aggregation'' or ''Basket'') or multiples thereof. The Fund issues and redeems the Shares on a continuous basis, by or through participants that have entered into participant agreements (each, an ''Authorized Participant'')[8] with the Managing Owner.

A Basket will be issued in exchange for an amount of cash equal to the Fund's net asset value (''NAV'') per Share times 200,000 Shares (''Basket Amount''). The Basket Amount will be determined on each business day by The Bank of New York (''Administrator'').[9] An Authorized Participant that wishes to purchase a Basket must transfer the Basket Amount to the Administrator (the ''Cash Deposit Amount''). A Basket is then separable upon issuance into the Shares that can be traded on Nasdaq on a UTP basis.

The Shares are not individually redeemable may be redeemed only in Baskets. To redeem, an Authorized Participant is required to accumulate enough Shares to constitute a Basket (*i.e.*, 200,000 shares). An Authorized Participant that wishes to redeem a Basket will receive cash in exchange for each Basket surrendered in an amount equal to the NAV per Basket (the ''Cash Redemption Amount''). Upon the surrender of the Shares and payment of applicable redemption transaction fee, taxes, or charges, the Administrator will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55386 (March 2, 2007), 72 FR 10801 (March 9, 2007) (SR–NASDAQ–2007–016) (the ''Pilot Order'').

[4] *See* Securities Exchange Act Release No. 54450 (September 14, 2006), 71 FR 55230 (September 21, 2006) (the ''Amex Order'').

[5] The Managing Owner is registered as a commodity pool operator (''CPO'') and commodity trading advisor (''CTA'') with the Commodity Futures Trading Commission (''CFTC'') and is a member of the National Futures Association (''NFA''). The Managing Owner serves as the CPO and CTA of the Fund and the Master Fund.

[6] The G10 currencies are the U.S. Dollar, the Euro, the Japanese Yen, the Canadian Dollar, the Swiss Franc, the British Pound, the Australian Dollar, the New Zealand Dollar, the Norwegian Krone, and the Swedish Krona (the ''Eligible Index Currencies'').

[7] The Index Sponsor reviews and re-weights the Index on a quarterly basis.

[8] An ''Authorized Participant'' is a person, who at the time of submitting to the trustee an order to create or redeem one or more Baskets: (i) Is a registered broker-dealer; (ii) is a Depository Trust Company Participant; and (iii) has in effect a valid Participant Agreement.

[9] At or about 4 p.m. ET each business day, the Administrator determines the Basket Amount for orders placed by Authorized Participants received before 1 p.m. ET that day. Thus, although Authorized Participants place orders to purchase Shares throughout the trading day until 1 p.m. ET, the actual Basket Amount is determined at 4 p.m. ET or thereafter. On each business day, the Administrator makes available, immediately prior to 9:30 a.m. ET, the most recent Basket Amount for the creation of a Basket. According to the Amex Order, Amex disseminates every 15 seconds throughout the trading day, via the facilities of the Consolidated Tape (''CT''), an amount representing, on a per-Share basis, the current value of the Basket Amount.

deliver to the redeeming Authorized Participant the Cash Redemption Amount.

After 4 p.m. ET each business day, the Administrator determines the NAV [10] for the Fund, utilizing the current settlement value of exchange-traded futures contracts on the Index Currencies, and the Administrator, Amex, and Managing Owner will disseminate the NAV for the Shares and the Basket Amount (for orders placed during the day). The Basket Amount and the NAV are communicated by the Administrator to all Authorized Participants via facsimile or e-mail.[11] Nasdaq will provide a hyperlink to the Fund's Web site at *http://www.dbfunds.db.com* from its Web site at *http://www.nasdaq.com.* The Web site for the Fund contains quantitative information about the Fund and the Fund's prospectus. Quotations for and last sale information regarding the Shares are disseminated via the CT and the Consolidated Quotation Service.

To provide updated information relating to the Fund for use by investors, professionals, and persons wishing to create or redeem the Shares, Amex disseminates through the facilities of the CT an updated Indicative Fund Value (''IFV''). The IFV is disseminated on a per-Share basis every 15 seconds from 9:30 a.m. to 4:15 p.m. ET. The IFV is calculated based on the cash required for creations and redemptions (*i.e.*, NAV × 200,000) adjusted to reflect the price changes of the Index Currencies through investments held by the Master Fund (*i.e.*, futures contracts and options on futures and/or forwards).

DB London, as the Index Sponsor, publishes the value of the Index at least once every 15 seconds throughout each trading day on the CT, Bloomberg, and Reuters, and on its Web site at *http://index.db.com* and the Fund's Web site at *http://www.dbfunds.db.com.* The closing Index level is similarly provided by DB London and the Fund. In addition, any adjustments or changes to the Index also are provided by DB London and the Fund on their respective Web sites.

The daily settlement prices for the foreign currency futures contracts comprising the Index and held by the Master Fund are publicly available on the Internet Web sites of the futures exchanges trading the particular contracts, as well as automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. All of the foreign currency futures contracts in which the Master Fund currently expects to invest are traded on the CME, although currency futures contracts on the eligible Index Currencies also trade on other futures exchanges and the Master Fund may invest in such contracts.[12]

Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121. The conditions for a halt include a regulatory halt by the listing market. UTP trading in the Shares will also be governed by provisions of Nasdaq Rule 4120 relating to temporary interruptions in the calculation or wide dissemination of the IFV or the value of the Index. Additionally, Nasdaq may cease trading the Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will also follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally, Nasdaq will stop trading the Shares if the listing market delists them.

Nasdaq believes that its surveillance procedures are adequate to address any concerns about the trading of the Shares on Nasdaq. Trading of the Shares through Nasdaq facilities is currently subject to NASD's surveillance procedures for equity securities in general and ETFs in particular.[13] Nasdaq is able to obtain information regarding trading in the Shares and the underlying currency futures through its members in connection with the proprietary or customer trades that such members effect on any relevant market. In addition, Nasdaq may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG, including the CME. Nasdaq has issued an Information Circular to inform its members of the special characteristics and risks associated with trading the Shares.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [14] in general and Section 6(b)(5) of the Act [15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, Nasdaq believes that the proposal is consistent with Rule 12f–5 under the Act [16] because it deems the Shares to be an equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. 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–NASDAQ–2007–049 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.

[10] The NAV for the Fund is the total assets of the Master Fund less total liabilities of the Master Fund. The NAV is calculated by including any unrealized profit or loss on futures contracts and any other credit or debit accruing to the Master Fund but unpaid or not received by the Master Fund. The NAV is then used to compute all fees (including the management and administrative fees) that are calculated from the value of Master Fund assets. The Administrator calculates the NAV per Share by dividing the NAV by the number of Shares outstanding.

[11] According to the Amex Order, Amex has represented that the NAV for the Fund will be made available to all market participants at the same time. If the NAV is not disseminated to all market participants at the same time, Amex will halt trading in the Shares.

[12] Such other futures exchanges would be required to be members of the Intermarket Surveillance Group (''ISG'') or to have comprehensive surveillance sharing agreements with Nasdaq.

[13] NASD surveils trading pursuant to a regulatory services agreement. Nasdaq is responsible for NASD's performance under this regulatory services agreement.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 17 CFR 240.12f–5.

All submissions should refer to File Number SR–NASDAQ–2007–049. 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–NASDAQ–2007–049 and should be submitted on or before June 7, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[18] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[19] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[20] The Commission notes that it previously approved the listing and trading of the Shares on Amex and the trading of the Shares on NYSE Arca pursuant to UTP.[21] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[22] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[23] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding the Shares are disseminated through the facilities of the CTA and the Consolidated Quotation System. Furthermore, the IFV, updated to reflect changes in currency exchange rates, is calculated by Amex and published via the facilities of the Consolidated Tape Association on a 15-second delayed basis throughout the trading hours for the Shares. In addition, if the listing market halts trading when the IFV is not being calculated or disseminated, the Exchange would halt trading in the Shares.

The Commission notes that, if the Shares should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has represented that its surveillance procedures are adequate to properly monitor Exchange trading of the Shares. This approval order is conditioned on the Exchange's adherence to this representation.

In addition, the Commission recently approved the trading of the Shares on the Exchange pursuant to UTP for a pilot period of three months.[24] In the Pilot Order, the Commission noted that exchanges that trade commodity-related securities generally have in place surveillance arrangements with markets that trade the underlying securities. In its proposal to trade the Shares for a pilot period, the Exchange represented that it was in the process of completing these surveillance arrangements and expected to do so ''in the near future.'' The Exchange recently provided the Commission with evidence that it has completed these surveillance arrangements.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Shares on Amex and the trading of the Shares on NYSE Arca pursuant to UTP are consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit those findings or would preclude the continued trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by continuing the additional competition in the market for the Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–NASDAQ–2007–049) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E7–9466 Filed 5–16–07; 8:45 am]

BILLING CODE 8010–01–P

[17] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78*l*(f).

[20] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[21] *See supra* note 4 (approving listing and trading of Shares on Amex). *See also* Securities Exchange Act Release No. 54569 (October 4, 2006) 71 FR 60594 (October 13, 2006) (approving UTP trading of Shares on NYSE Arca).

[22] 17 CFR 240.12f–5.

[23] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[24] *See supra* note 3.

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55740; File No. SR–NASDAQ–2007–048]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Trade Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares Pursuant to Unlisted Trading Privileges

May 10, 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 May 3, 2007, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This notice and order provides notice of the proposed rule change and approves the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to trade, pursuant to unlisted trading privileged (''UTP''), (1) Claymore MACROshares Oil Up Tradeable Shares (the ''Up-MACRO Tradeable Shares'') and (2) Claymore MACROshares Oil Down Tradeable Shares (the ''Down-MACRO Tradeable Shares'' and together with the Up-MACRO Tradeable Shares, the ''MACRO Tradeable Shares'').

The text of the proposed rule change is available from Nasdaq's Web site at *nasdaq.complinet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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, 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to trade the MACRO Tradeable Shares pursuant to UTP. The MACRO Tradeable Shares are issued by and represent an undivided beneficial interest in (1) the Claymore MACROshares Oil Up Tradeable Trust (the ''Up-MACRO Tradeable Trust'') and (2) the Claymore MACROshares Oil Down Tradeable Trust (the ''Down-MACRO Tradeable Trust''), respectively. The assets of these trusts (collectively, the ''MACRO Tradeable Trusts'') each consists exclusively of a majority of the Claymore MACROshares Oil Up Holding Shares (''Up-MACRO Holding Shares'') issued by the Claymore MACROshares Oil Up Holding Trust (''Up-MACRO Holding Trust'') and the Claymore MACROshares Oil Down Holding Shares (''Down-MACRO Holding Shares'') issued by the Claymore MACROshares Oil Down Holding Trust (''Down-MACRO Holding Trust'').[3] The Commission previously approved the listing and trading of the MACRO Tradeable Shares on the American Stock Exchange (''Amex'').[4] As described in greater detail in the Amex Order, the value of the MACROShares Tradeable Shares is dependent upon the settlement price of the light sweet crude oil futures contract traded on the New York Mercantile Exchange (''NYMEX'').

Nasdaq deems the MACRO Tradeable Shares to be equity securities, thus rendering trading in the MACRO Tradeable Shares subject to its existing rules governing the trading of equity securities, including Nasdaq Rule 4630, which governs trading of Commodity-Related Securities. The MACRO Tradeable Shares will trade on Nasdaq from 9:30 a.m. until 4:15 p.m. Eastern Time (''ET'').

Quotations for and last sale information regarding the MACRO Tradeable Shares are disseminated through the Consolidated Quotation System. During each trading day, Amex, acting as the calculation agent, publishes to the Consolidated Quotation System, at least every 15 seconds during the entire time that the MACRO Tradeable Shares trade on Amex (normally 9:30 a.m. to 4:15 p.m. ET each trading day), an Indicative Intraday Value (''IIV'') representing the estimated underlying value per share of both the Up-MACRO Tradeable Shares and the Down-MACRO Tradeable Shares. Amex also publishes these values on its Web site. To enable this calculation, Amex receives real-time price data from the NYMEX for the light sweet crude oil futures contract that trades on the NYMEX from two major market data vendors, from the opening of trading of the light sweet crude oil futures contract on NYMEX at 10 a.m. to the close of trading of the MACRO Tradeable Shares on Amex at 4:15 p.m. ET. In addition, the closing price of the MACRO Tradeable Shares on Nasdaq will be available through the Exchange's Web site.

Because the NYMEX market for the light sweet crude oil futures contract is closed for portions of the period from 9:30 a.m. to 4:15 p.m. ET, the IIV calculated values are fixed during these closures. From 9:30 a.m. to 4:15 p.m. ET, however, if trading in the NYMEX light sweet crude oil futures contract is occurring on the CME Globex electronic trading platform, those trades would be used to update IIV values.

The administrative agent for the MACRO Tradeable Shares, Claymore Securities, maintains a Web site (*http://www.ClaymoreMacroShares.com*) that is publicly accessible at no charge and contains the following information posted on each NYMEX trading day: the daily price level percentage change of the applicable reference price of crude oil; the daily underlying value of the Up-MACRO Holding Trust and the per-share underlying value of the Up-MACRO Holding Shares and the Up-MACRO Tradeable Shares; and the daily underlying value of the Down-MACRO Holding Trust and the per-share underlying value of the Down-MACRO Holding Shares and the Down-MACRO Tradeable Shares.

Pricing and other information for NYMEX light sweet crude oil futures contracts is available through major market data vendors such as Reuters and Bloomberg. Nasdaq has issued an Information Circular to inform its members of the special characteristics and risks associated with trading the MACRO Tradeable Shares.

Nasdaq would halt trading in the MACRO Tradeable Shares under the conditions specified in Nasdaq Rules 4120 and 4121. The conditions for a halt include a regulatory halt by the listing market. UTP trading in the MACRO Tradeable Shares also would be governed by provisions of Nasdaq Rule 4120 relating to temporary interruptions

[3] The Up-MACRO Holding Shares and Down-MACRO Holding Shares (collectively, the ''MACRO Holding Shares'') will not be listed or traded on Nasdaq.

[4] *See* Securities Exchange Act Release No. 54839 (November 29, 2006), 71 FR 70804 (December 6, 2006) (SR–Amex–2006–82) (the ''Amex Order'').

in the calculation or wide dissemination of the IIV or the value of the applicable NYMEX light sweet crude oil futures contract. Additionally, Nasdaq may cease trading the MACRO Tradeable Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq also would follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally, Nasdaq would stop trading the MACRO Tradeable Shares if the listing market delists them.

Nasdaq believes that its surveillance procedures are adequate to address any concerns about the trading of the MACRO Tradeable Shares on Nasdaq. Trading of the MACRO Tradeable Shares is currently subject to NASD's surveillance procedures for equity securities in general and ETFs in particular.[5]

Nasdaq is able to obtain information regarding trading in the MACRO Tradeable Shares and NYMEX oil futures contracts through its members in connection with the proprietary or customer trades that such members effect on any relevant market. In addition, Nasdaq is party to an Information Sharing Agreement with NYMEX for the purpose of providing information in connection with trading in or related to oil futures contracts traded on that market.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[6] in general and Section 6(b)(5) of the Act[7] in particular, in that 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 a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, Nasdaq believes that the proposal is consistent with Rule 12f–5 under the Act[8] because it deems the MACRO Tradeable Shares to be an equity securities, thus rendering trading in the Macro Tradeable Shares subject to Nasdaq's existing rules governing the trading of equity securities.

[5] NASD surveils trading pursuant to a regulatory services agreement. Nasdaq is responsible for NASD's performance under this regulatory services agreement.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 240.12f–5.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. 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–NASDAQ–2007–048 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–NASDAQ–2007–048. 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–NASDAQ–2007–048 and should be submitted on or before June 7, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the MACRO Tradeable Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[11] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[12] The Commission notes that it previously approved the listing and trading of the MACRO Tradeable Shares on Amex and the trading of the MACRO Tradeable Shares on NYSE Arca pursuant to UTP.[13] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[14] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the

[9] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78*l*(f).

[12] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[13] *See supra* note 4. *See also* Securities Exchange Act Release No. 55033 (December 29, 2006) 72 FR 1253 (January 11, 2007) (approving UTP trading of MACRO Tradeable Shares on NYSE Arca).

[14] 17 CFR 240.12f–5.

class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the MACRO Tradeable Shares to be equity securities, thus rendering trading in the MACRO Tradeable Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[15] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding the MACRO Tradeable Shares are disseminated through the facilities of the CTA and the Consolidated Quotation System. Furthermore, the IIV, updated to reflect changes in currency exchange rates, is calculated by Amex and published via the facilities of the Consolidated Tape Association on a 15-second delayed basis throughout the trading hours for the MACRO Tradeable Shares. In addition, if the listing market halts trading when the IIV is not being calculated or disseminated, the Exchange would halt trading in the MACRO Tradeable Shares.

The Commission notes that, if the MACRO Tradeable Shares should be delisted by the listing exchange, the Exchange would no longer have authority to trade the MACRO Tradeable Shares pursuant to this order.

In support of this proposal, the Exchange has represented that its surveillance procedures are adequate to properly monitor Exchange trading of the MACRO Tradeable Shares. This approval order is conditioned on the Exchange's adherence to this representation.

In addition, the Commission recently approved the trading of the MACRO Tradeable Shares on the Exchange pursuant to UTP for a pilot period of three months.[16] In the Pilot Order, the Commission noted that exchanges that trade commodity-related securities generally have in place surveillance arrangements with markets that trade the underlying securities. In its proposal to trade the MACRO Tradeable Shares for a pilot period, the Exchange represented that it was in the process of completing these surveillance arrangements and expected to do so ''in the near future.'' The Exchange recently provided the Commission with evidence that it has completed these surveillance arrangements.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the MACRO Tradeable Shares on Amex and the trading of the MACRO Tradeable Shares on NYSE Arca pursuant to UTP are consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit those findings or would preclude the continued trading of the MACRO Tradeable Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by continuing the additional competition in the market for the MACRO Tradeable Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NASDAQ–2007–048), be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

J. Lynn Taylor,

Assistant Secretary.

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[15] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[16] *See* Securities Exchange Act Release No. 55386 (March 2, 2007), 72 FR 10801 (March 9, 2007) (SR–NASDAQ–2007–016) (the ''Pilot Order'').

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55745; File No. SR–NASD–2007–030]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trade Reporting Obligations for Transactions in Foreign Equity Securities

May 11, 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 April 20, 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 designated the proposed rule change as ''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)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon receipt of this filing by 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 is proposing to adopt a new paragraph (g) to Rule 6620 to codify a member's trade reporting obligations with respect to transactions in foreign equity securities. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

6600. OVER–THE–COUNTER EQUITY SECURITIES

* * * * *

6620. Transaction Reporting

(a) through (f) No change.

(g) Transactions in Foreign Equity Securities

(1) For purposes of this paragraph, the term ''foreign equity security'' means any OTC Equity Security that is issued by a corporation or other entity incorporated or organized under the laws of any foreign country.

(2) Transactions in foreign equity securities shall be reported to the OTC Reporting Facility unless:

(A) The transaction is executed on and reported to a foreign securities exchange; or

(B) the transaction is executed over the counter in a foreign country and is reported to the regulator of securities markets for that country.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

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

The purpose of the proposed rule change is to codify existing NASD guidance regarding an NASD member's trade reporting obligations in transactions involving foreign equity securities.

NASD Rule 6620 requires members to transmit to the OTC Reporting Facility last sale reports of transactions in OTC Equity Securities. For purposes of a member's trade reporting obligations under Rule 6620, an OTC Equity Security is ''any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting.''[5] This broad definition of OTC Equity Security, by its terms, would include foreign equity securities that are not listed on a U.S. securities exchange and that trade exclusively in foreign markets.

The proposed rule filing would codify the long-held interpretive position taken by NASD that transactions in foreign equity securities[6] are not subject to the trade reporting requirements if (1) the transaction is executed on and reported to a foreign securities exchange or (2) the transaction is executed over the counter in a foreign country and is reported to the regulator of securities markets for that country.[7] Transactions in foreign equity securities that are not reported to a foreign securities exchange or, if executed over the counter in a foreign country, to a foreign securities regulator, must be reported to NASD.[8] Although many members are aware of and continue to rely on this guidance, NASD recently has received a number of inquiries relating to foreign equity trade reporting requirements. To ensure that all members are aware of their trade reporting obligations regarding foreign equity securities, NASD is proposing to codify this guidance so that, going forward, the rules themselves specifically address foreign equity securities.[9]

NASD has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing, April 20, 2007.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] 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 that the proposed rule change provides needed clarification to NASD members regarding their trade reporting obligations with respect to foreign equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b–4 thereunder[11] because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of NASD. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2007–030 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–2007–030. 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

[5] *See* NASD Rule 6610(d).

[6] The proposed rule change defines ''foreign equity security'' as any OTC Equity Security that is issued by a corporation or other entity incorporated or organized under the laws of any foreign country.

[7] This position was originally taken with respect to the end-of-day reporting requirements of non-Nasdaq, over-the-counter securities under former Schedule H to NASD's By-Laws. *See NASD Notice to Members* 90–58 (September 1990). It was reaffirmed when end-of-day reporting was changed to 90-second transaction reporting. *See OTC Bulletin Board Update* (December 1993).

[8] It is important to note, however, that separate legs of a riskless principal transaction may be subject to different reporting requirements. For example, if a member executes a transaction in a foreign equity security for a customer on a foreign exchange on a riskless principal basis, with the initial leg reported by the foreign exchange, the member would not be required to report that leg of the riskless principal transaction to NASD. However, the second leg (*i.e.*, the transaction between the member and the customer) would have to be reported to NASD on a non-tape basis.

[9] NASD also notes that trades reported in the U.S. must be reported in U.S. dollars, regardless of the currency in which the trade occurred. The methodology employed by the member for currency conversion is left to the NASD member; however, the member should document its practice and employ the same method consistently. *See OTC Bulletin Board Update* (December 1993) and *Notice to Members* 90–58 (September 1990). *See also Notice to Members* 06–70, at note 5 (December 2006) (noting that, for purposes of reporting to the Order Audit Trail System, members are ''permitted to use reasonable business practices for the [currency] conversion; however, members should document their practice regarding currency conversion and should be consistent in their methodology'').

[10] 15 U.S.C. 78o–3(b)(6).

[11] 17 CFR 240.19b–4.

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 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–2007–030 and should be submitted on or before June 7, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E7–9471 Filed 5–16–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55742; File No. SR–NYSE–2007–19]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change as Modified by Amendment No. 1 Relating to the Waiver of Certain Listing Fees

May 10, 2007.

I. Introduction

On February 22, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to waive certain listing fees. The proposal was published for comment in the **Federal Register** on March 14, 2007.[3] The Commission received no comments on the proposal. The Exchange filed Amendment No. 1 with the Commission on April 27, 2007.[4] This order provides notice of and solicits comment on the proposed rule change as modified by Amendment No. 1 and approves the proposal on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend Section 902.02 of its Listed Company Manual (the ''Manual'') to provide that there shall be no initial listing fee applicable to (i) Any company listing upon emergence from bankruptcy, or (ii) any company listing its primary class of common stock that is not listed on a national securities exchange but is registered under the Act.

The Exchange also proposes a temporary cap on fees payable by companies listing upon emergence from bankruptcy. Annual fees for such issuers will be billed at a rate of one-fourth of the applicable annual fee rate for the fiscal quarter the issuer lists and for each of the succeeding 12 full fiscal quarters. Further, the total fees (including initial listing fees and annual fees) that may be billed to such an issuer during this period would be subject to a $25,000 cap in the fiscal quarter in which the issuer lists and in each of the succeeding 12 full fiscal quarters. The exclusions applicable to the standard fee cap, set forth in Section 902.02 under the heading ''Total Maximum Fee Payable in a Calendar Year,'' would also apply to issuers listing upon emergence from bankruptcy.

The Exchange believes that the initial listing fee waiver and fee cap for companies listing upon emergence from bankruptcy are justified by the unique circumstances of those issuers, which, according to the NYSE, among other things, tend to be more sensitive to the initial and continued costs associated with listing because of the desire in bankruptcy proceedings to ensure creditors are paid as much as possible. According to the Exchange, because bankrupt companies face unique challenges in the listing process, the number of companies that will benefit from the fee waiver and lower fee cap applicable to bankrupt companies will be very limited, and the fee cap will apply only during a three-year transitional period, the Exchange does not believe that the treatment this proposal would afford to bankrupt companies constitutes an inequitable or unfairly discriminatory allocation of fees.

In addition, the Exchange believes that waiving initial listing fees for a company listing its primary class of common stock which is registered under that Act but not listed on a national securities exchange is appropriate and does not constitute an inequitable or unfairly discriminatory allocation of fees. The Exchange anticipates that most companies taking advantage of this waiver will be formerly-listed companies that were delisted as a result of a failure to timely file annual reports with the Commission.[5] The Exchange notes that these companies usually seek to re-list on the Exchange as soon as their filings are up to date.[6] According to the Exchange, because such companies had previously paid initial listing fees to the Exchange or to another national securities exchange, the Exchange believes that to make them pay these fees again would further penalize them unnecessarily.

The Exchange has represented that the proposed rule change would not affect its commitment of resources to its regulatory oversight of the listing process or its regulatory programs. Companies that benefit from one of the proposed waivers would be reviewed for compliance with Exchange listing standards in the same manner as any other company that applies to be listed on the Exchange. The Exchange would conduct a full and independent review of each issuer's compliance with the Exchange's listing standards.

The Exchange also has represented that it does not expect the financial impact of this proposed rule change to be material, either in terms of increased levels of annual fees from transferring issuers or in terms of diminished initial listing fee revenues. A limited number of companies are qualified and seek to list on the Exchange that are either emerging from bankruptcy or have a registered class of common stock but are not currently listed on another market. Accordingly, the proposed rule change will not impact the Exchange's resource commitment to its regulatory oversight

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55421 (March 14, 2007), 72 FR 1350 (the ''Notice'').

[4] Amendment No. 1 (i) Proposed a clarifying change to the proposed rule text and (ii) added language to the purpose section to clarify the effect of the waiver of listing fees for a company listing its primary class of common stock that is not listed on a national securities exchange but is registered under the Act. The text of Amendment No. 1 is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[5] In Amendment No. 1, the Exchange stated that there may occasionally be an initial listing on the Exchange of a company which is trading in the over-the-counter market immediately prior to listing and which was not previously delisted as a result of a failure to timely file annual reports with the Commission. However, in the Exchange's experience, very few such companies meet the Exchange's listing requirements and, therefore, the Exchange expects the number of such listings and the related loss of fee revenue to be immaterial.

[6] In its filing, the Exchange stated that typically, such companies are otherwise in good standing with the Exchange or with another national securities exchange, but fell behind on their reporting obligations under the Act because their auditors or the Commission required restatements of their financial statements. The Commission notes that the timely filing of accurate financial reports under the Act is critical to investors and our national market and assures that investors receive up to date financial information about listed companies.

of the listing process or its regulatory programs.

Following their approval, the Exchange would apply the amendments contained in the proposal retroactively to February 22, 2007, the date of filing of the proposed rule change.[7]

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,[9] which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission also finds that the proposal is consistent with Section 6(b)(5) of the Act,[10] which requires, *inter alia,* that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and not designed to permit unfair discrimination between issuers. The Commission has not received any comments on the proposal. This order approves the proposed rule change, as modified by Amendment No 1.

The Commission notes that companies who re-list upon emerging from bankruptcy or who re-list upon a return to good standing following delisting have usually paid listing fees to either the Exchange or to another national securities exchange at the time of their initial listing. In addition, with respect to the cap on annual fees for companies listing upon emergence from bankruptcy, the Commission notes that the fee cap is a temporary one, designed to enable recently bankrupt companies to manage the costs associated with listing, consistent with the desire in bankruptcy proceeding to ensure that creditors are paid as much as possible. For these reasons, the Exchange argues, the waiver of listing fees and the cap on annual fees are equitable.

The Commission recognizes that, as drafted, the initial fee waiver would extend to companies that have never listed on a national securities exchange, which thus have never paid listing fees. In this regard, the Exchange acknowledges that some companies other than those returning to good standing after recent delisting—*e.g.*, a company trading on the over-the-counter market—may seek to take advantage of the waiver of listing fees for companies not listed on a national securities exchange but registered under the Act. However, the Exchange expects the number of such companies eligible for the waiver to be very small, since very few of these companies would meet the Exchange's quantitative listing requirements.

The Commission also notes that the Exchange has represented that the waiver of listing fees and the cap on annual fees should not have a material financial impact on the exchange, or impact the Exchange's resource commitment to its regulatory oversight of the listing process or its regulatory programs.

Further, the proposal does not have any impact on whether a company is actually eligible to list on the Exchange. The Commission expects, and the Exchange has represented, that a full and independent review of compliance with listing standards will be conducted for any company seeking to take advantage of either of the fee waivers, just as for any company that applies for listing on the Exchange.

In light of these arguments, the Commission agrees that the proposed waiver and fee cap, which are retroactively effective to February 22, 2007, the date of the filing of the proposed rule change,[11] do not constitute an inequitable allocation of reasonable dues, fees, and other charges, do not permit unfair discrimination between issuers, and are generally consistent with the Act.

Pursuant to Section 19(b)(2) of the Act,[12] the Commission finds good cause for approving the proposal prior to the thirtieth day after the publication of the proposal, as modified by Amendment No. 1, in the **Federal Register**. The revisions to the proposed rule change made by Amendment No. 1 do not raise any novel or substantive regulatory issues, and clarify the proposal. Therefore, the Commission finds good cause for approving the amended proposal on an accelerated basis.

IV. Solicitation of Comments Concerning Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change as modified by Amendment No. 1, including whether it 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–NYSE–2007–19 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–NYSE–2007–19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–19 and should be submitted on or before June 7, 2007.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–NYSE–2007–19), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

[7] See *supra* note 3

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f)

[9] 15 U.S.C. 78f(b)(4)

[10] 15 U.S.C. 78f(b)(5)

[11] See *supra* note 3

[12] 15 U.S.C. 78s(b)(2)

[13] *Id.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E7–9438 Filed 5–16–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55743; File No. SR–NYSEArca–2007–24]

Self-Regulatory Organizations; NYSE Arca Inc.; Order Approving a Proposed Rule Change to Waive Certain Listing Fees

May 10, 2007

I. Introduction

On February 28, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc., filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to waive certain listing fees. The proposal was published for comment in the **Federal Register** on March 16, 2007.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend its listing fee schedule to provide that there shall be no initial listing fee applicable to (i) any company listing following emergence from bankruptcy, or (ii) any company listing its primary class of common stock that is not listed on a national securities exchange but is registered under the Act.

The Exchange believes that the initial listing fee waiver for companies listing upon emergence from bankruptcy is justified the unique circumstances of those issuers, which, according to the NYSE, among other things, tend to be more sensitive to the initial and continued costs associated with listing because of the desire in bankruptcy proceedings to ensure creditors are paid as much as possible. According to the Exchange, because bankrupt companies face unique challenges in the listing process, and because the number of companies that will benefit from the fee waiver will be very limited, the Exchange does not believe that the treatment this proposal would afford to bankrupt companies constitutes an inequitable or unfairly discriminatory allocation of fees.

In addition, the Exchange believes that waiving initial listing fees for a company listing its primary class of common stock which is registered under that Act but not listed on a national securities exchange is appropriate and does not constitute an inequitable or unfairly discriminatory allocation of fees. The Exchange anticipates that most companies taking advantage of this waiver will be formerly-listed companies that were delisted as a result of a failure to timely file annual reports with the Commission. These companies usually seek to re-list on the Exchange as soon as their filings are up to date.[4] According to the Exchange, because such companies had previously paid initial listing fees to the Exchange or to another national securities exchange, the Exchange believes that to make them pay these fees again would further penalize them unnecessarily.

The Exchange stated that other companies trading in the over-the-counter market that have not previously been listed on a national securities exchange may seek to qualify for the waiver of initial listing fees. However, the Exchange believes that not many of these companies will be able to meet its quantitative initial listing standards, and thus does not believe that waiving initial listing fees for such companies will have a meaningful effect on the Exchange's revenue or constitute an inequitable or unfairly discriminatory allocation of fees.

The Exchange has represented that the proposed rule change will not affect the Exchange's commitment of resources to its regulatory oversight of the listing process or its regulatory programs. Companies that benefit from one of the proposed waivers will be reviewed for compliance with Exchange listing standards in the same manner as any other company that applies to be listed on the Exchange. The Exchange will conduct a full and independent review of each issuer's compliance with the Exchange's listing standards.

The Exchange also has represented that it does not expect the financial impact of this proposed rule change to be material, either in terms of increased levels of annual fees from transferring issuers or in terms of diminished initial listing fee revenues. A limited number of companies are qualified and seek to list on the Exchange that are either emerging from bankruptcy or have a registered class of common stock but are not currently listed on another market. Accordingly, the proposed rule change will not impact the Exchange's resource commitment to its regulatory oversight of the listing process or its regulatory programs.

Following their approval, the Exchange would apply the amendments contained in the proposal retroactively to February 28, 2007, the date of filing of the proposed rule change.[5]

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,[7] which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission also finds that the proposal is consistent with Section 6(b)(5) of the Act,[8] which requires, *inter alia*, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and not designed to permit unfair discrimination between issuers. The Commission has not received any comments on the proposal. This order approves the proposed rule change.

The Commission notes that companies who re-list upon emerging from bankruptcy or who re-list upon a return to good standing following delisting have usually paid listing fees to either the Exchange or to another national securities exchange at the time of their initial listing. For this reason, the Exchange argues, the waiver of listing fees constitutes an equitable allocation of reasonable fees.

The Commission recognizes that, as drafted, the initial fee waiver would extend to companies that have never

[14] 17 CFR 200.30–3(a)(12)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55430 (March 8, 2007), 72 FR 12651 (the ''Notice'').

[4] In its filing, the Exchange stated that typically, such companies are otherwise in good standing with a national securities exchange, but fell behind on their reporting obligations under the Act because their auditors or the Commission required restatements of their financial statements. The Commission notes that the timely filing of accurate financial reports under the Act is critical to investors and our national market and assures that investors receive up to date financial information about listed companies.

[5] See *supra* note 3.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(5).

listed on a national securities exchange, which thus have never paid listing fees. In this regard, the Exchange acknowledges that some companies other than those returning to good standing after recent delisting—*e.g.*, a company trading on the over-the-counter market—may seek to take advantage of the waiver of listing fees for companies not listed on a national securities exchange but registered under the Act. However, the Exchange expects the number of such companies eligible for the waiver to be very small, since not many of these companies would meet the Exchange's quantitative listing requirements.

The Commission also notes that the Exchange has represented that the waiver of listing fees should not have a material financial impact on the exchange, or impact the Exchange's resource commitment to its regulatory oversight of the listing process or its regulatory programs.

Further, the proposal does not have any impact on whether a company is actually eligible to list on the Exchange. The Commission expects, and the Exchange has represented, that a full and independent review of compliance with listing standards will be conducted for any company seeking to take advantage of either of the fee waivers, just as for any company that applies for listing on the Exchange.

In light of these arguments, the Commission agrees that the proposed waivers, which are retroactively effective to February 28, 2007, the date of the filing of the proposed rule change,[9] do not constitute an inequitable allocation of reasonable dues, fees, and other charges, do not permit unfair discrimination between issuers, and are generally consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–NYSEArca–2007–24) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E7–9439 Filed 5–16–07; 8:45 am]

BILLING CODE 8010–01–P

[9] See *supra* note 3.

[10] *Id.*

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10859]

Maine Disaster Number ME–00007

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Maine (FEMA–1693–DR), dated 04/25/2007.

Incident: Severe Storms and Inland and Coastal Flooding.

Incident Period: 04/15/2007 through 04/23/2007.

Effective Date: 05/04/2007.

Physical Loan Application Deadline Date: 06/25/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Maine, dated 04/25/2007, is hereby amended to establish the incident period for this disaster as beginning 04/15/2007 and continuing through 04/23/2007.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–9486 Filed 5–16–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10859]

Maine Disaster Number ME–00007

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Maine (FEMA–1693–DR), dated 04/25/2007.

Incident: Severe Storms and Inland and Coastal Flooding.

Incident Period: 04/15/2007 and continuing.

Effective Date: 04/30/2007.

Physical Loan Application Deadline Date: 06/25/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road Fort, Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Maine, dated 04/25/2007, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Franklin, Hancock, Lincoln, Sagadahoc, Somerset, and Waldo.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–9488 Filed 5–16–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10871 and #10872]

Maine Disaster #ME–00008

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Maine (FEMA–1693–DR), dated 05/09/2007.

Incident: Severe Storms and Inland and Coastal Flooding.

Incident Period: 04/15/2007 through 04/23/2007.

Effective Date: 05/09/2007.

Physical Loan Application Deadline Date: 07/09/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 02/11/2008.

ADDRESSES: Submit completed loan applications to : U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/09/2007, 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): Cumberland, and York.

Contiguous Counties (Economic Injury Loans Only):

Maine: Androscoggin, Oxford, and Sagadahoc.

New Hampshire: Carroll, Rockingham, and Strafford.

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 108716 and for economic injury is 108720.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–9490 Filed 5–16–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10852 and #10853]

New York Disaster Number NY–00045

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New York (FEMA–1692–DR), dated 04/24/2007.

Incident: Severe Storms and Inland and Coastal Flooding.

Incident Period: 04/14/2007 through 04/18/2007.

Effective Date: 05/09/2007.

Physical Loan Application Deadline Date: 06/25/2007.

EIDL Loan Application Deadline Date: 01/24/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road For, Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of New York , dated 04/24/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: Ulster.

Contiguous Counties: New York, and Delaware.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–9489 Filed 5–16–07; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2007–3400]

Privacy Act of 1974 as Amended; Computer Matching Program (SSA/States, SVES Files)—Match 6005, 6006, 6007, and 6008

AGENCY: Social Security Administration (SSA) .

ACTION: Notice of a renewal of an existing computer matching program which is scheduled to expire on June 30, 2007.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that SSA is currently conducting with the States.

DATES: SSA will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 965–8582 or writing to the Associate Commissioner, Office of Income Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Income Security Programs as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: May 8, 2007.

Manuel J. Vaz,

Acting Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Social Security Administration (SSA) With the States

A. Participating Agencies

SSA and the States

B. Purpose of the Matching Program

The purpose of this matching program is to establish the conditions, safeguards, and procedures under which the States may obtain SSN verification and certain SSA information relating to the eligibility for, and payment of, Social Security, Supplemental Security Income, and Special Veterans Benefits, quarters of coverage, prisoner, and death information. This information is available from various SSA systems of records.

Individual agreements with the States will describe the information to be disclosed and the conditions under which SSA agrees to disclose such information.

C. Authority for Conducting the Matching Program

This matching program is carried out under the authority of the Privacy Act of 1974, as amended; sections 202(x)(3)(B)(iv), 205(r)(3), and 1106 of the Social Security Act; sections 402, 412, 421 and 435 of Public Law 104–193; Public Law 108–458; section 6301(l)(7) of Title 26 of the Internal Revenue Code and SSA's Privacy Act Regulations (20 CFR 401.150) and by the routine use exception to the Privacy Act (5 U.S.C. 552a(b)(3)).

D. Categories of Records and Individuals Covered by the Matching Program

States will provide SSA with names and other identifying information of appropriate benefit applicants or recipients. Specific information from participating States will be matched, as provided in the agreement for the specific programs, with the following systems of records maintained by SSA.

1. SVES—SSR/SVB, SSA/ODSSIS (60–0103); MBR, SSA/ORSIS (60–0090); and the Master Files of SSN Holders and SSN Applications, SSA/OEEAS (60–0058);

2. Quarters of Coverage Query—the Earnings Recording and Self-Employment Income System, SSA/OEEAS (60–0059) and the Master Files of SSN Holders and SSN Applications, SSA/OEEAS (60–0058);

3. Prisoner Query—PUPS, SSA/OEEAS (60–0269).

E. Inclusive Dates of the Matching Program

The matching program will become effective no sooner than 40 days after notice of the matching program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

Individual State matching agreements under the matching program will become effective upon the effective date of this matching program or the signing of the agreements by the parties to the individual agreements, whichever is later. The duration of individual State matching agreements will be subject to the timeframes and limitations contained in this matching program.

[FR Doc. E7–9443 Filed 5–16–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2006–17]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 6, 2007.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FAA–2007–26253 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 PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

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

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2006–26253.

Petitioner: Ogdensburg Bridge & Port Authority.

Section of 14 CFR Affected: 139.319.

Description of Relief Sought: To allow Ogdensburg Bridge & Port Authority to operate without meeting the requirement for aircraft rescue and fire fighting equipment manned and ready to respond for each scheduled landing of a plane with 9 or more passengers.

[FR Doc. E7–9463 Filed 5–16–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 11, 2007.

The Department of 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 June 18, 2007 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0959.

Type of Review: Extension.

Title: LR–213–76 (Final) Estate and Gift Taxes; Qualified Disclaimers of Property.

Description: Section 2518 allows a person to disclaim an interest in property received by gift or inheritance. The interest is treated as if the disclaimant never received or transferred such interest for Federal gift tax purposes. A qualified disclaimer must be in writing and delivered to the transferor or trustee.

Respondents: Individuals or households.

Estimated Total Burden Hours: 1,000 hours.

OMB Number: 1545–0181.

Type of Review: Revision.

Title: Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes.

Form: 4768.

Description: Form 4768 is used by estates to request an extension of time to file an estate (and GST) tax return and/or to pay the estate (and GST) taxes and to explain why the extension should be granted. IRS uses the information to decide whether the extension should be granted.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 30,710 hours.

OMB Number: 1545–1668.

Type of Review: Revision.

Title: Return of U.S. Persons With Respect to Certain Foreign Partnerships.

Form: 8865.

Description: The Taxpayer Relief Act of 1997 significantly modified the information reporting requirements with respect to foreign partnerships. The Act made the following three changes (1) expanded section 6038B to require U.S. persons transferring property to foreign partnerships in certain transactions to report those transfers; (2) expanded section 6038 to require certain U.S. Partners of controlled foreign partnerships to report information about the partnerships; and (3) modified the reporting required under section 6046A with respect to acquisitions and dispositions of foreign partnership interests.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 296,124 hours.

OMB Number: 1545–1592.

Type of Review: Extension.

Title: Revenue Procedure 98–20, Certification for No Information Reporting on the Sale of a Principal Residence.

Description: The revenue procedure applies only to the sale of a principal residence for $250,000 or less ($500,000 or less if the seller is married). The revenue procedure provides the written assurances that are acceptable to the Service for exempting a real estate reporting person from information reporting requirements for the sale of a principal residence.

Respondents: Individuals or households.

Estimated Total Burden Hours: 420,500 hours.

OMB Number: 1545–1212.

Type of Review: Extension.

Title: U.S. Estate Tax Return for Qualified Domestic Trusts.

Form: 706–QDT.

Description: Form 706–QDT is used by the trustee or the designated filer to compute and report the Federal estate tax imposed on qualified domestic trusts by C section 2056A. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.

Respondents: Individuals or households.

Estimated Total Burden Hours: 357 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. E7–9514 Filed 5–16–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2006–XX

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2006–XX, Rotable Spare Parts Safe Harbor Method.

DATES: Written comments should be received on or before July 16, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedures should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202)622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Rotable Spare Parts Safe Harbor Method.

OMB Number: 1545–2070.

Revenue Procedure Number: Rev. Proc. 2006–XX.

Abstract: The information for which the agency is requesting to collect will support a taxpayer's claim for eligibility to use the safe harbor method of accounting for rotable spare parts provided in the proposed revenue procedures. The information will be submitted as a supporting schedule for the Form 3115, Application for Change in Accounting Method.

Current Actions: There are no changes being made to the revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 300.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 75.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 3, 2007.

Joseph R. Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–9532 Filed 5–16–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Earned Income Tax Credit Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Amended notice.

SUMMARY: An open meeting of the Earned Income Tax Credit Committee of the Taxpayer Advocacy Panel will be conducted at the Internal Revenue Service, 1750 Pennsylvania Avenue, Washington, DC 20006. The Committee will be discussing issues pertaining to the IRS administration of the Earned Income Tax Credit.

DATES: The meeting will be held Friday, June 1, 2007, 9 a.m. to 4:30 p.m., and Saturday, June 2, 2007, from 9 a.m. to 12 Noon ET.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Earned Income Tax Credit Committee of the Taxpayer Advocacy Panel will be held Friday, June 1, 2007, 9 a.m. to 4:30 p.m., and Saturday, June 2, 2007, from 9 a.m. to 12 p.m. ET, at 1750 Pennsylvania Avenue, Washington, DC 20006. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For information contact Audrey Y. Jenkins as noted above. Notification of intent to participate in the meeting must be made with Ms. Jenkins. If you would like a written statement to be considered, send written comments to Ms. Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201 or post your comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various issues pertaining to the IRS administration of the Earned Income Tax Credit.

Dated: May 10, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–9531 Filed 5–16–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, June 6, 2007, at 1 p.m., Eastern Time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Wednesday, June 6, 2007, at 1 p.m. Eastern Time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or (414) 231–2360, or write Barbara Toy, TAP Office, MS–1006–MIL, PO Box 3205, Milwaukee, WI 53201–2105, or FAX to (414) 231–2363, or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy.

The agenda will include the following: Discussion of issues and responses brought to the Joint Committee, office report, and discussion of next meeting.

Dated: May 10, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–9537 Filed 5–16–07; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 72, No. 95

Thursday, May 17, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2006–26600]

Qualification of Drivers; Exemption Applications; Diabetes

Correction

In notice document E7–8178 beginning on page 21316 in the issue of Monday, April 30, 2007, make the following correction:

On page 21316, in the third column, under the heading **DATES**, in the last line, ''June 1, 2009'' should read ''April 30, 2009''.

[FR Doc. Z7–8178 Filed 5–16–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
May 17, 2007

Part II

Department of Labor

Employment and Training Administration

20 CFR Part 656

Labor Certification for the Permanent Employment of Aliens in the United States; Reducing the Incentives and Opportunities for Fraud and Abuse and Enhancing Program Integrity; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

RIN 1205–AB42

Labor Certification for the Permanent Employment of Aliens in the United States; Reducing the Incentives and Opportunities for Fraud and Abuse and Enhancing Program Integrity

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Final Rule.

SUMMARY: The Department of Labor (DOL or Department) is amending its regulations to enhance program integrity and reduce the incentives and opportunities for fraud and abuse related to the permanent employment of aliens in the United States.

This Final Rule includes several major provisions. It prohibits the substitution of alien beneficiaries on permanent labor certification applications and resulting certifications. The Final Rule provides a 180-day validity period for approved labor certifications; employers will have 180 calendar days within which to file an approved permanent labor certification in support of a Form I–140 *Immigrant Petition for Alien Worker* (Form I–140 hereafter) with the Department of Homeland Security (DHS). The rule prohibits the sale, barter or purchase of permanent labor certifications and applications. In addition, this rule requires employers to pay the costs of preparing, filing and obtaining certification. An employer's transfer to the alien beneficiary of the employer's costs incurred in the labor certification or application process is strictly prohibited. The rule makes clear an alien may pay his or her own legitimate costs in the permanent labor certification process, including attorneys' fees for representation of the alien. The rule also reinforces existing law pertaining to the submission of fraudulent or false information and clarifies current DOL procedures for responding to incidents of possible fraud. Finally, the rule establishes procedures for debarment from the permanent labor certification program.

Consistent with the proposed rule, the provisions in this Final Rule apply to permanent labor certification applications and approved certifications filed under both the Program Electronic Review Management (PERM) program regulation effective March 28, 2005, and prior regulations implementing the permanent labor certification program. This rule also clarifies the Department's ''no modifications'' policy for applications filed on or after March 28, 2005, under the new, streamlined PERM process.

DATES: This Final Rule is effective July 16, 2007.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210. Telephone: (202) 693–3010 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION

I. Background

The purpose of this Final Rule is to impose clear limitations on the acquisition and use of permanent labor certification applications and permanent labor certifications in order to reduce incentives and opportunities for fraud and abuse in the permanent labor certification program. It also promulgates key measures to enhance the integrity of the permanent labor certification program. This Final Rule continues efforts the Department initiated several years ago to construct a deliberate, coordinated fraud reduction and prevention framework within the permanent labor certification program. The Department laid the groundwork for greater integrity and security during the planning and promulgation of the 2004 Final Rule to implement the re-engineered PERM system. While fraud prevention has always been a goal of the Department's labor certification programs, our continuing program experience and that of other Federal agencies has demonstrated the need to focus on the specific opportunities for fraud and abuse addressed in this rule.

A. Statutory Standard and Current Department of Labor Regulations

Under section 212(a)(5)(A) of the Immigration and Nationality Act (INA or Act) (8 U.S.C. 1182(a)(5)(A)), before the Department of Homeland Security (DHS) may approve petition requests and the Department of State (DOS) may issue visas and admit certain immigrant aliens to work permanently in the United States (U.S.), the Secretary of Labor (Secretary) must certify to the Secretary of Homeland Security and the Secretary of State that:

(a) There are not sufficient U.S. workers who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(b) The employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers.

If the Secretary of Labor, through the Employment and Training Administration (ETA), is satisfied in his or her review of a sponsoring employer's application for certification that these two requirements have been met, he or she so certifies by granting a permanent labor certification. If DOL cannot make both of the above findings, the application for permanent labor certification is denied. The Department of Labor's regulation at 20 CFR part 656 governs the labor certification process for the permanent employment of immigrant aliens and sets forth the responsibilities of employers who wish to employ immigrant aliens permanently in the United States.

The INA does not specifically address substitution of aliens in the permanent labor certification process. Similarly, the Department of Labor's regulations are silent on the question of substitution.

On May 6, 2002, the Department published a Notice of Proposed Rulemaking (NPRM) to streamline the permanent labor certification program. 67 FR 30466 (May 6, 2002). A Final Rule implementing the streamlined permanent labor certification program through revisions to 20 CFR part 656 was published on December 27, 2004, and took effect on March 28, 2005. 69 FR 77326 (Dec. 27, 2004). The prior 20 CFR part 656 (2004) governs processing of permanent labor certification applications filed prior to March 28, 2005, except where certain provisions of this Final Rule will impact such applications. Previously filed applications may be refiled under the new PERM rule.

B. General Immigration Process Involving Permanent Labor Certifications

To obtain permanent alien workers, U.S. employers generally must engage in a multi-step process that involves DOL and DHS and, in some instances, DOS. The INA classifies employment-based (EB) immigrant workers into categories, e.g., EB–2 and EB–3, based on the general job requirements and the perceived benefit to American society.

U.S. employers must demonstrate that the requested job requirements, and in some cases the alien, fit into one of these classifications. The first step in the process for the EB–2 and EB–3 classifications, further described below, generally begins with the U.S. employer filing a labor certification application with DOL in accordance with 20 CFR part 656. The U.S. employer must demonstrate to DOL, through a test of the labor market, that there are no U.S. workers able, willing, qualified, and available at the time of the application for a visa and admission to the United States and at the place where the alien is to perform the work. The employer must also demonstrate that the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers. Following review of the permanent labor certification application, DOL will either certify or deny the application.

The *Immigrant Petition for Alien Worker* (Form I–140) is a petition filed with the United States Citizenship and Immigration Services (USCIS), within DHS, by a U.S. employer for a prospective permanent alien employee. Most Form I–140 petitions filed under section 203(b)(2) and (3) of the Act, the EB–2 and EB–3 classifications, must be accompanied by an approved labor certification issued by DOL. DHS has established procedures for filing Form I–140 petitions under 8 CFR 204.5.

DHS reviews the approved labor certification in conjunction with the Form I–140 petition and other supporting documents to evaluate whether the position being offered to the alien named in the petition is the same as the position specified on the labor certification and whether the employment qualifies for the immigrant classification requested by the employer. In addition, DHS evaluates the alien's education, training, and work experience to determine whether the particular alien meets the job requirements specified on the labor certification. The approved labor certification is also used to establish the priority date for which an immigrant visa will be made available to the alien, based on the date the labor certification application was originally filed.

C. Current ETA Practices Involving Permanent Labor Certifications

Although not mentioned in 20 CFR part 656, ETA has for years informally allowed employers to substitute an alien named on a pending or approved labor certification with another prospective alien employee. Labor certification substitution has occurred either while the permanent labor certification application is pending at DOL or—by DOL's delegation to DHS—while a Form I–140 petition, filed with an approved labor certification, is pending with DHS. Historically, this substitution practice was permitted as an accommodation to U.S. employers due to the length of time it took to obtain a permanent labor certification or receive approval of the Form I–140 petition.

Currently, the regulations do not set any validity period on a permanent labor certification and, thus, permanent labor certifications are valid indefinitely. Also, DOL regulations do not address payments related to the permanent labor certification program or debarment authority. In this Final Rule, the Department addresses problems that have arisen related to substitution, lack of a validity period for certifications, and financial transactions related to the permanent labor certification program.

D. Issues Arising From Current Practices

For more than 15 years, the Department has expressed concern that various immigration practices, including substitution, were subject to a high degree of fraud and abuse. See, e.g., Interim Final Rule, 56 FR 54920 (October 23, 1991).[1] This concern was heightened by a number of recent criminal prosecutions by the Department of Justice (DOJ) as well as recommendations from the Department of Justice and the Department of Labor's Office of Inspector General (OIG), and public comments concerning fraud received in response to the May 6, 2002, NPRM on PERM. See, e.g., 69 FR at 77328, 77329, 77363, and 77364 (Dec. 27, 2004).

The Department's review of recent prosecutions by DOJ, in particular, revealed that the ability to substitute alien beneficiaries has turned labor certifications into commodities which can be sold by unscrupulous employers, attorneys, or agents to those seeking a ''green card.'' Similarly, the ability to sell labor certifications has been greatly enhanced by their current open-ended validity, providing a lengthy period during which a certification may be marketed. In many of these applications, the job offer was fictitious. In others, the job in question existed but was never truly open to U.S. workers. Rather, the job was steered to a specific alien in return for a substantial fee or ''kickback.'' The Federal Government has prosecuted a number of cases resulting from employers, agents, or attorneys seeking to fraudulently profit from the substitution of aliens on approved labor certifications and applications. One attorney filed approximately 2,700 fraudulent applications with DOL for fees of up to $20,000 per application. Many of these applications were filed for the sole purpose of later being sold to aliens who would be substituted for named beneficiaries on the approved labor certifications. See *U.S.* v. *Kooritzky,* No. 02–502–A (E.D. Va. 2003). Additional prosecutions have also involved the sale of fraudulent applications or certifications. See, e.g., *U.S.* v. *Ivanchukov,* et al., No. 04–421 (E.D. Va. 2005); *U.S.* v. *Mir,* No. 8:03–CR–00156–AW–ALL (D. Md. 2003); *U.S.* v. *Fredman,* et al., No. WMN–05–198 (D. Md.); *U.S.* v. *Lee,* No. 03–947–M (E.D. Va.); *U.S.* v. *Mederos,* No. 04–314–A (E.D. Va.); *U.S.* v. *Yum* (E.D. Va. 2006); *U.S.* v. *Mandalapa,* No. 205–NJ–03117–PS (D. N.J. 2006); *U.S.* v. *Heguman,* No. CR 04–1635(A)–RSWL (C.D. Cal. 2007). Our program experience confirms that such fraudulent activity adds to the cost of foreign labor certification programs—for example, resources spent processing fraudulent applications, anticipating and combating unscrupulous conduct, and assisting debarments or prosecutions after the fact.

The Final Rule implementing the streamlined permanent labor certification program also discussed DOL's and others' concerns about fraud in the program and the steps the Department would be taking to minimize the filing of fraudulent or non-meritorious applications. 69 FR at 77328, 77329, and 77363 (Dec. 27, 2004). As implemented, the basic labor certification process under the new PERM system incorporates fraud detection measures targeting areas that have historically shown vulnerability. These measures include system and manual checks in key areas, as well as the use of auditing triggers and techniques, both targeted and random, which can be adjusted as appropriate to maintain security and integrity in the process.

Personal Identification Numbers (PINs) and passwords for registration into the automated filing system are assigned to accounts issued to

[1] The 1991 Interim Final Rule included a provision prohibiting substitution. That provision was overturned by the U.S. Court of Appeals for the D.C. Circuit on Administrative Procedure Act procedural grounds. *Kooritzky* v. *Reich,* 17 F.3d 1509 (D.C. Cir. 1994). DOL addressed the court's concern through publication of the NPRM for notice and comment on February 13, 2006, consideration of comments received and development of this Final Rule. 71 FR 7656 (Feb. 13, 2006). It is of no small significance that the plaintiff in that suit, an attorney, was later convicted for the criminal sale of fraudulent labor certifications used for substitution. *U.S.* v. *Kooritzky,* No. 02–502–A (E.D. Va. 2003).

sponsoring employers, who may then create sub-accounts for attorneys or agents who represent the employer. The initial stages of registration and application include system checks to verify the employer-applicant is a bona fide business entity. Once DOL's initial review of a filed application shows it to be technically acceptable for processing, the application transfers to a substantive review queue, where it may be selected for audit either randomly or based on specific criteria that tie closely to program requirements. Staff at ETA's National Processing Centers, where PERM applications are processed, also confirm information directly with employers, for example, to ensure each employer is aware an application has been filed on its behalf and is, in fact, sponsoring the alien named on the application.

While these measures are targeted based on our program experience, they focus largely on discrete activities (employer verification, sponsorship, etc.) or on program requirements as reflected in questions throughout the application, and do not address broader labor certification policies historically of concern to the Department. For example, in the Final Rule to implement the PERM program, the Department noted the practice of allowing the substitution of alien beneficiaries may provide an incentive for fraudulent applications to be filed. 69 FR at 77363 (Dec. 27, 2004). The Department also concluded in that Final Rule that the emerging ''black market'' for purchase and sale of approved labor certifications is not consistent with the purpose of the labor certification statute at section 212(a)(5)(A) of the INA. While DOL was not able to address many of these fraud issues in the PERM Final Rule because they arguably went beyond the scope of the proposals contained in the PERM NPRM, the Department clearly indicated it would be exploring regulatory solutions to address these issues. 69 FR at 77328, 77329, and 77363 (Dec. 27, 2004).

Similarly, the Department determined that additional regulatory action was required to reinforce and clarify core program components, both to strengthen fraud prevention and enhance program integrity. For example, a prohibition on modifications to applications was an original assumption of the PERM program and having such a clear, enforceable prohibition is critical to its long-term efficiency and effectiveness. A prohibition against the transfer of labor certification costs from sponsoring employers to alien beneficiaries keeps legitimate business costs with the employer, minimizes improper financial involvement by aliens in the labor certification process, and strengthens the enforceability of the bona fide job opportunity requirement.

Accordingly, on February 13, 2006, the Department published in the **Federal Register** a Notice of Proposed Rulemaking to amend its regulations governing the permanent labor certification process to curb fraud and abuse and strengthen program integrity. 71 FR 7656. As proposed, the rule prohibited substitution of aliens not originally named on applications for permanent labor certification; limited the period of validity of a permanent labor certification to 45 calendar days; prohibited certain financial transactions or activities related to permanent labor certifications; and took other steps to enhance program integrity and reduce or avert fraud.

This Final Rule builds on the foundation laid in the 2004 Final Rule implementing the streamlined permanent program and follows through on the strong commitment reflected in the NPRM for this rulemaking, culminating a multi-year effort to enhance integrity and fraud prevention mechanisms in the permanent labor certification program.

To assist compliance and enforcement under this rule, the Department is reviewing available resources to determine its ability to establish a new toll-free telephone number, or to develop other means, to receive reports of potential violations. Calls would be screened by DOL staff, who would refer calls or inquiries to appropriate agencies within or outside the Department.

II. Overview of the Regulation

In order to protect the integrity of the permanent labor certification program, reduce the incentives for fraud and abuse, and comply with the Department's statutory obligation to protect the wages and working conditions of U.S. workers, the Department proposed in the NPRM a number of regulatory changes. As stated in the NPRM, the revisions were proposed in part in response to concerns raised historically by stakeholder agencies and individual program users. They also responded to the numerous substantive comments received to the May 6, 2002 NPRM. At its essence, each change was motivated by our program experience and desire and responsibility under the authorizing statute to restore and maintain the integrity of the labor market test. The Department's regulations at 20 CFR part 656 establish the fact-finding process designed to develop information sufficient to support the Secretary of Labor's determination, required under the statute, of the availability of or adverse impact to U.S. workers. The labor market test forms the basis for notice to U.S. workers of the job vacancy, for the recruitment process through which U.S. workers have the opportunity to apply and be considered for each job, and for employer attestations related to key terms and conditions of employment. While we remain sensitive to concerns raised by employers and others over the impact of these changes, we nonetheless have concluded, after careful review of comments on each proposal, that the identification and deterrence of fraud and the broader integrity of the program require a strong, comprehensive approach to which these regulatory reforms are critical. Accordingly, in this Final Rule the Department amends part 656 to add fraud prevention and redressive measures in the key areas identified in the proposed rule, as follows.

Substitution—Consistent with the proposed rule, this Final Rule adds a new § 656.11 to prohibit the substitution of alien beneficiaries as of the effective date of the Final Rule. This prohibition will apply to all pending permanent labor certification applications and to approved permanent labor certifications, whether the application was filed under the provisions of 20 CFR part 656 in effect before March 28, 2005, or on or after March 28, 2005. Additionally, as proposed, the Final Rule revises § 656.30(c) to provide that a certification resulting from an application filed under 20 CFR part 656 in effect before March 28, 2005, or on or after March 28, 2005, is only valid for the alien named on the original permanent labor certification application. These regulatory changes do not affect substitutions approved by the Department or DHS under either regulation prior to this Final Rule's effective date. They also do not affect substitution requests in progress as of this rule's effective date. Due to the considerable evidence of past and continuing fraud in the permanent labor certification process, DOL through this Final Rule, among other measures, is eliminating the practice of substitution. The Department will work with the Departments of Justice and Homeland Security to explore appropriate circumstances under which substitution could be reinstated. We anticipate that there may come a time when all affected agencies are satisfied that there are sufficient anti-fraud protections to alleviate the concerns motivating this rule.

Modifications to applications—This Final Rule finalizes with minor changes the provision in the proposed rule prohibiting modifications to permanent labor certification applications once such applications are filed with the Department. The Department has implemented technological changes in the PERM program to alert applicants to technical grounds for deniability, thus eliminating the need for many modifications. Section 656.11(b) clarifies that requests for modifications to an application, where the application was filed after this Final Rule's effective date, will not be accepted. To comport with this clarification while ensuring due process, the Final Rule revises § 656.24(g) to more precisely define what evidence may be submitted with an employer's request for reconsideration.

Validity period—Although the Department had originally proposed permanent labor certifications be filed with DHS within 45 calendar days, this Final Rule extends that period to 180 calendar days. Accordingly, all permanent labor certifications approved on or after the effective date of this Final Rule will expire 180 calendar days after certification, whether the original application was filed under 20 CFR part 656 in effect prior to or after March 28, 2005, unless filed prior to expiration in support of a Form I–140 petition with DHS. Likewise, all certifications approved prior to this Final Rule's effective date will expire 180 calendar days after the Final Rule's effective date unless filed in support of a Form I–140 petition with DHS prior to the expiration date.

Ban on sale, barter, purchase, and certain payments—This Final Rule prohibits the sale, barter, and purchase of applications and approved labor certifications, as well as certain payments to employers in compensation or reimbursement for the employer's costs incurred to obtain labor certification. This ban will apply to all such transactions on or after the effective date of This Final Rule regardless of whether the labor certification application involved was filed under 20 CFR part 656 in effect before March 28, 2005, or on or after March 28, 2005. In consideration of comments, the Final Rule more precisely describes the payments being prohibited. Proposed § 656.12(b), now § 656.12(b) and (c), has been revised to reflect this approach and definitions have been added to § 656.3.

Debarment and program integrity—Finally, the Final Rule institutes several enforcement mechanisms as described in the proposed rule, with revisions to clarify procedures and address comments received in response to the NPRM. On or after the effective date of this Final Rule, the Department may debar an employer, attorney or agent based upon certain enumerated actions such as fraud, willful provision of false statements, or a pattern or practice of noncompliance with PERM requirements, regardless of whether the labor certification application involved was filed under the prior or current regulation. In addition, other provisions related to all applications filed under 20 CFR part 656 in effect before March 28, 2005, or on or after March 28, 2005, highlight existing law pertaining to submission of fraudulent or false information and clarify our procedures for responding to possible fraud.

As proposed, this Final Rule extends from 90 to 180 days the period during which the Department may suspend processing of applications under criminal investigation. In addition, in response to comments requesting a materiality standard for the various debarment provisions, the Final Rule adds an intent requirement (''willful'') to the false information section; to be actionable, the employer must willfully provide false or inaccurate information to the Department. The Final Rule also raises the standard for debarment based on failure to comply with the terms of Forms ETA 9089 or 750, failure to comply with the permanent labor certification program's audit process, or failure to comply with the program's supervised recruitment requirements, to require there must be a pattern or practice of noncompliance in each case. These changes in the standard for debarment at § 656.31(f) work in tandem with the revision to § 656.26(a)(1). The new § ´656.26(a)(1) expands the existing provision for a right to review the Department's denial of an application or revocation of a certification, to encompass a right to review of a debarment action. The request for review would be made to, and in appropriate cases a concomitant hearing would be held by, the Board of Alien Labor Certification Appeals (BALCA).

III. Discussion of Comments on Proposed Rule

The Department received a total of 489 comments from attorneys, educational institutions, trade associations, individuals, and businesses. Many of the comments were duplicative in nature and have been grouped together for discussion purposes. Although most of the commenters were critical of one or more of the proposed changes, they also supported the Department's efforts to deter fraud in the permanent labor certification program. Several commenters suggested alternatives for improving the fraud rule, while some suggested abandonment of the proposed rule entirely.

A. Prohibition of Substitution or Change to the Identity of Alien Beneficiaries on Permanent Labor Certifications and Applications

The proposed rule prohibited the substitution of alien beneficiaries on pending applications for permanent labor certification and on approved labor certifications. The comments we received on the prohibition of substitution raised concerns in a number of key areas: the Department's authority to make the rule change; the nexus between the proposed ban and the incidence and types of fraud that have occurred; the Department's premise that substitution is no longer needed, both because the new, automated system has significantly reduced processing time and because the backlog of permanent labor certification applications filed prior to March 28, 2005, will be eliminated by September 30, 2007; the application of the ban to all pending applications and approved certifications; and the hardships that employers would suffer and costs they would incur as a result of such a ban.

We address the comments bearing on each of these issues below. However, after thoughtfully reviewing and deliberating over the concerns raised, we continue to find that the public benefit of eliminating substitution on permanent labor certifications and applications outweighs any potential disadvantages to individual program users. Consequently, as originally proposed in the NPRM, the Final Rule includes a new § 656.11 providing that, as of the effective date of the Final Rule, substitution of alien beneficiaries will be prohibited: (1) On all pending permanent labor certification applications; and (2) on certifications, regardless of whether the application was filed under 20 CFR part 656 in effect before or on or after March 28, 2005. Likewise, once this Final Rule takes effect, the revised § 656.30(c) makes a certification valid only for the alien named on the original application.

As explained in the NPRM, this regulatory change has no retroactive effect on substitutions approved by the Department or DHS prior to this Final Rule's effective date. As made implicit by the new § 656.11(a), this Final Rule also has no retroactive effect on substitution requests in progress (submitted) prior to this rule taking

effect. These and the other regulatory changes promulgated in this Final Rule modify the statement in the preamble to the December 27, 2004, PERM Final Rule that applications filed before that Final Rule's effective date would continue to be processed and governed by the then-current regulation. 69 FR 77326 (Dec. 27, 2004).

1. Statutory Authority

Several commenters questioned the Department's authority under the INA to eliminate substitution of aliens on certifications and applications.

Statutory authority relative to qualifications and identity of alien—Many commenters opposed the ban on substitution as being overbroad and overreaching. Commenters referred to the plain language of the authorizing statute and opposed the elimination of substitution on grounds that DOL's jurisdiction, based on 8 U.S.C. 1182(a)(5), stops with determining worker unavailability and adverse impact and does not extend to activities related to worker identity or qualifications. Commenters stated that the authority to scrutinize the qualifications of the alien named on the petition rests solely with USCIS.

More specifically, commenters questioned the Department's authority to join the labor certification application to a specific alien, asserting labor certifications are related to the job opportunity, not the employee. They argued that the identity of the specific alien employee, whether the original beneficiary or a substituted beneficiary, is not relevant to a good faith labor market test. One commenter stated that the elimination of substitution, requiring a second labor market test for the position, contravenes what it believes is the legislative intent that the labor certification process require only a single labor market test.

With respect to the statutory requirement that U.S. workers be unavailable, one commenter stated that the identity of the alien is not relevant to the labor market test, as long as he or she qualified for the job opportunity when the labor certification application was filed. With respect to the requirement of no adverse impact, the commenter stated that the alien's identity is also not relevant as long as the qualified alien is offered the appropriate wages and working conditions. The commenter raised concern that this rule would refocus labor certification from the job opportunity to the identity of the sponsored alien, and would do so without statutory change, evidence of fraud, or analysis of the increased costs to the employer. In fact, this commenter stated that given the automated, largely attestation-based nature of PERM, DOL is clearly unprepared and lacking in resources to evaluate evidence bearing on whether the alien is qualified for the job.

The Department's authority to regulate and ban the substitution of aliens on labor certifications and applications is clear. The INA treats each alien individually and, for employment-based immigration requiring labor certification, makes every alien inadmissible, absent the Secretary of Labor's determination on U.S. worker availability and adverse impact. The trigger for such a determination has always been, at its core, the existence of a vacancy that an employer wishes to fill with an alien, and the burden of proof is always upon the petitioning employer to overcome the presumption of the inadmissibility of an individual intended immigrant employee through a test of the labor market.

The statute itself could not be clearer that the labor certification process is alien specific. In defining the Department's role in the admission of an alien for employment-based permanent residence, INA section 212(a)(5)(i) ties the required certification to ''the place where *the* (emphasis added) alien is to perform such skilled or unskilled labor[,]'' and the necessity of certifying that ''the employment of *such* (emphasis added) alien will not adversely affect the wages * * *.'' The plain language of these provisions (i.e., the use of terms such as ''the alien'' and ''such alien'') is meant to focus not on the process but solely on its use to admit one, specific alien.

It is this Department's responsibility to judge how and under what circumstances a labor market determination should be made, and what constitutes the employer's actual minimum requirements for performance of the job. It is appropriate and consistent with the broader statutory and programmatic intent to apply these requirements any time a position that is the subject of a labor certification application is or becomes vacant, regardless of whether the application covering it was previously in process and for how long. The labor market changes rapidly, and it is consistent with the Department's obligation to protect the jobs, wages and working conditions of U.S. workers to require that there be another labor market test when the job opportunity effectively changes through the unavailability of the original alien worker.

The Department's regulations authorize it to closely review the information provided on the application with respect to the named alien. Our authority to examine the stated qualifications of the alien named on the application also extends to our determination of whether an employer has accurately stated the minimum qualifications necessary to perform the job, or has inflated or misstated job requirements. 56 FR 54920 (Oct. 23, 1991); see 20 CFR 656.17(i).

Nevertheless, the Department does not undertake in this Final Rule to determine the visa eligibility of individual aliens. This rule governs the processing of labor certification applications, the validity of approved certifications, and other Department of Labor activities implementing relevant INA provisions and 20 CFR part 656; it does not speak to activities by the Departments of Homeland Security or State conducted under their respective authorities and jurisdiction. Further, the Department's focus is not on the identity of the individual alien but on the employer's failure to conduct a second labor market test for available U.S. workers when the original alien beneficiary becomes unavailable and, subsequently, when an employer seeks substitution. As stated in the NPRM, if the original alien beneficiary is no longer available, then the employer must use some means to fill that job opportunity. Clearly, the employer used some recruitment tool to find the new foreign worker for that newly opened job opportunity. Prohibiting substitution will ensure the employer again makes the reopened employment opportunity available to U.S. workers. In the event another alien is again the only qualified person available, then it is consistent with this program's purpose and the statute's plain language to require that the employer file a new application reflecting the new recruitment undertaken.

The *Medellin* decision—A number of commenters cited the decision in *Medellin* v. *Bustos*, 854 F.2d 795 (5th Cir. 1988) in support of the argument that the Department lacks authority to prohibit substitution. The commenters argue that in *Medellin*, the Fifth Circuit held that the Department's administrative decision (based on operational guidance to program staff) to revoke a permanent labor certification based on the employer's substitution of another alien in place of the named alien more than six months after the certification was granted was not in accordance with applicable law. The commenters further argued that limiting a labor certification to ''the alien for

whom the certification was granted'' ran contrary to both the INA provisions (now at INA section 212(a)(5)) stating the Secretary of Labor's authority to determine worker availability and adverse impact, and the Department of Labor's own regulations, which provided that a labor certification was valid indefinitely, hence disconnecting validity and any time limitations.

We carefully considered the Fifth Circuit's opinion in *Medellin* prior to the issuance of the NPRM and concluded that the dictum relied upon by commenters in the decision was not so compelling as to overcome the strong argument, based on the Department's authority and experience, that supports the elimination of substitution. We have reviewed that matter again as a result of comments and reach the same conclusion for a number of reasons.

First, the ultimate basis for the *Medellin* decision was an administrative law issue not relevant to this rulemaking. *Medellin* involved a challenge to provisions in an ETA Technical Assistance Guide (TAG) that permitted the substitution of an alien on an approved labor certification only for the first six months after issuance. As the *Medellin* court correctly noted, the TAG was not published using notice and comment rulemaking procedures. Further, the six-month limitation was inconsistent with the then regulation at 20 CFR 656.30(a) that made labor certifications valid indefinitely. This rulemaking directly addresses the administrative law problem identified in *Medellin* by clarifying, after notice-and-public comment rulemaking, that a labor certification is valid only for the alien who was the beneficiary of the original application and only for a limited time, 180 days.

The discussion in the *Medellin* decision about the relative responsibilities of DOL and INS in the labor certification process is *dictum* and clearly is not the legal grounds for the court's decision. Further, the reasoning in that *dictum* is not compelling and reflects an overly narrow view of the Department's role in the immigration process. Under the INA, the Department is responsible for requiring a labor market test that is the statutory prerequisite to the granting of a labor certification. Banning substitution enhances protections for U.S. workers by offering U.S. workers another chance when a job that was the subject of a labor certification once again becomes available through the departure of the alien employee.

Section 212(a)(5) of the INA makes a foreign worker inadmissible unless, as one condition precedent, the Department determines there is no able, willing, and qualified domestic worker available to fill the position for which the foreign worker's admission is sought. Judicial interpretation of the word ''willing'' led to the creation of the process that has been in place since 1978, whereby the certification approval is predicated on an employer's demonstrated unsuccessful efforts to recruit a domestic worker. See *Production Tool Corporation* v. *Employment and Training Administration*, 688 F. 2d 1161 (7th Cir. 1982). The position that the job opportunity for which certification is being sought must be a job that a domestic worker can actually fill has been affirmed by two appellate courts subsequent to the *Medellin* decision. *Bulk Farms* v. *Martin*, 963 F. 2d 1286 (9th Cir. 1992); *Hall* v. *McLaughlin*, 864 F. 2d 868 (D.C. Cir. 1989).

Given these considerations, it is perfectly reasonable for the Department to require the employer to conduct a new test of the labor market, and file a new labor certification application, every time the job opportunity becomes vacant. The *Medellin* litigation simply did not take place in a context that allowed the Department's concerns regarding the new test of the labor market to be adequately addressed.

Relationship to DHS regulations—One commenter supported the ban on substitution but expressed concern that the impact of the change may be quite limited until DHS adopts corresponding regulations to prohibit the substitution of aliens. Another commenter argued that the public should not be placed in the position of dealing with competing and possibly inconsistent regulations issued by different agencies and suggested that DOL should withdraw its proposal until DHS signals its equivalent concern.

DOL disagrees that there is a likelihood of competing or inconsistent regulations between DOL and DHS. No DHS regulations address or authorize substitution of alien beneficiaries on labor certifications. Rather, at present, DHS permits substitution on permanent labor certifications through a delegation of authority from DOL. See March 7, 1996 Memorandum of Understanding between the Immigration and Naturalization Service (INS) and Employment and Training Administration (signed by Louis D. Crocetti, Jr., Associate Commissioner, Examinations, and Raymond Uhalde, Deputy Assistant Secretary for Employment and Training). INS (the portion of that agency that provided immigration benefits) later became U.S. Citizenship and Immigration Services (USCIS) at the Department of Homeland Security. Pursuant to that 1996 MOU, when substitution is requested, DHS requires employers to submit a new (employer-completed but not processed) DOL permanent labor certification application form with the name of the substituted alien, along with the approved labor certification in the name of the original alien beneficiary. See USCIS Adjudicator's Field Manual, Sec. 22.2(b)(6) (Sept. 12, 2006). This Final Rule alters the current practice by providing that labor certifications, once approved, are valid only for the alien named in the original application and that substitution of alien names on the certification is prohibited. DOL and DHS have agreed that DOL will rescind the delegation of authority contained in the 1996 MOU consistent with the terms of this Final Rule and effective on the same date as this Final Rule. Because substitution of aliens on labor certifications has occurred pursuant to DOL authority, regulatory action by DHS is not necessary to implement a termination of its delegated authority with respect to DOL permanent labor certifications.

Thus, following the effective date of this rule, employers will face a consistent approach to labor certifications: Substitution of the alien beneficiary on a permanent labor certification application or on the resulting certification is prohibited. As reflected throughout this Final Rule, the Department has determined that this prohibition on substitution is consistent with its statutory responsibilities and is necessary to achieve important objectives. DOL is responsible for administering the labor certification process and is authorized and accountable for improvements to the program, independent of employment-based immigration programs overseen by other Federal agencies. Therefore, although we have closely coordinated with DHS, DOL OIG, DOJ, and other appropriate agencies in this rulemaking and other fraud prevention efforts, DOL has determined, in light of the evidence of fraud and the continued concerns about fraud and program integrity raised by many sources, and the Department's statutory responsibility to U.S. workers, that it is appropriate to issue this regulation governing the part of the employment-based immigration process for which we are responsible. The Department has authority to administer, enforce, and reform programs under its jurisdiction, including to regulate the meaning and nature of a permanent labor certification issued under 20 CFR part 656. Nothing in this Final Rule in

any fashion interferes with DHS' authority or its ability to address fraud issues through a rulemaking process of its own.

Entitlement to substitution—Many commenters asserted that since the practice of substitution has been permitted by DOL for several decades, the statute and regulations provide entitlement to substitution. One commenter asserted that the Department, under its current regulations at 20 CFR 656.30(c)(2), effectively provides that the labor certification application can be valid for any qualified worker, which the commenter interpreted to include a substituted worker. 20 CFR 656.30(c)(2). Another commenter opined that the absence of statutory entitlement to substitution is irrelevant to the clear value of substitution, which in its view far outweighs the perceived or potential benefits from reducing incentives for fraud.

The Department disagrees with these comments. While substitution has been a long-standing practice at the Department and by delegation to DHS, the statutory framework to allow the permanent admission of foreign nationals to perform work was deliberately protective of U.S. workers and contains nothing approaching an entitlement to substitution. It is consistent with the statute's presumption of alien inadmissibility that admissibility must be demonstrated by each employer for each alien and that the statute does not provide for substitution of individual aliens on labor certifications or applications. This regulatory action is also consistent with the Congressional intent to grant the Secretary of Labor broad discretion in implementation of the permanent labor certification program. Nor is it surprising that the practice of substitution has not been authorized or addressed in DOL's regulations. Substitution has been permitted simply as a procedural accommodation to employer-applicants. The Department recognizes that this accommodation has had a distinct benefit to employers and applicants in allowing them to retain an earlier priority date and apply the results of a completed labor market test. However, as discussed later in this Preamble, the equities do not support retention of the earlier priority date. Accordingly, in light of the evidence that substitution is an important contributor to fraud in the labor certification program and of DOL's statutory interest in protecting U.S. workers by reestablishing worker unavailability whenever a position once again becomes vacant, the demonstrated ''black market'' in labor certifications, and the significant number of prosecutions for fraudulent activity related to the program, we conclude the benefits to elimination outweigh the potential disadvantages. As stated previously, the Department will continue to work with other Federal agencies with an interest in the employment-based immigration system to explore, under appropriate circumstances, potential alternatives to the current practice.

2. Evidence of Fraud

Several commenters mentioned that the Department has not provided evidence of or statistics on widespread labor certification fraud or abuse and needs to consider the benefits of substitution against relatively few abuses. One commenter opined that elimination is appropriate only when a policy is commonly or largely misused. It stated the burden is on the Department to show the connection between fraud and substitution, and to establish that its elimination will not impede legitimate business practices.

Some commenters questioned the effectiveness of eliminating substitution; they were concerned the rule does not target the most common sources of abuse or deter persons with intent to defraud. One commenter suggested that persons intending to engage in these abuses will find the substitution prohibition does not provide a significant obstacle to their endeavors. It stated such persons will remain free to file fraudulent applications naming the intended beneficiary and that substitution elimination will only succeed in moving the initiation of the fraudulent transaction with the foreign national back to a point in time before the filing of the application. The commenter asserted it is highly questionable whether such a minor achievement justifies the harm done to legitimate employers by the prohibition of substitution. Some commenters claimed the substitution prohibition will do little to eliminate the filing of applications without the knowledge of the employer, and the filing of applications by employers who are paid to engage in a fraudulent scheme and who have no intention of filling the job opportunity described in the application. Citing *U.S.* v. *Kooritzky*, No. 02–502–A (E.D. Va. 2003), they observed those who are determined to commit fraud will find a way to commit fraud.

The NPRM detailed the reasons for our proposal to eliminate the practice of substitution. Our experience with the failures of this practice is longstanding and shared by other Federal agencies. The Department disagrees that eliminating substitution contributes only a ''minor'' achievement to addressing the realm of abuses over which the Department has control. The fraud cases prosecuted even within the recent past indicate a significant number of instances where substitution played a role in fraudulent activity in obtaining an immigrant benefit. See, e.g., *U.S.* v. *Yum* (E.D. Va. 2006); *U.S.* v. *Mandalapa*, No. 205–NJ–03117–PS (D.N.J. 2006).

The Department continues to believe, based on the activity in these and other cases, that fraudulent substitution is a core contributor to the marketability of labor certifications because it is only if one can substitute that one can benefit from a certified application naming another individual. This marketability results in the use of labor certifications for fraudulent purposes—by aliens and employers with no intent to have a legitimate employment relationship.

We agree there are numerous sources of fraud in employment-based immigration programs government-wide, and individuals intent on committing fraud and abusing the system may still find a way to do so. However, the existence of other types of fraud, separate from that generated by the practice of substitution, does not obviate the need to address the documented fraud related to alien substitution. As described earlier, the Department has instituted specific checks and balances in the PERM process to address and prevent the filing of applications without the employer's knowledge. For example, the National Processing Centers contact the employer directly to confirm it is aware of the application and is sponsoring the alien, and the ETA Form 9089 requires distinct contact information for the employer and the attorney or agent filing the application. The substitution prohibition enhances and supplements existing anti-fraud and program integrity measures.

Alternatives to a regulatory ban on substitution, including limiting or tailoring the option to substitute—One commenter asserted the elimination of substitution in no way facilitates the identification of fraudulent labor certification applications, and this rule instead takes a ''shotgun'' approach at the expense of legitimate program users. The comment stated the goal of reduced fraud is better achieved by heightened enforcement measures, which it states the Department has already put in place in the PERM program. The commenter also pointed to traditional law enforcement measures, like the

discernment of patterns in groups of applications filed by a given employer or attorney, to ferret out fraud and abuse. One commenter argued existing regulations provide a sufficient basis to prosecute employers, employees, and attorneys alike who engage in fraudulent activity associated with the permanent labor certification process. Others also suggested there is no need to ban substitution because of the additional provisions prohibiting the sale, barter, or purchase of labor certifications at § 656.12; the safeguards already in place at the Backlog Processing Centers to confirm the bona fide nature of applications; and the PERM program's strict employer registration requirements. Another commenter stated it is concerned about the elimination of substitution in small town or rural areas where employers have great difficulty finding qualified engineers, and requested the Department relax its requirements for rural or small town situations.

One commenter suggested that in order to limit occurrences of fraud, DOL should limit the prohibition on substitutions to filings made under section 245(i) of the INA. As an alternative, the commenter suggested the establishment of an exception to the rule for large corporations. The commenter also suggested the Department could establish appropriate criteria to allow employers who, for example, have a demonstrated record of filing appropriate labor certification applications to use substitutions.

The Department disagrees with these comments. The heightened enforcement measures in the PERM program are designed to catch fraud ''in process'' and do not address fraudulent activity that transpires thereafter, as the new substitution policy will. Further, the prohibition on substitution is not designed as a fraud detection mechanism, but rather as one of several protective measures to altogether prevent fraud related to this activity by preventing the commodification of labor certifications. The prohibition will be more effective because it will cover applications filed under 20 CFR part 656 in effect before and after March 28, 2005. Further, while we agree that other fraud prevention and detection methods may be available, the effectiveness of those other methods does not remove the need for additional, targeted techniques like those instituted in this Final Rule. For example, we are well aware of other laws, such as those governing perjury, that support detection and prosecution of fraud. However, such statutes are not always sufficient to prevent, deter and/or redress unlawful conduct. By removing the opportunity to engage in the fraudulent activity, this rule permits existing investigative and prosecutorial resources to be better focused, and frees resources across government agencies for other pressing needs.

We have no programmatic evidence that applications filed under section 245(i) are particular sources of fraud. In addition, this suggested alternative would result in a one-time solution, since the INA section 245(i) cases have already been filed and are being processed in the Department's Backlog Processing Centers. Further, such a policy would establish unequal rules for employers based upon the unsupported assumption that applications filed under section 245(i) are the only ones in which substitution fraud occurs. Labor certifications issued for 245(i) cases are indistinguishable from others and require the same steps of employers; absent a strong rationale, they should not be subject to different conditions or limitations than the limitations that attach to other labor certifications.

We also do not agree that exceptions for large corporations or for rural areas are warranted. Exceptions for certain categories of employers, as suggested by commenters, do not further the Department's obligation to ensure a sufficient test of the labor market for the admission of each alien each time a job opportunity opens. We also have determined that it is not wise to establish a list of pre-approved employers, in part because the types of fraud we are targeting by this Final Rule are in some cases committed by attorneys and agents without the knowledge of the employer named on the application.

3. Change in Conditions That Originally Warranted Allowance of the Practice

Various organizations provided comments concerning current processing times and the Department's remaining backlog of permanent labor certification applications in relation to the proposed ban on substitution. These commenters generally took issue with the Department's premise that substitutions are no longer needed to accommodate application processing delays. Some commenters questioned the premise based on the number of applications pending at the Department's Backlog Processing Centers and experiences to date with applications filed under the PERM system. They stated even if the Backlog Processing Centers meet what appears to be an unrealistic backlog elimination goal, the premise is quite obviously false.

For example, one commenter stated it has 1,100 pending, unadjudicated labor certification applications and that, in many cases, because of the multi-year adjudication times for these applications, the original alien beneficiary has already moved on to a new position and the employee currently in the position has become the new intended beneficiary of the application. Another commenter referred to over 1,000 Reduction-in-Recruitment applications pending at the Department's Backlog Processing Centers, and stated about half of all of its PERM applications still remain pending for up to five months from date of submission. Both commenters suggested the Department should continue its efforts to eliminate the backlog and to speed up the PERM process prior to considering changes to the practice of substitution.

The Department disagrees. The agency operating conditions under which alien substitution was initially permitted have noticeably changed. The Department acknowledged in the preamble of the proposed rule that the strongest historical argument in support of substitution has been the length of time it once took to obtain a permanent labor certification. 71 FR at 7656, 7659 (February 13, 2006). However, the Department also noted the streamlined process introduced by the PERM regulation has significantly reduced the labor certification processing time for applications filed under the new system. Since the PERM program began accepting applications on March 28, 2005, 68 percent of the certified applications have been processed in less than 60 days. And in FY 2006 alone, approximately 75 percent of the certified applications were approved in 60 days or less. In addition, the PERM system will continue to improve as we gather baseline information from which to implement process improvements. In other words, we expect applications to be adjudicated at least as quickly in the future as the system builds upon its knowledge base.

With respect to the pending applications at our Backlog Processing Centers, we have significantly reduced the number of backlogged applications from an estimated 365,000 to less than half that number. This effort places us on target to meet our goal of eliminating the backlog by September 30, 2007. Thus, the argument in support of allowing substitutions to continue because of long processing delays has been appropriately addressed by both the new, streamlined PERM process and the large reduction in backlogged applications. In light of these changes,

we believe it is imprudent to wait to adopt this rule, as some commenters suggest, until all backlogs are completely eliminated, thus giving those who wish to fraudulently use substitutions additional time to do so.

4. Extending Regulation to Pending Applications for Permanent Labor Certification and to Approved Certifications

The Department received a number of comments opposing the application of the substitution ban to applications filed under 20 CFR part 656 in effect either before March 28, 2005, or on or after March 28, 2005, and to certifications already granted. These commenters urged the prohibition on substitution should be limited to only those applications filed under the current streamlined regulation and should not encompass any applications filed under the 20 CFR part 656 in effect before March 28, 2005.

Commenters stated employers and employees across the country have made critical hiring and transfer decisions in reliance on the availability of substitution. They stated that by applying the rule change to all substitutions except those approved by the effective date of the Final Rule, the Department would be setting itself up for further challenges and pressures. The commenters cited *Bowen* v. *Georgetown Univ. Hospital*, 488 U.S. 204 (1988), asserting it supported their contention that a Federal agency lacks the power to issue retroactive rules absent a statutory grant of authority. They contended it is unfair, and most likely unlawful, for the Department to change the rules midstream, and that any change in the rules governing substitution should only be prospective in effect.

Others commented that the Department's proposed regulation constitutes a retroactive ban that raises legal questions. Some stated the proposed rule improperly seeks to retroactively invalidate approved labor certification applications, when such approval was obtained under the current rule that such certifications are ''valid indefinitely.'' Others stated the proposed application is contrary to the prohibition on retroactive agency rules as found in the Administrative Procedure Act (APA). They noted that, under the APA, a rule is defined as the whole or part of an ''agency statement of general or particular applicability and *future* [emphasis added] effect designed to implement, interpret, or prescribe law or policy.'' Commenters stated the Department would need specific authority from the Congress to promulgate retroactive regulations. Several commenters referenced *Health Ins. Assn. of America, Inc.* v. *Shalala*, 23 F.3d 412, 423 (D.C. Cir. 1994) for the proposition that, under the APA, rules may only have future effect. The court cited Justice Scalia's concurrence in *Bowen* v. *Georgetown Univ. Hosp.*, 488 U.S. 204, 216–23 (1988), which interpreted the APA to mean that a rule is a statement that has legal consequences only for the future and found that a rule that alters a future regulation in a manner that makes worthless substantial past investment incurred in reliance upon the prior rule may for that reason be found ''arbitrary'' or ''capricious.'' One commenter asserted the proposed provisions eliminating substitution would be illegal retroactive rulemaking because employers have filed applications with the expectation of substitution as a potentially significant benefit should the original beneficiary drop out, and this benefit is a form of a property right.

One commenter argued the application of the rule prohibiting substitution to backlogged applications under the pre-PERM regulation was retroactive in nature and could be read as an attempt to force the time and expense of the new application under the PERM process on employers who already have an investment in applications in the backlog. The commenter said this would amount to a taking of a business investment without just compensation. Similarly, another commenter asserted the elimination of substitution constitutes a ''taking without compensation'' of an employer's significant investment in the preparation and filing of pending and approved labor certification applications. The commenter stated the prevention of an unknown and possibly insignificant level of fraud and abuse does not justify this devaluation of a company's investment. The commenter went on to observe that eliminating substitution would disproportionately impact large high-tech employers, which file large numbers of applications. Finally, this commenter stated years of processing delays have spurred employers to build substitution into a business practice as part of their respective programs.

In a similar vein, other commenters stated the prohibition of substitution is detrimental to parties who have relied on the current practice. Estoppel, they said, warrants that a person who has rightfully relied on a practice should get the benefit of that reliance. Employers and beneficiaries have depended on the ability to substitute and have foregone filing new applications because they planned to use an application for a previous employee for a current employee.

One commenter argued that due process considerations of fair notice, reasonable reliance, and settled expectations, affirmed in *Immigration and Naturalization Service* v. *St. Cyr*, 533 U.S. 289 (2001), should compel the Department to strip from the rule any provision applying the ban on substitution retroactively. This commenter asserted that, based on that case law, the 1996 Memorandum of Understanding between the Department and the Immigration and Naturalization Service delegating to INS responsibility for substituting a named beneficiary on a labor certification, and longstanding agency practice, the Labor Department may not now retroactively divest USCIS and employers with pending labor certification applications of the legal right to engage in the practice of substituting alien beneficiaries. This commenter further stated that if a case has not yet been adjudicated, it is difficult to imagine any harm resulting from a legitimate employer substituting a new beneficiary on the pending application.

Other commenters also pointed out the hardship that the ban on substitution would cause to certain aliens. They stated prohibiting substitution on applications pending prior to the effective date of the rule will render countless beneficiaries who are subject to the American Competitiveness in the Twenty-First Century Act (AC21), Public Law 106–313 (October 17, 2000), stranded and unable to extend their current stays, since such extensions depend on the existence of either a permanent labor certification application that has been pending for 365 days or more or a pending Form I–140 petition.

As an alternative to the proposal, one commenter recommended that substitution remain available for all cases currently pending at a Backlog Processing Center. The commenter also recommended substitution remain available for all cases as long as the employer can demonstrate it has engaged in some additional recruitment and can document there are no qualified U.S. workers available. One commenter recommended the substituted beneficiary should be assigned the priority date of the date of substitution or, in the event substitution is prohibited, that the prohibition start with the effective date of the rule, and not be applied retroactively. One commenter suggested a grace period prior to the ban becoming effective.

We have carefully reviewed these comments and find they do not present sufficient grounds to overcome the rationale reflected in the NPRM to prohibit the practice of substitution on all labor certifications issued after the effective date of this Final Rule. Assertions that the prospective ban on substitution of aliens is, instead, a retrospective ban are misplaced. Past substitution requests that already have been approved are unaffected by this rule. Current substitution requests pending on the effective date of this rule will continue to be processed. Even though substitution will not be permitted with respect to labor certifications granted prior to this rule's effective date and may upset expectations based on part 656 as it previously read, that does not make the ban retrospective.

The question of whether a rulemaking activity has a ''retroactive'' impact that renders that rule invalid is more complex than the commenters suggest. The United States Supreme Court has ruled that ''[a] statute does not operate 'retroactively' merely because it is applied in case arising from conduct antedating the statute's enactment.'' *Landgraf* v. *USI Film Products*, 511 U.S. 244, 269 (1994). The Court went on to note that determining whether a statute is improperly retroactive requires the application of ''familiar considerations of fair notice, reasonable reliance, and settled expectations. * * *'' Id. at 270. Application of the *Landgraf* principles led the Court to reject a retroactivity challenge to the application of the Foreign Sovereign Immunities Act to wrongdoing that occurred prior to that law's enactment. *Republic of Austria* v. *Altman*, 541 U.S. 677 (2004). These same principles recently led an *en banc* Sixth Circuit to uphold the application of a change in Social Security Administration disability regulations to pending cases. *Combs* v. *Commissioner of Social Security*, 459 F.3d 640 (6th Cir. 2006). The Sixth Circuit followed the same approach in finding that there was no impermissible retroactive effect in applying certain amendments to the INA relating to the discretionary removal of relatives to aliens in the U.S. who sought to invoke the prior procedure. *Patel* v. *Gonzales*, 432 F.3d 685 (6th Cir. 2005). After applying these principles to the current rulemaking, the Department has determined its proposal is appropriate.

An application for permanent alien labor certification is filed at DOL with the employer-applicant's expectation that it will satisfy the exclusionary provision in 8 U.S.C. 1182(a)(5)(A), so as to support a petition to DHS to import the alien beneficiary of the certification. That remains unchanged by this rule.

The Department has provided ample notice of its intention to eliminate substitution, sufficient for employers and their representatives to reduce or eliminate continued reliance on the practice. As early as 1991, we indicated our intention to discontinue the practice. 59 FR at 54920, 54925–54926 (Oct. 23, 1991). When the PERM Final Rule was published in 2004, its preamble discussed at some length questions relating to the practice of substitution, the Department's findings of an emerging market for fraudulent sale of labor certifications, and DOL's intent to examine the practice and ''explor[e] in the near future regulatory solutions to address this issue.'' 69 FR at 77363 (Dec. 27, 2004). In the NPRM to this Final Rule, the Department again announced its intent to eliminate substitution. Thus, we are confident public notice and comment has been fair, open, and consistent with the Administrative Procedure Act. Any employer who has an application pending but who is either unable or unwilling to continue to sponsor the original alien has had more than sufficient opportunity to identify a new alien and take advantage of the past procedures.

We have determined that employers cannot demonstrate they reasonably relied on the prior practice. In filing an application for permanent labor certification, an employer is expressing its intent to and expectation that it will hire the alien named on that document if the application is approved. An employer's hypothetical need to substitute, should the first alien no longer be available, is not tantamount to detrimental reliance on an ability to do so. Commenters offered no explanation of how an employer's initial filing can be made in reliance on a future ability to substitute. The risk any employer sponsoring an alien takes is that the alien will not remain an employee through the entire permanent residence process, or at the end of that process, and the option of simply inserting another alien has never been an entitlement. The INA's rule of inadmissibility of immigrant workers without a test of the labor market for available U.S. workers, the statute's requirement that admissibility be determined for each alien individually, and the statute's overall protection of employment rights of U.S. workers, each further supports the Department's position.

With respect to the claim of employer expectations of an option to substitute, the statute makes clear that an employer has no absolute right to a labor certification, and certainly no property interest in one. Employers, particularly regular users of the system, have known about the Department's intent to end the practice of substitution since the publication of the PERM regulations in 2004. No employer could after that date have had any reasonable expectation that the practice would be indefinitely available. Several commenters appear to argue that once they have applied for or secured a labor certification for a particular alien in a particular job, they have a right to bring in any alien they choose for that job. The statutory scheme, with its focus on individual aliens and presumption of each alien's inadmissibility, belies that argument.

Further, it is appropriate to apply the prohibition on substitution to the cases in our Backlog Processing Centers to ensure these needed fraud protections are applied throughout all permanent labor certification cases, regardless of where they reside in terms of processing. Accordingly, the Department has determined that, following the effective date of this Final Rule, the elimination of alien substitution will apply to all permanent labor certification applications pending with the Department and to all permanent labor certifications issued under the current or prior regulation. This Final Rule does not nullify substitutions already made or in progress, whether by the Department or DHS, but rather prohibits substitutions in the future, substitutions which employers presumably do not anticipate and are not planned and, hence, to which there is no right or reasonable expectation. No labor certification may be the subject of a substitution request submitted on or after the effective date of this rule.

This rule places no additional responsibilities on recipients of labor certifications approved prior to the effective date. At the time of certification a benefit was granted; none was waived. The required wage rate remains unchanged for employers. No further recruitment for U.S. workers is required of the employers under approved labor certifications. Once the certification is filed with DHS in support of a visa petition, and if the employer and alien comply with all other applicable provisions of the immigration laws, the alien beneficiary will be admitted as a permanent resident.

All that is changed is that the employer now will be encouraged to retain its original alien beneficiary (perhaps to that alien's benefit) or will

have to file a new application on behalf of a new alien. An employer seeking to substitute, in fact, always has had to engage in a limited test of the labor market. When the original alien beneficiary no longer is available for the job opportunity, the employer has had to recruit the substitute alien, either domestically among nonimmigrants, or abroad to import a new foreign worker. This rule would make that labor market test include not just foreign workers, but also U.S. workers, at prevailing wages and working conditions.

The standards in 8 U.S.C. 1182(a)(5)(A) ''are quite broad. The Secretary must decide whether there are sufficient U.S. workers who are 'able, willing, qualified, and available,' and whether the alien's employment would 'adversely affect the wages and working conditions' of these workers. The statute leaves to the Department a broad area for the exercise of its discretion in issuing labor certificates.'' *Industrial Holographics, Inc.* v. *Donovan,* 722 F.2d 1362, 1365–1366 (7th Cir 1983). In the exercise of her discretion to issue labor certifications, the Secretary is within the extensive bounds created by the INA. Id. If the employer files a new application, it will be considered fairly and on its own merits. If approved, the new labor certification will be for a more current wage rate and subject to a more current labor market test, to the benefit of the new alien and/or U.S. workers similarly employed. This is within the intent of the statute, and is an appropriate preventative measure given the deleterious effect caused by substitution in the past. Given the Department's expressed concerns about fraud in the labor certification process, particularly with respect to substitution, and the emerging ''black market'' in status as a beneficiary of a labor certification, DOL sees a compelling need to protect the program's integrity regardless of the processing status of a certification on the effective date of the final rule. The Department's duty also to protect job opportunities for U.S. workers, and the welfare of both U.S. and foreign workers, makes it necessary to end the process of substitution after the effective date. See section I.D of this preamble, above.

Effect on aliens who are H–1Bs and not entitled to benefit from substitution after the fifth year—The Department also received comments regarding the effect of the substitution ban on nonimmigrant aliens on whose behalf viable labor certifications have not been filed by the end of their fifth year in H–1B status, and specifically on these aliens' ability to adjust their status to that of immigrants. Under current law, nonimmigrant H–1B visa holders in their sixth year of H–1B status who are named on permanent labor certification applications that have been pending for 365 days or more qualify—upon petition to USCIS—for extension of their H–1B status in one-year increments. AC21, section 106(a). Currently, USCIS allows visa holders in H–1B status who are substituted into labor certification applications by the end of their fifth year to extend their nonimmigrant status beyond the normal six-year maximum. Commenters argued H–1B visa holders who are unable either to have a permanent labor certification application filed on their behalf or to be substituted into an existing application by that time will lose the opportunity for additional extensions of H–1B status.

The Department understands concerns that, as a result of this rule, H–1B nonimmigrant aliens who, after five years of employment in the United States, are not yet the beneficiary of a permanent labor certification application might not be permitted by USCIS to further extend their H–1B status prior to obtaining U.S. permanent resident status. However, the Department finds that continuing substitution as an accommodation to this small group of individuals, a group whose numbers and participation in the program are both speculative, is disproportionate to the adverse consequences of continuing the substitution practice which creates both an incentive and opportunity for fraud, and which deprives U.S. workers of job opportunities.

Some commenters have suggested that since AC21 increased the portability of H–1B visas, allowing such nonimmigrants to change employers, substitution by these foreign workers should continue to be allowed. Public Law 106–313, sec. 105. The Department sees no reason, as a general matter, to permit one type of nonimmigrant to continue benefiting from the practice of substitution over other nonimmigrants. The portability provision seeks to increase flexibility for a specific group of nonimmigrants—H–1B aliens—under a specific set of circumstances; it governs transfers between positions which aliens fill on a temporary basis, and is triggered by the filing of a new LCA and petition. It does not address, and does not extend to, substitution, which is a function of the permanent residence process. The statutory permission to move from one employer to another as a procedural accommodation does not in turn mandate increased flexibility through substitution in the permanent residence process.

These commenters' analysis incorrectly pairs portability with the extension beyond the six-year H–1B employment limit allowed by section 106(a) of AC21. The Department finds that analysis flawed. The INA dictates that after six years, H–1B status must terminate. The specific exceptions to that termination are linked by AC21 to harm resulting from permanent residence backlogs, including backlogs in the permanent labor certification program. The extension beyond six years is intended by the statute to benefit an H–1B worker when 365 days or more have elapsed since the filing of a permanent labor certification application ''on the alien's behalf (if such certification is required for the alien to obtain status under such [INA] section 203(b)) * * *.'' Public Law 106–313 section 106(a)(1). Clearly, the alien intended to be helped by this provision is the alien who may have been prejudiced by the backlog in processing labor certification applications under DOL's pre-PERM regulations. An H–1B worker seeking substitution may have benefited by working in the U.S. for six or more years, but has not necessarily been affected by the backlog at all. It is not inconsistent with the statutory intent of AC21 to limit the ability of that alien to continue his or her nonimmigrant status to a labor certification filed on his or her behalf rather than on someone else's behalf.

The Department recognizes that those aliens who fall outside the five-year mark will potentially be unable to extend beyond the sixth year of H–1B status and otherwise might have been able to do so through substitution. This small group of affected individuals, however, does not present sufficient equities to persuade the Department to carve out an exception to the prohibition on substitution, since employers in such situations have had upwards of five years in which to initiate permanent resident status on their behalf.

Further, extension of an alien's nonimmigrant visa status is the province of USCIS, not the Department of Labor. The Department's mandate is not to preserve the opportunity or further the potential opportunity in all circumstances for an employer to hire an immigrant worker, nor is it a process driven by the interests of any or all aliens who may wish to enter the U.S. through employment-based immigration. The Department's mandate, rather, is to design and implement a secure framework within which an employer with legitimate business needs may determine the availability of U.S. workers and, if such

workers are not found, bring in a foreign worker. Moreover, because the Final Rule prohibits only substitutions which have not yet been made, aliens who have not otherwise begun the permanent residence process before the end of the fifth year of H–1B status presumably do not anticipate and therefore cannot claim a reasonable expectation of benefiting from substitution.

5. Effect of the Elimination of Substitution on Employers

The Department received many comments addressing the perceived hardships employers would suffer if substitution were prohibited.

Added cost and burden—Employers were concerned about loss of their investment in the first application; the loss of an important employee retention and recruitment tool; added cost and burden from a new application, including advertising and recruiting costs, staff time, legal fees; inherent delays to getting a new worker in place, and potential processing delays with the Department or other agencies; additional costs from other parts of the petitioning and visa application process; loss of place in the queue given visa retrogression; and retardation of business growth and loss of competitiveness from potential delays in getting products to market. Some pointed to the potential negative impact on special groups, such as high-tech employers, nonprofits, or businesses located in rural areas. One commenter stated that each set of costs should not be viewed in isolation, but rather multiplied by the number of applications for each employer, and the large number of employers that must respond to labor mobility and unforeseen business changes.

Despite a lack of consistent information from commenters on the additional costs associated with new filings, the Department is aware of and sensitive to the time and expense employers absorb to recruit and retain a qualified workforce. However, the costs associated with the employment-based immigration process, including the costs incurred by employers requesting permanent labor certification, have been an accepted part of the labor certification process for almost 30 years and are not unanticipated by the statute. The INA presumes inadmissibility of each alien, and requires the presumption be overcome for each foreign worker through, in part, the Secretary of Labor's determination. A demonstration of worker unavailability is inherent to the process of filing a labor certification application, and it is not unreasonable or inconsistent with the INA to require recruitment every time an employer seeks to bring in a new foreign worker. Recruitment activities and the costs associated with them are equally as appropriate for the would-be substituted foreign worker as they were for the originally named alien. Accordingly, while we are sensitive to employers' concerns, we must nevertheless conclude that elimination of the current substitution practice is amply justified notwithstanding.

In addition, the Department fully recognizes that substitution has become a tool to address visa retrogression. However, the Department is not convinced it should retain a policy on substitution that gives rise to significant fraud and may adversely affect U.S. workers as a means to cope with the visa cap issue, or to support any unintended cost savings for employers that may have resulted from this practice.

Loss of priority date—Many commenters expressed concern over the loss of the visa priority date when a new application is required to hire a new alien. Our program experience indicates that the priority date plays a defining role in the commoditization of labor certifications; substitution enhances the labor certification's marketability. Commoditization stems from the ability to substitute aliens on labor certifications, which are valid indefinitely, while maintaining the priority date of the original filing. Indeed, the priority date is often a prime motivator for the marketability and added value of labor certifications. It is also not necessarily true that the availability of substitution is beneficial to aliens as a class. As stated in the NPRM, under the substitution process currently in place, the new alien beneficiary is inserted into an in-process application or certification initially filed for a different alien and with a filing date that is often years earlier than the substituted alien would have received if named in a newly filed application.

We are aware of concerns that these practices make substitution fundamentally unfair to other aliens (and their petitioning employers) seeking to immigrate to the U.S. who remain below the substituted worker in the visa priority date queue, as well as to U.S. workers. See 71 FR 7656 (Feb. 13, 2006) and 56 FR 54920 (Oct. 23, 1991). The need for a new labor market test and the Department's interest in removing aspects of the current process creating incentives for fraud, combined with the inequity to other aliens waiting in the visa queue who have not been substituted in, outweigh the harm to an individual employer and alien from the loss of a priority date on a given application. In addition, the reasoning that the employer suffers a hardship from the inability to apply an earlier priority date to a subsequent application rests on an unsupported assumption that another test of the labor market would not yield a qualified and willing U.S. worker. We do not agree with this reasoning and find it contrary to our statutory responsibility to protect U.S. workers, as well as virtually impossible to legitimately accommodate in the administration of the permanent labor certification program.

B. Prohibition of Modifications to Applications

The proposed rule sought to clarify procedures for modifying applications filed under the new permanent labor certification regulation and, in particular, to prohibit modifications to applications once filed with the Department. We received numerous comments raising concern over this new provision. After careful consideration of these comments and for the reasons set forth below, this Final Rule codifies the new provision at § 656.11(b) with slight changes from the NPRM, clarifying that requests for modifications to an application submitted under the PERM regulation will not be accepted where the application was filed after this Final Rule's effective date. In considering how to implement the ''no modification'' provision, while ensuring due process to applicants for labor certification, we have determined that it is advisable to revise the language of § 656.24(g) to more precisely define what documentation may be submitted with a request for reconsideration.

Codifying the ''no amendments'' requirement through notice and comment—As explained in the NPRM, the clarification made by this Final Rule is consistent with the streamlined labor certification procedures governed by the regulation that went into effect March 28, 2005. Nothing in the regulation contemplates permitting employers to make changes to applications after filing. That practice was one the Department specifically sought to change through the Final Rule implementing the re-engineered PERM program. The re-engineered program is designed to streamline the process, and an open amendment process that either freely allows changes on applications or results in continual back and forth exchange between the employer and the Department regarding amendment requests is inconsistent with that goal. Further, the re-engineered certification

process has eliminated the need for changes.

The Department has instituted screening and guideposts for electronic permanent labor certification applications. The online application system, especially in light of the technological enhancements described below, allows the user to proofread, revise, and save the application prior to submission, and the Department expects users will do so. ETA has received frequent, positive feedback from stakeholders on what they have found to be the time and cost-saving nature of this review.

Moreover, in signing the application, the employer declares under penalty of perjury that it has read and reviewed the application and the submitted information is true and accurate to the best of its knowledge. In the event of an inadvertent error or any other need to refile, an employer can withdraw an application, make the corrections and file again immediately. Similarly, if an employer receives a denial under the new system, it can choose to correct the application and file again immediately if it does not seek reconsideration or appeal.

Immediate feedback on deficiencies or deniability prior to submission of an application—Prohibiting the modification of applications will allow the Department to process employer applications more quickly and support greater uniformity and consistency in their adjudication. However, as part of our continuing upgrades to PERM processing capabilities, as well as in response to comments on the NPRM and the suggestion by the BALCA in its decision in *In the Matter of HealthAmerica,* No. 2006–PER–1 (July 18, 2006), we have dramatically increased the nature and number of system ''prompts'' and warnings in an effort to provide employers and others with additional opportunities for correction prior to submission of an application.

The Department has added system capabilities in the form of ''pop-up'' edit alerts to notify each applicant when a response to a question is technically in conflict with either the PERM regulation or certain of the formal instructions for completion of the form. The applicant is allowed to continue, but with full warning of possible deniability. The system permits submission of the application, but the applicant assumes the risk that the application will be denied based on the failure to fully comply with the technical requirements and alerts of the program. This electronic advisory system is much more detailed and more robust than anything available previously to online users, and it is continuing to reduce the type of automated denials that gave rise to *HealthAmerica.*

The majority of form preparation errors that have occurred to date will now generate an automated prompt, warning the filer that it may have entered erroneous information that may cause a denial of the application. As described above, similar manual mechanisms are in place to detect and correct errors on mailed applications. The Department reiterates, however, the fundamental responsibility to submit an application which does not contain typographical or similar errors remains with program users.

Under the system upgrades now in place, applications containing errors in contravention of system alerts are denied. Consistent with the ''no modifications'' policy codified by this rule and the evidentiary parameters of the revised § 656.24(g) described below, requests for reconsideration based on such denials will not be granted, where an application filed after this rule's effective date is at issue. Requests for reconsideration based on such denials involving applications filed prior to this rule's effective date will be reviewed on a case-by-case basis; they will be placed in the appropriate queue and reviewed on a ''first in, first out'' basis and as workload permits.

Evidence in support of requests for reconsideration and amendment of § 656.24(g)—We have made one change from the NPRM in this Final Rule based on the BALCA's decision in *HealthAmerica.* Among other issues, the Board addressed the meaning of the current § 656.24(g) governing requests for reconsideration. That section provides that reconsideration requests ''may not include evidence not previously submitted.'' The Board concluded that evidence ''previously submitted'' encompassed material in the possession of the employer at the time of filing. That reasoning was the basis for the Board's decision that allowed the employer to modify its application to correct a mistake. To the extent the BALCA favored allowing the employer in *HealthAmerica* to present evidence that effectively changed the response to a question on the application, the BALCA's approach is inconsistent with the Department's objective and the NPRM proposal that applications cannot be changed or modified after submission.

However, the Department recognizes that there will be situations where—although an employer will not be permitted to amend its response to a question as it did in *HealthAmerica*—it may nonetheless be appropriate to consider information not previously in the Certifying Officer's (CO's) physical possession in order to provide appropriate evaluation of the employer's request for reconsideration. The Department has determined an approach that allows for submission with a motion to reconsider of documentation in existence at the time of filing and held by an employer as part of its compliance responsibilities under the PERM recordkeeping requirements is appropriate. Accordingly, we have adopted a modified approach to that proposed in the NPRM, continuing to prohibit application modifications but recognizing the appropriateness of an opportunity to present and consider evidence that was generated to comply with record retention requirements of the PERM program.

Accordingly, the Department is including as part of this Final Rule a revised § 656.24(g) setting the new standard for applications filed on or after the effective date of this Final Rule. The new § 656.24(g) describes the evidence that can be submitted with a motion to reconsider and clarifies the interplay with the no-modification provision of § 656.11(b). The revised § 656.24(g) limits evidence submitted at reconsideration to documentation that the Department actually received from the employer in response to a request from the Certifying Officer to the employer; or documentation that the employer did not have an opportunity to present to the Certifying Officer, but that existed at the time the application was filed, and was maintained by the employer to support the application for permanent labor certification to meet the documentation requirements of § 656.10(f). Revised § 656.24(g) also provides that the Department will not grant motions to reconsider where the deficiency that caused denial resulted from the applicant's disregard of a system prompt or other direct instruction. These changes together adequately ensure that employers and others have sufficient opportunity to present evidence on salient points, even if denied that opportunity during the application's consideration, while enabling the PERM program to function in its intended streamlined manner.

1. Issues Raised by Public Comments

Authority to limit modifications to an *Application for Permanent Employment Certification*—Many commenters questioned the Department's authority to limit and prohibit an employer's ability to modify a Form ETA 9089, *Application for Permanent Employment Certification.* We disagree. Federal

agencies have the authority, and sometimes the necessity, to write strict procedural rules in order to manage their respective responsibilities. *HealthAmerica,* slip op. at 17. Our past practice and program experience led us to make regulatory changes in the nature of the permanent labor certification program, changes that were publicized through extensive stakeholder outreach and during numerous public meetings across the country. The resulting efficiency and effectiveness measures have contributed to overall program productivity increases and have reinforced, among other factors, the critical need to discontinue what has historically been continual, unduly time-consuming communication between ETA Certifying Officers and employers or their representatives.

The Department recognizes that the accountability-based standard it put in place in PERM was, at least for purposes of the modifications issue, not made sufficiently clear in the text or preamble to the original December 27, 2004 Final Rule. The BALCA pointed out in its *HealthAmerica* decision that a requirement for precise filing can be imposed with proper notice, citing *Glaser* v. *FCC,* 20 F.3d 1184, 1186 (D.C. Cir. 1994); *Salzer* v. *FCC,* 778 F.2d 869, 875 (D.C. Cir. 1985); *JEM Broadcasting Co., Inc.* v. *FCC,* 22 F.3d 320 (D.C. Cir. 1994); *Florida Cellular Mobil Communications Corp.* v. *FCC,* 28 F.3d 191 (D.C. Cir. 1994). In these cases, the D.C. Circuit found the FCC could appropriately and legitimately write regulations requiring certain license applications be ''letter-perfect'' (i.e., complete and sufficient) when submitted because the requirement was provided for in agency regulations that had been subject to notice and comment. The BALCA noted the issuance of the NPRM as evidence that such a ''letter-perfect'' requirement did not exist under the PERM regulations as initially issued. This rulemaking satisfies public notice and comment objectives.

Relationship to fraud—One commenter suggested the Department is insinuating that any request for modification is grounded in fraud. We disagree. As we have stated, the ''no amendments'' clarification in this rule simply codifies a policy the Department assumed was part and parcel of the re-engineered program, and which was an (albeit unstated) assumption of the PERM Final Rule. The ''no modifications'' policy furthers administrative efficiency. In addition, it protects against certain program abuses, such as the submission of a form with incomplete or inaccurate information simply to save the priority date. Thus, the policy serves a number of purposes not limited to fraud prevention.

Need for modifications—Many commenters stated modifications to applications were necessary because alleged errors made by the Department in reviewing mailed-in applications led to erroneous case denials. For example, the Department issued denials for failure to include the language that the employer would accept ''any suitable combination of education, training, or experience,'' when, in fact, the language was included in the application. Further, commenters stated other applications have been denied because the Department allegedly stated the alien did not possess the required academic credentials when, in fact, he or she did, and those credentials were clearly noted in the application in the appropriate place.

Commenters suggested in the event of an inadvertent error, there are many reasons why refiling is not usually a viable alternative, thus making modifications necessary. For instance, they stated that often an application preparer is not aware an error has been made at the time the employer submits the electronic Form ETA 9089. Even if the mistake comes to light before the Department issues a denial, it may be too late to re-file because the recruitment may have become stale. Further, certain post-filing, pre-certification events, including but not limited to changes in corporate structure resulting in a change of employer name, tax identification number, or address, may require the amendment of the application. One commenter suggested the inability to modify inadvertent mistakes could have serious ramifications as such a mistake may result in an inability to refile the application, cause a denial of the application, or be construed as a false statement.

The Department disagrees that these comments require alteration of the no-modifications policy reflected in the NPRM. As outlined above, going forward, electronic system prompts will most often alert the employer or its agent to the grounds for deniability, so a filer will be able to learn prior to submitting the application if the system would deny the application as currently completed. Further, as always, an employer has the right to seek reconsideration and beyond that, appeal to the BALCA, when it believes a denial was unjustified, without loss of the priority date which attached to the application. Hence, the ''no modifications'' policy does not institute a standard not previously envisioned, and does nothing to limit or undermine employer due process rights.

When filing the *Application for Permanent Employment Certification,* the employer certifies and declares under penalty of perjury that it has read and reviewed the application, and the information provided therein is true and accurate to the best of its knowledge. The Department understands that human error occurs in limited circumstances, which is why we have elected to increase our system ''prompts'' to help avoid such errors. These additions sufficiently address commenter concerns. Further, the Department believes it is capable of distinguishing between typographical or inadvertent errors and willful false statements.

Tailoring the ''no modifications'' policy—One commenter suggested the current regulations governing PERM should permit a single opportunity to the employer or agent to correct minor technical deficiencies. According to this commenter, applications should be decided based on their substantive merits instead of on non-material technical errors. The Department agrees that applications should be adjudicated upon their respective merits. However, typographical or similar errors are not immaterial if they cause an application to be denied based on regulatory requirements. The Department encourages those who submit applications to carefully review all information for completeness and accuracy and has modified the online application system to assist them to do so. Attentive filers will accrue the benefits of the new streamlined system, as ''clean'' applications are usually processed and adjudicated within 60 days of filing.

Many commenters suggested it is highly unlikely that employers will need more than one opportunity to correct any minor technical deficiencies and the nature and number of technical errors is highly unlikely to have a significant detrimental impact on the overall efficiency of the PERM process. Commenters suggested the new system has, in fact, had a dramatic impact on the processing of applications for permanent labor certification through, among other things, centralization and implementation of new technology. According to these commenters, permitting a single opportunity to amend an application to overcome a non-substantive technical error will neither require substantial Department resources nor render the PERM system ineffective or inefficient.

We disagree with the commenters'' premise that permitting modifications

will not negatively impact the processing and review of applications. The processing of requests for reconsideration of denials poses a significant, costly resource drain on the PERM case management system and staff. The opportunity cost and inequity to other employers are also high, as resources must be transferred from review of applications that do meet technical requirements to those that may not. Moreover, as we have discussed above, the alerts and prompts that we have built into the system will provide employers the opportunity to correct minor technical deficiencies before they ever submit their applications. This is a reasonable balancing of available resources. Therefore, the Department is finalizing the standard noted in the NPRM of not allowing modifications to an application. The revisions to § 656.24(g) will enable employers to present evidence in a request for reconsideration that will permit filers the opportunity, if necessary, to present evidence outside the four corners of the application.

Many commenters suggested it is reasonable to request that the modification prohibition, if adopted, should only apply to applications filed after publication of the Final Rule. We have adopted this suggestion. The changes to §§ 656.11 and 656.24 contained in this rule apply only to applications filed after the effective date of the rule; they do not impact the processing of motions for reconsideration filed with respect to applications filed prior to that date.

Concern prohibiting modifications will generate backlogs—One commenter suggested prohibiting modifications under proposed § 656.11(b) would be an open invitation to intractable increases in backlogged applications, rather than the radical reduction in pending applications and processing times contemplated by the PERM reforms. The efficiencies created by the new system prompts, which are proving to be an effective screen for program users against system-generated denials for technical errors, as well as the ''no modifications'' policy put in place by this rule, will allow us to significantly reduce the pending queues of denied applications and, consequently, to process all other applications more quickly and effectively.

Distinguishing policies for backlog and PERM—One commenter suggested the Department should clarify its position on modifications under the new PERM streamlined system, relative to applications filed with the Backlog Processing Centers, by clearly explaining the difference in treatment in the regulatory text. As proposed in the NPRM, the ''no modifications'' policy in this Final Rule will apply only to the PERM program since only the PERM regulation is amended in this Final Rule. In addition, this preamble describes more fully the process the Department will follow in its review of applications filed up to the effective date of the rule. This information provides sufficient notice of the expectations for employers and their representatives regarding the treatment of technical and other modifications going forward.

C. Prohibition on the Sale, Barter, or Purchase of Applications for Permanent Labor Certifications and of Approved Permanent Labor Certifications, and Prohibition on Related Payments

The proposed rule, at § 656.12, prohibited the sale, barter, and purchase of applications and approved labor certifications, as well as other related payments. The Department received numerous comments on this proposal. Commenters overwhelmingly opposed § 656.12(b), which would prohibit employers from seeking or receiving payment of any kind for any activity related to obtaining a permanent labor certification.

After carefully considering comments received, the Department has decided to move forward on all provisions, but in response to comments has clarified the types of prohibited payments, as further described below. The prohibitions in this section will apply to all such transactions on or after the effective date of this Final Rule, regardless of whether the labor certification application involved was filed under the prior or current regulation implementing the permanent labor certification program.

1. Improper Commerce

The proposed rule provided, at § 656.12(a), that permanent labor certification applications and certifications are not articles of commerce and they may not be sold, bartered, or purchased by individuals or entities. The majority of comments favored the proposal, and only a few were in opposition. Some comments were ambiguous; it was not clear whether the commenters were commenting primarily on § 656.12(a), prohibiting commerce in labor certification applications and certifications, or on § 656.12(b), which prohibits several types of payments related to labor certification applications and certifications.

The Department's extensive experience in the administration of this program leaves no doubt that some labor certifications are treated as commodities and sold at substantial gain by those who wish to engage in the existing secondary market. In one example from 2005, a joint investigation with DHS' Immigration and Customs Enforcement (ICE), the Federal Bureau of Investigation, the Department of State OIG and the Internal Revenue Service resulted in several employers, agents and attorneys being convicted of numerous visa fraud schemes. See *U.S.* v. *Ivanchukov et. al.* (No. 04–421, E.D. Va. 2005); see also DOL OIG Semiannual Report (October 1, 2005–March 31, 2006) (available at *http://www.oig.dol.gov/public/semiannuals/55.pdf*). In the *Ivanchukov* case, labor certifications were being sold for as much as $120,000.00. As a reminder of how common this activity has become, one commenter to the NPRM for this rulemaking provided the Department with a website that advertises the sale of pre-approved labor certifications. The Department has reasonably concluded that there is a need to prohibit improper commerce in permanent labor certifications.

Sale, barter or purchase—Two commenters indicated that prohibiting sale, barter, and purchase was one of the most effective amendments the Department could promulgate to reduce fraud in the permanent labor certification program, as it removes the economic incentive for unscrupulous behavior. Some commenters indicated the terms ''sold,'' ''bartered,'' and ''purchased'' were impermissibly vague. Other commenters stated the proposed ban on sale, barter, purchase, and related payments was overbroad and did not take into account that both employer and employee benefit when an employee obtains permanent residence. The Department acknowledges these concerns by adding definitions of the terms sale, barter, and purchase to the definitions at § 656.3, and by specifying and clarifying what constitutes the ban on sale, barter, purchase, and related payments. A labor certification is a certification from the Department that there are no able, willing, and qualified U.S. workers available for the specific job opportunity stated on the employer's application. Converting this labor certification into a commodity is an example of selling, bartering, or purchasing.

Many commenters suggested that if DOL wants to make selling labor certifications illegal, it should make such sales illegal and prosecute those who break the law rather than punishing everyone. We disagree that the rule punishes everyone; this aspect

of the rule only impacts an individual or employer when there is an actual sale. Further, our program experience clearly indicates that not ''everyone'' uses the substitution accommodation or wishes to sell labor certifications.

One commenter suggested we should remove institutions of higher education from the prohibition on barter, sale and purchase, suggesting that the prohibition be tailored to industries where the prohibited activity has been shown to occur. The Department's rationale for prohibiting the sale of labor certifications is based upon a broader policy concern than the commenter implies. Any such activity is contrary to the statutory purpose of the program. There is no basis upon which to exempt one industry sector or type of employer. Further, as other commenters have stated, there is no legitimate reason for an employer to sell or barter permanent labor certifications. Further, if such activity is not occurring in a particular industry, then employers in that industry will not be affected by the prohibition.

Attorneys' fees for preparing and filing labor certification applications—Two commenters supported the improper commerce provisions, contingent upon clarification that attorneys' fees for preparing and filing an application would not be prohibited or deemed a sale or purchase. It is not the Department's intent to prohibit attorneys from charging fees for preparing and filing labor certification applications for employers or to deem such fees by themselves to be a sale or purchase of the application or resulting certification.

Corporate restructuring—One commenter was troubled that the proposed rule could be construed broadly to prohibit transfer of a labor certification that arises as the consequence of a merger, acquisition, spin-off or other type of corporate restructuring. The commenter went on to say the proposed rule could be construed to contradict the intent of the Congress in stating in AC21 that corporate restructuring should not have any adverse impact on the immigration process. According to the commenter, in cases where one company is acquired by another, the acquiring company often compensates the acquired entity for the cost of pending labor certifications and other types of applications. In other cases, the employer filing the labor certification application may spin off part of the company and wish to sell the pending labor certification to the spun-off entity so that it can be used to obtain a green card for the original beneficiary, who now works for that spun-off entity. According to the commenter, the proposed rule is ambiguous with respect to both of the above factual situations. The commenter requested the rule be clarified to state that the prohibition against sale, barter or purchase of labor certification applications and certifications does not apply to transfers stemming from legitimate corporate restructuring activities such as mergers acquisitions, or spin-offs.

The Department did not intend this provision to govern corporate restructuring or internal corporate accounting and finance practices which exist independently of the permanent labor certification program. The Department has determined that further clarification on this question is not necessary.

2. Prohibition on Employers Seeking or Receiving Certain Payments, Including Payment of Attorneys' Fees

As proposed, the rule would have added a new § 656.12(b) to prohibit employers from seeking or receiving payment of any kind, from any source, for filing a Form ETA 750 or a Form ETA 9089 or for other actions in connection with the permanent labor certification process. The Department proposed to include in this prohibition a ban on payment or reimbursement, directly or indirectly, of any employer-incurred attorneys' fees and other costs related to the preparing, filing, and obtaining of a labor certification, whether payment was by the alien or another individual or entity. The Department received numerous comments in response to this proposal, most in strong opposition to the proposal.

Following careful review of comments and weighing our growing program experience with this issue, and for the reasons explained in detail below, the Department finds the need for program integrity outweighs any interest in the ability of the employer to receive payment or reimbursement from the alien or others in exchange for the filing of a labor certification application, especially when such payment or reimbursement has led to abuse of the process or exploitation of individual aliens. The Department's unique responsibility to reduce the incentive for fraud in the permanent labor certification program while simultaneously protecting the rights and working conditions of U.S. workers requires us to focus on the nature of the payment that an employer would receive from an alien or others for costs or fees relating to the preparation and filing of the labor certification application or obtaining permanent labor certification. The Department's concern, which is shared by other Federal agencies, is that such a payment undermines the labor certification process by potentially corrupting the search for qualified U.S. workers and creating serious doubt as to whether the employer is offering a bona fide job opportunity and making it available for U.S. workers.

Accordingly, consistent with the proposed rule, the intent of this Final Rule is to make it clear that employers who submit applications for permanent labor certification do so with the full understanding that the costs they incur for the preparation and filing of the application and obtaining permanent labor certification are to be exclusively borne by the employer. Thus, the Final Rule prohibits an employer from receiving payment of any kind as an incentive or inducement to file, or in reimbursement of the costs of preparation or filing of, an application for labor certification, including covering the costs of the employer's attorneys' fees, except as specifically provided for certain third-party payments. The Final Rule also prohibits an employer filing an application for labor certification from reducing the wages, salary or benefits of an alien named on the application for any expense related to the preparation and filing of the application. This prohibition includes the payment by the alien of costs (for recruitment or other activities in furtherance of the labor certification) as well as the employer's attorneys' fees.

In addition, this Final Rule prohibits employers engaged in the labor certification process from withholding from an alien's wages, either in increments or in lump sum, any payment in reimbursement to the employer for costs associated with that process.

As first described in the NPRM, prohibited payments include, but are not limited to: Employer fees for hiring the alien beneficiary; receipt of ''kickbacks'' of part of the alien beneficiary's pay, whether through a payroll deduction or otherwise; reducing the alien beneficiary's pay for purposes of reimbursement or pre-payment; goods and services or other wage or employment concessions; kickbacks, bribes or tributes; or receipt of payment from aliens, attorneys, or agents for allowing a permanent labor certification application to be filed on behalf of the employer.

There are strong and ample grounds upon which to prohibit these payments or arrangements, including the payment by the alien of the employer's attorneys'

fees. Permanent labor certification is an employer-driven process; employers, not aliens, must file permanent labor certification applications. To the extent the alien beneficiary who is the subject of the labor certification application and, later, the immigrant petition, is financially involved in the application process directly or indirectly, this involvement casts suspicion on the integrity of the process and the existence of a bona fide job opportunity. Payment by the alien of employer costs allows him or her some level of control over what must remain an employer-driven process. The degree of that control, at least at the labor certification stage, directly and unduly influences the legitimacy of the job opportunity and whether that opportunity has been and remains truly open to U.S. workers. In other words, as stated in the NPRM, alien subsidization of employer-incurred costs adversely affects the likelihood that a U.S. worker will be offered the job when, for example, the alien is paying for the recruitment effort.

The essence of this aspect of this Final Rule is that expenses that rightfully belong with an employer should not be transferred to an alien beneficiary or others. An alien is free to retain counsel to represent his or her interests in the labor certification process and also to assume responsibility for those costs. This Final Rule does not seek to regulate or control payments to, or the identity of, the alien's attorney. However, to the extent that any attorney is preparing or filing a labor certification application and thus engaged by the employer as well as with the alien, the costs attributable to work for the employer must be paid by the employer. Costs for attorneys' fees outside the labor certification process are not part of this rulemaking.

The Department is aware of the import of its position—the implications are at the center of the reasons we find the prohibition a necessity. We recognize the vast majority of aliens for whom permanent labor certifications are filed are already employed by the employer. In initiating the permanent residence process, the employer demonstrates a desire to retain the alien on a more permanent basis than permitted by his or her nonimmigrant status. The pre-existing relationship provides the employer with significant incentive to conduct the recruitment process in a manner that favors the alien. The cost incurred in the labor certification recruitment process by the employer serves as an identifiable disincentive to that outcome. It serves at least to make the employer examine the value it places on retaining the alien. By requiring employers to bear their own costs and expenses, including the representation of the employer, the Department is ensuring that the disincentive to pre-qualify the alien in the job opportunity—keeping the job open and the recruitment real—remains in the process. This enables the Department to remain in its statutory role as the arbiter of the presence of otherwise-eligible U.S. workers in relation to the admissibility of the alien.

The complexities associated with multiple-party financial involvement in the labor certification process are not new. The provisions in this section work in concert with other parts of the regulation and reflect the Department's determination to keep the recruitment process open, fair and available to U.S. workers. For example, as stated in the preamble to the final PERM regulation, evidence that the employer, agent, or attorney required the alien to pay employer costs may be used under the regulation at § 656.10(c)(8) to determine whether the job has been and clearly is open to U.S. workers. The rule prohibiting the payment of an employer's fees or costs by the alien and the rule requiring the presence of a bona fide job offer, in turn, are consistent with the prohibition on sale and barter in the Final Rule, as they support the Department's desire to actively prevent and prohibit activities that directly commoditize permanent labor certifications.

Under the authority of § 656.10(c)(8) of the current regulation, Form ETA 9089 [2] already requires employers to disclose and specify ''payment[s] *of any kind* [emphasis added] for the submission of [the] application.'' The decision to seek this disclosure as part of the information related specifically to recruitment reflects the Department's concern that such payments may adversely impact the availability of the job opportunity to the U.S. workforce. The provisions added by this Final Rule are simply a logical extension and clarification of the type of information the Department considers relevant to this concern.[3]

This Final Rule clarifies the application of § 656.10(c)(8) to the issue of alien payment. It prohibits employer practices that require an alien to pay employer labor certification costs, including prohibiting practices that require the alien beneficiary to cover all labor certification costs, requirements that an alien cover specific activity-related costs (all recruitment costs, all in-house legal expenses), and wage deductions to the alien's paycheck as reimbursement for or in anticipation of such costs, regardless of the labor certification activity they cover. As with the modifications policy, this Final Rule reinforces the PERM rule's policy; it also specifies in greater detail the specific activities the prohibition is meant to cover.

As stated in the NPRM, the Department recognizes the possibility that legitimate employers may have a practice of seeking reimbursement from the aliens they hire for the expenses they incur in filing and obtaining the permanent labor certification. The Department has determined that any such reimbursement including, but not limited to, attorneys' fees to prepare an employer's application, recruitment expenses to determine whether domestic labor is available, or other such employer expenses, is contrary to the purpose of the labor certification program and such costs should be borne exclusively by the employer. An alien employee who reimburses his employer is effectively being paid a lower wage than agreed to by the employer on the labor certification, which undermines the Secretary's finding that the wages and working conditions of the job will not adversely affect U.S. workers and the Secretary's duty to protect U.S. workers.

3. Issues Raised by Comments on Attorneys' Fees

The Department received a significant number of comments on the proposed prohibition on payment or reimbursement of the employer's attorneys' fees or other employer costs related to preparing and filing a permanent labor certification application and obtaining permanent labor certification. The overwhelming majority of the commenters were opposed to this proposal.

Relationship of this prohibition to purpose of the rule—Commenters questioned the relationship between the prohibition against aliens paying or reimbursing the employer for expenses related to the labor certification application, including attorneys' fees, and the Department's efforts to limit the opportunities and incentives for fraud in the labor certification program. They believed the Department's statements in the preamble to the NPRM were vague and did not establish a logical relationship between illegal

[2] Section ''I. Recruitment Information,'' Subsection ''e. General Information,'' Question 3.

[3] In the PERM regulation, the Department reserved the right to request any information the Certifying Officer deems relevant to a labor certification application. 20 CFR 656.20(d). The existence of a bona fide job opportunity and the disclosure of payments are always relevant to the application.

merchandising of labor certifications and such payments or reimbursements. Commenters also questioned the reasoning behind the Department's statement in the NPRM at 71 FR at 7660, that an alien's payment of the employer's costs might indicate there is not a bona fide position and wage available to U.S. workers.

The Department stands by its reasoning. An alien's reimbursement or payment to an employer for filing a labor certification on his behalf turns labor certifications into commodities, increases the likelihood that a prejudicial arrangement exists which precludes any consideration of U.S. workers, and undermines the integrity of the labor market test required for certification under Section 212(a)(5)(A) of the INA. An alien employee who reimburses his employer via deductions from his paycheck or a lump payment is effectively being paid a lower wage than agreed to by the employer on the labor certification. A U.S. worker is non-competitive with the alien worker unless he too accepts the actual lower wage. Therefore, the practice of aliens reimbursing employers for expenses the employer incurred in the labor certification process adversely affects the compensation of U.S. workers. Because the INA mandates that the Department may only approve a labor certification if there are not qualified U.S. workers for the position, and if the wages and working conditions of similarly employed U.S. workers are not adversely affected, the Department will not permit the practice of reimbursement of attorneys or other fees or costs associated with obtaining a labor certification. There is a direct correlation between an alien's financial participation in the labor certification process and the likelihood that an arrangement exists which precludes legitimate consideration of U.S. workers, affecting the integrity of the labor market test required by INA section 212(a)(5)(A). The statute charges the Department to ensure an adequate, good faith test of the labor market—that an alien will not be admitted for a job for which a qualified U.S. worker is available. It is, therefore, the Department's role and statutory responsibility to remove the potential for this undue influence.

Authority—Many of the commenters questioned the Department's authority to dictate who should not pay attorneys' fees and other costs. They asserted that there is no statutory authority for such a rule and stated that had the Congress intended to give DOL the authority to regulate the attorney-client relationship and/or to set limits on the payment of attorneys' fees, it would have done so explicitly and unambiguously as it has in other contexts. They cited the authority in INA section 212(n) for the H–1B program as an example. Many commenters opined the proposed rule would be restrictive of freedom to contract.

In addition, many commenters expressed the belief the Department was intruding into the licensing and regulation of attorneys. They stated this issue has been left exclusively to the states, which prescribe the qualifications for admission to practice and the standards of professional conduct and are responsible for attorney discipline. These commenters believed the Department has neither statutory nor other authority to regulate payments to the attorneys that parties to proceedings before the Department are entitled to retain. They further stated any changes to this complex relationship should be left to the regulatory bodies that traditionally make them—states and their bar associations.

The Department disagrees with those comments. This Final Rule's prohibition on improper payments governs employers and aliens engaged in the labor certification process, not the attorneys retained by the employer. The rule prohibits employers from receiving financial incentives or reimbursement for filing labor certification applications and from withholding payments from workers for that purpose (among other things). These are activities that undermine the legitimacy of the labor market test that is required to be conducted by the law before the Department may approve a labor certification. The Department's focus is not on attorneys' fees, but rather on the actual wage paid to the alien employee and the effect that a lower wage or reimbursement of costs has on the wages and opportunities available to U.S. workers. The transfer of the responsibility for payment of attorneys' fees or other costs associated with preparing, filing and obtaining labor certification from employer to alien (or others) signals preselection in the hiring decision, contrary to the requirement of an open recruitment process with full consideration of U.S. workers. The INA broadly empowers the Secretary to ensure that there is a bona fide job opportunity open to U.S. workers and that there is no adverse effect on the wages and working conditions of U.S. workers before approving a labor certification. As part of its statutory charge, the Department is responsible for eliminating factors which undermine the legitimacy of the job opening and of the recruitment process, including the improper allocation of costs and fees associated with labor certification. Prohibiting the alien, directly or indirectly, from paying the employer's attorneys' fees and other costs is a critical step toward ensuring employers or others do not degrade the validity of the labor market test. The fact that section 212(n)(2)(C)(vi)(II) of the INA prohibits an employer from accepting reimbursement from an alien employee for the fees for an H–1B nonimmigrant petition does not support the argument that the Department lacks authority to prohibit the reimbursement of attorneys' fees and other costs associated with permanent labor certifications. To the contrary, that specific prohibition in the nonimmigrant context highlights Congress' interest that the employer should bear the costs associated with hiring alien employees and not pass them onto the alien.

It is well settled that an agency is empowered to take all reasonable actions, even if not particularly specified in the statute, to effect the objective and policy of the statute. The Department is charged with ensuring that an employer's hiring of an alien employee does not displace U.S. workers or distort wages and working conditions in the U.S. labor market before approving permanent labor certifications, and this prohibition against the reimbursement of attorneys fees and other costs directly furthers that mandate. The Final Rule in no way precludes an employer from hiring and paying an attorney for the services provided to the employer or an alien from hiring and paying an attorney for the services provided to the alien, or for that matter an employer paying for an attorney who exclusively represents the alien employee. The rule does not speak to the qualifications of an attorney or the professional standards with which the attorney practices. The rule simply seeks to ensure the integrity of the labor certification process by removing an incentive to manipulate that process in favor of an alien worker and against the interests of U.S. workers.

Right to counsel; attorney-client relationship—Commenters also asserted that because the labor certification application is signed by both the employer and the alien, both are parties to the proceeding and both are exposing themselves to sanctions under the law for any misrepresentations made on the application. They maintained that each is entitled to counsel of his or her choosing and the Department may not limit the choice and interfere in the attorney-client relationship by regulating who may pay attorneys' fees. Some commenters included reasons as

to why the alien might want independent counsel and other commenters read the proposed rule to mean the alien could not have independent counsel. Some commenters also interpreted the proposed rule as prohibiting dual representation of both employer and alien by a single attorney.

These commenters misconstrued the NPRM. The Department is not seeking to limit either party from choosing counsel. The act of seeking legal representation, the identity of legal counsel, and similar activities are all outside the scope of this regulation. As previously noted, the alien is free to retain counsel to represent his or her interests in the labor certification area or any other area in which the alien desires counsel. Nothing in this regulation prohibits the alien from hiring the same attorney as the employer. This regulation simply prohibits an employer from transferring his legal and other costs associated with procuring a permanent labor certification to the alien employee.

Vagueness—Several commenters asserted the Department has not provided sufficient description of the conduct that it would deem to be a violation of this proposed rule. Commenters specifically identified the language in § 656.12(b) stating, ''An employer shall not seek or receive payment of any kind for any activity related to obtaining a permanent labor certification'' as vague.

In response to this concern, the Department has clarified the prohibited behavior in this Final Rule. The rule provides specific examples of prohibited transactions, including kickbacks, improper wage withholdings, bribes, and lump sum reimbursements. It also prohibits non-monetary transactions, such as free labor. Further, it exempts certain third-party payments from the prohibition, as discussed below, allowing these payments to be made in connection with labor certifications.

To whom labor certification benefits accrue—Many commenters disagreed with the Department's premise that because the employer files the labor certification application, the employer should bear all of the costs. These commenters believed there is a benefit to both the employer and the alien from the labor certification and since both are interested parties, these parties should be free to negotiate payment arrangements. Some commenters also claimed that the permanent resident status is a benefit to the alien and only benefits the employer if the employee remains on the job beyond attaining permanent status. A significant number of commenters described agreements frequently used which require reimbursement if a foreign employee resigns upon being granted permanent residence or prior to a specified length of time after obtaining permanent residence status. They compared these reimbursement arrangements to widely used employer-employee agreements linking relocation costs or training and education costs incurred by an employer to an employee commitment to remain in a job for a specified period of time or otherwise reimburse a portion or all of the costs. Other commenters stated that, under section 204(j) of the INA, since the alien beneficiary now has the ability to move to another employer even before attaining permanent residence (as soon as 180 days after filing an adjustment application), the extent of the benefit realized has shifted even more substantially to the employee and increases the employer's need for the agreement described above.

Several commenters claimed the interest in the labor certification application is weighted to the alien even more strongly. To support this argument, one commenter referenced *DerKevorkian* v. *Lionbridge Technologies,* No. 04–cv–01160–LTB–CBS, U.S. Dist. LEXIS 4191 (D. Colo. Jan. 26, 2006). In this unreported decision, the court held that an employer's promise to sponsor an alien employee for permanent residence created claims for promissory estoppel and breach of fiduciary duty by the employee against the employer. Some commenters asserted that this decision supports the proposition that an employee has legal rights in the labor certification process, even when an application has yet to be filed with the Department. The commenters further asserted this case could stand for the proposition that an employer may limit its legal liability by requiring an alien to retain his own attorney. Additionally, commenters referenced various provisions for continued employment rights for H–1B nonimmigrants which purport to recognize the alien's rights and interests in the labor certification process.

Others believed the alien should rightfully participate in paying some or all of the costs related to the labor certification application because the recruitment process and completion of the application is, in reality, an ''artificial'' recruitment being conducted solely to satisfy the Department's requirements. They maintained the actual recruitment that was paid for by the employer is the recruitment which produced the non-U.S. worker, and therefore, the need for the recruitment used in the labor certification process is directly tied to the alien employee and the alien should be able to contribute to the payment of the employer's costs. Further, many permanent alien workers are first hired by employers under H–1B or other nonimmigrant visas for which there is no requirement of a pre-employment labor market test to determine whether U.S. workers are available.

We disagree with the commenters' assumption that an alien's interest in labor certification warrants payment by the alien of the employer's expenses. For purposes of employment-based visas requiring labor certification, the application to the Department of Labor and the Secretary of Labor's determination initiate a much broader, multi-agency process whose function is to consider and complete a specified alien's entry into the United States for the sole purpose of filling an employer's job vacancy. First, the unreported *DerKevorkian* decision merely suggests that an alien may have a private right of action against an employer for failure to properly proceed after agreeing to sponsor an alien for permanent residence. The court did not hold that an alien has a legal interest against the Department in the approval of a labor certification. Second, an alien does not apply to the Department for approval of a labor certification, the employer does. Finally, the purpose of the labor certification is not to provide an alien with permanent residence, rather it is to certify that the alien's admission into the United States to work in a particular position will neither displace a U.S. worker nor distort the U.S. labor market. The fact that aliens may leave employment early or change employers is a risk which is no different from the risk of hiring any U.S. worker and which should be duly considered by employers as they carefully consider whether to invest the resources they believe are required to pursue an employment-based immigration solution to their workforce shortage. This rule does not seek to govern the large majority of employment agreements between employers and alien workers—those that may require reimbursement to the employer for travel, moving expenses, loans and other expenditures that apply equally to both U.S. and foreign workers and can be shown were made directly for the benefit of that worker. The Department must weigh the undeniable benefit to the employer and the alien of sharing certification costs against the interests of U.S. workers who must, under the statute, be considered for that job

opportunity before it can be offered to the alien.

Payment by the employer of the costs associated with the preparation, filing and obtaining a labor certification keeps the alien outside the process and insulates the process from financial relationships that would subvert the permanent labor certification process' goal of protecting U.S. workers. The Department has decided its statutory mandate is best served by removing this incentive for a less-than-valid test of the labor market. Under the terms of the labor certification program, the protection of U.S. workers outweighs any employer interest in obtaining financial remuneration from alien employees for the costs associated with labor certifications.

As stated, the Department is not seeking to prohibit, limit, or regulate dual legal representation of alien and employer in the permanent residence process. However, it is the Department's expectation that in such situations attorneys' fees and costs associated with the preparation, filing and obtaining of the labor certification are to be borne by the employer. Various Federal, state and local laws regulate payment of wages, prohibit or restrict deductions from wages, outlaw ''kickbacks,'' restrain assignments, and otherwise govern the frequency and manner of paying wages. In accord with the restrictions promulgated in this rule, any attempt by an employer to recover labor certification costs from an employee through deductions from wages, uncompensated additional work by the employee, or otherwise, would be considered an attempt to circumvent the rule and could result in the debarment of the employer from the program as provided in the rule, as well as subject the employer to appropriate enforcement actions for violations under other applicable authorities.

Disparate treatment—Several commenters were concerned the proposed rule would result in disparate treatment of nonprofit organizations, hospitals, public universities, and small businesses. According to these commenters, these organizations may not have in-house counsel or the resources to hire counsel and have traditionally negotiated a cost-sharing agreement with the alien employee. Commenters also claimed the proposed rule would penalize those same institutions—nonprofit research organizations and institutions of higher education—that the Congress has expressly recognized as worthy of support. The different standard for prevailing wages and the exemption from training fees under the H–1B program were cited as examples of Congressional intent. These commenters believed the effect of the rule would be to move the program to the exclusive domain of highly profitable employers in the United States.

Commenters also stated disparate treatment of workers could result. They asserted if employers were to be required to pay the fees for labor certification, the end result would be that the alien employees would receive a specific benefit and better treatment (i.e., payment of legal fees) than similarly situated U.S. workers. Other commenters were concerned the rule as proposed would have a disparate impact on alien workers, some of whom would be given access to employer funds for legal costs and some of whom would not, based on budgetary allocations, the type of benefit sought, or other factors. One commenter suggested that this would have a disparate effect on professors and researchers in universities that, for various reasons, require their in-house or outside counsel to file labor certifications, resulting in a different outcome than their colleagues who were considered ''outstanding'' and thus able to bypass the labor certification process.

The Department disagrees. The recruitment, legal, and other costs associated with labor certification are transaction costs necessary for or, in the case of legal fees, desired by the employer to complete the labor market test, allow the Department of Labor to make its determination, and enable the employer to move to the next step of the hiring process, a step it will complete with DHS. The employer's responsibility to pay these costs exists separate and apart from any benefit to the alien from his or her eventual entry as an immigrant. Moreover, employers may legitimately offer benefits to employees on a selective basis in almost all areas—educational benefits offered to certain sectors of a workforce but not to others, relocation expenses offered to those at certain geographic distances but not others, training offered to managers but not to nonexempt employees, to name just a few examples. The costs involved in a labor certification are just one instance where benefits may be, at the employer's option, extended to some employees or classes of employees but not to others. The same is true of those who bypass the labor certification process entirely and who are able to file an immigrant petition directly with DHS, such as the outstanding professors and researchers noted by the commenters. The Department reminds employers, especially those small employers and non-profits who commented on this issue, that there is no statutory or regulatory requirement that an application for permanent labor certification be prepared by and/or submitted by an attorney, nor is the Department setting any standards for what such costs should be.

Third party situations—Commenters have raised questions about payments by third parties and asserted that, by deeming attorneys' fees to be only the employer's expense, the Department was forbidding the employer from passing the expense to another party. These commenters suggested the Department is also prohibiting third party payments directly to the attorney, even though such payment is not a reimbursement of the employer's expenses.

Commenters also described purportedly common situations that involve the payment of attorneys' fees by entities other than ''the employer.'' As an example, one commenter stated physicians frequently have split appointments between a Veterans Affairs Medical Center (VAMC) and an affiliated institution of higher education. In these cases, although there is one ''employer of record'' who files the labor certification application, the university reimburses the VAMC for the proportion of the fees commensurate with the proportion of the work week spent at the university.

The Department finds these comments largely meritorious and has revised the regulation at § 656.12(b) to recognize such situations. It is not our intent to look behind the employment that is the subject of the labor certification to ascertain the legitimacy of the employer vis-á-vis other entities with a legitimate interest in the alien. Where there is a legitimate third-party relationship in which the payment by the third party of the fees and costs that should be borne by the employer would not contravene the intent of the program, the payment does not adversely affect the fairness of the labor market test. In cases where there is a legitimate, pre-existing business relationship between the employer and the third party, and the work to be performed will benefit that third party, the employer is not influenced to the point of preselection of the alien worker in the labor market test. By requiring that the relationship be a business interest that predates the labor certification process, the Department is protecting against fraudulent relationships.

The Department also received comments regarding money paid to a trust fund established by a union for defraying the costs of legal services for

employees, their families, and dependents. The proposed rule, the commenters maintained, would prohibit payment of attorneys' fees and costs for an alien employee by such a union fund because payment would not be coming from the employer. These commenters believed the proposed rule may contravene Supreme Court cases confirming a union's First and Fourteenth Amendment right to assert legal rights. This comment is misplaced. To the extent such a trust fund is reimbursing a worker for the worker's legitimate costs and not for the employer's costs, reimbursement is not prohibited by the Final Rule.

The Department reiterates that this Final Rule seeks to require the employer to pay its own costs, including attorneys' fees, for its own activities related to obtaining permanent labor certification, which is an employer-driven process. However, this rule does not regulate payment by an alien or others of their own costs, attorneys' fees or other expenses. Nor does this rule regulate contract arrangements, cost allocation and financial transactions within a corporation or its affiliates, between an entity and its insurers or legal service providers, or between and among entities engaged in a joint enterprise.

Employer paying alien's attorney—Another commenter described a scenario in which an alien retains his or her own attorney separately from counsel retained by his or her employer and the employer is willing to pay the attorneys' fee, but the attorney may be prohibited from accepting such a payment under state bar rules. As previously noted, this rule does not regulate the attorney-client relationship or the alien's retention of counsel. Neither does this rule prohibit payment by the employer of costs beyond those that are exclusively the employer's—payment, for example, of the alien's attorneys' fees or other costs attributed solely to the alien. Finally, nothing in this regulation regulates payment by an alien, or others, of their own attorneys' fees or other expenses.

D. Labor Certification Validity and Filing Period

The Department received numerous comments about the proposed language at § 656.30(b) establishing a validity period of 45 calendar days for permanent labor certifications. Although some commenters asserted the Department lacks the authority to define a validity period, the majority of commenters focused instead on proposing alternative time periods ranging from ninety days to five years. Some cited possible delays in both DOL and DHS processes, which they claimed would make the filing of an immigrant visa petition with DHS within the 45-day time period impractical, if not impossible.

Commenters provided very similar if not identical lists of reasons why a validity period of only 45 days would be inadequate. The reasons included: Untimely receipt of labor certifications from DOL; a prolonged absence of the individual, or individuals, necessary to the I–140 and I–485 filing processes; unavailability of documentation; and general, unforeseeable delays. Opportunities for delays notwithstanding, many commenters did not oppose a validity period and some expressly supported the concept of a labor certification being valid for only a finite length of time. Most, however, believed a longer time period was warranted. Others opposed a finite validity period but were willing to accept such a period only if it was for a time longer than 45 days.

After reviewing the arguments, considering the reasons presented for needing a longer validity period, and weighing the merits of alternative time periods, the Department, in this Final Rule, increases the validity period for a permanent labor certification from 45 to 180 days. The Department has determined that increasing the validity period to 180 calendar days is a reasonable alternative, in that it provides additional time to accommodate possible delays, while maintaining the integrity of the labor market test and the security of the labor certification. Labor market conditions are subject to rapid change, and it is consistent with DOL's mandate under INA section 212(a)(5)(A) to require a retest of the market after the passage of that time.

The question of the appropriate validity period directly addresses the reliability of the information that underlies and supports the Secretary's determinations of the availability of U.S. workers and whether the job opportunity's wages and working conditions will adversely affect the wages and working conditions of U.S. workers. The Department's certification speaks to the unavailability of U.S. workers and, hence, extends only to the point (either because of the passage of time or because, as in the case of substitution, the circumstances surrounding the job opportunity have changed) at which point availability again comes into question. The PERM regulation reflects the determination, made by the Department when the new program was instituted, that 180 days is the maximum window for the viability of labor market information. Consistent with this determination, the current regulation, at § 656.17(1)(i) and (ii), requires that mandatory recruitment be conducted no more than 180 calendar days prior to filing. A 180-day validity period after certification aligns programmatically with this recruitment requirement and follows a similar rationale.

The Department has determined that 180 days provides sufficient time for an employer to move to the next step in the permanent residence process while minimizing the risk of potential changes in local economies. Taken together, the timeframe as currently conceived (i.e., recruitment within six months of submission of the application, PERM's average processing time which is greatly improved and generally within 60 days, and a 180-day validity period) will all provide as valid and timely a picture of the labor market as current program parameters will allow while providing sufficient flexibility for contingencies in the employment-based immigration process.

1. Statutory Authority

Some commenters opposing imposition of a validity period claimed the Department is exceeding its statutory authority under INA section 212(a)(5)(A) which requires the Secretary of Labor's determination on U.S. worker availability and adverse impact on wages and working conditions. Most asserted that although the statute does not expressly provide for a validity period, it does refer to DOL's determination being used ''at the time of application for a visa.'' The Department does not agree it lacks the authority. To the contrary, by limiting the period of validity of the labor market test that underlies the Secretary's determination, the Department more closely adheres to the letter of the law. The statute requires the Secretary to make the certification as a function of evaluating the introduction of the alien immigrant into the workforce; the Secretary's determination is to be made at the time of the application for admission. A validity period serves to forge a closer temporal link between the determination and the admission.

One commenter argued that the INA limits the Department's authority to an assessment of the employment opportunity, i.e., the test of the labor market, in order to make a determination of whether or not to certify. No such limiting language exists in the INA. The test of the labor market was instituted by the Department as a means by which to implement the

requirements of the statute. Procedures for the examination of the labor market and the larger labor certification process of which it is a part have varied, but the labor market test has always functioned as a prerequisite to the employment-based admission of an alien. The imposition of a validity period is a logical mechanism by which the Department can ensure that the information upon which a determination was based remains legitimate.

2. Delays in Processing of Applications and Receipt of Labor Certifications

Some commenters attempted to establish a nexus between the long processing times at both DOL and DHS and a validity period. They contended the Department's argument that a certification grows stale with the passage of time is disingenuous, given the extremely long processing times and resultant staleness of at least some information in applications submitted years earlier, and implied the Department's argument is not justifiable. The Department disagrees. The Final Rule addresses the question of validity post-certification. While questions of wages and recruitment are adjudicated on an individual basis as applications come up for review in our Backlog Processing Centers—independent of how long each of those applications has been pending—the Department must determine how long it will stand behind those certifications once issued, and when it is appropriate to once again test the market. The question of a validity period addresses these broader concerns.

We also note the PERM system was implemented in direct response to the long processing times experienced under the previous program model, and we have already significantly reduced processing times from years to months. The reduction in time provides the Department assurance that the information upon which a determination is based is current and valid.

Commenters also complained of frequent and long delays in the receipt of granted labor certifications and suggested that another basis, other than the date of issuance, should be the starting point from which the time period begins to run. While it is true that delays in delivery, when they occur, negatively impact timely filing with DHS, these comments were based on the experiences at the outset of the new PERM program. Labor certifications are now being adjudicated in a more timely manner. Moreover, the longer validity period of 180 days serves to provide the time necessary to accommodate any delay that may occur in certification receipt.

3. Relationship to Fraud

Some comments in support of a validity period argued that indefinite validity allows some unscrupulous companies to stall the filing with DHS as a means of preventing the worker from leaving their employ, and that it also allows employers so disposed to prolong non-payment of the wage indicated on the application. One commenter opposed to a validity period hypothesized that an employer might not want to file the I–140 within an imposed validity period if it would be unable to demonstrate to DHS the ability to pay the wages attested to on the Form ETA 9089. We agree that indefinite validity may contribute to a variety of undesirable or unlawful behaviors and, further, that the longer the period of time the labor certification is in circulation, the greater the probability that the information on the application, not only that pertaining to recruiting, is stale or increasingly less relevant.

Some commenters pointed to other provisions currently in place or proposed in the NPRM, including the elimination of substitution, which serve to protect against fraud and argued that more fraud protection is unnecessary and merely prejudices the honest employer. As stated above with respect to the elimination of substitution, while we do not doubt that other fraud prevention and detection methods are available, the appropriateness or effectiveness of those other methods does not obviate the need for additional, targeted techniques to address the problems generated by a specific issue, such as, in this case, the indefinite validity periods for labor certifications. It is difficult to see how a reasonable validity period prejudices honest employers who presumably wish to obtain the admission of the alien worker they have sponsored as quickly as possible. The revised validity period accommodates the need for a reasonable period of time in which to submit the I–140.

4. Increased Burden at DOL Due to Untimely Filings and at DHS Due to Incomplete or Inaccurate I–140 Filings

Several commenters argued that imposing the requirement that a Form I–140 petition be filed within a limited period of time will result in increased burdens for both DOL and DHS. That likelihood is overstated. Commenters posited that DOL will likely see an increase in filings due to the re-submission of applications to replace labor certifications that expire before the Form I–140 can be filed, which will, in turn, result in filing backlogs. This claim does not take into consideration the efficiency of the PERM system. Moreover, given the importance of the labor certification for both the employer and the alien, it is unlikely that a significant number of labor certifications will be allowed to expire. Similarly, the claim that a ''rush to file'' the Form I–140 will result in inaccurate and incomplete Form I–140 filings is also difficult to envision, given the significance of the filing. DOL expects that employers, attorneys and agents will be thoughtful and careful as they complete each labor certification application and immigrant petition and that at least some preparation for the entire permanent residence process would have taken place in advance of certification. Furthermore, the lengthening of the validity period from 45 to 180 days will provide the employer a reasonable period of time in which to ensure that all documentation and information necessary are accurate and complete prior to filing.

E. Program Integrity and Debarment

The preamble to the PERM Final Rule indicated the Department would consider the imposition of stricter remedial measures in any future rulemaking involving the permanent program. Consistent with this intent, the NPRM to this Final Rule contained several provisions to promote the program's integrity and assist the Department in obtaining compliance with the proposed amendments and existing program requirements. The Department proposed several revisions to § 656.31, the regulatory section governing the Department's response to instances of potential fraud or misrepresentation, including extending the time for potential suspension of processing for applications filed by certain employers, attorneys, or agents. In addition, the NPRM made the section applicable to applications filed under the current regulation and the regulation in effect prior to March 28, 2005. This Final Rule adopts the provisions on suspension of applications and notice to employers largely as proposed in the NPRM.

As stated in the proposed rule, given the breadth and increased sophistication of the immigration fraud that has been identified in the recent past, the Department requires added flexibility to respond to potential improprieties in permanent labor certification filings. While the Department already has the authority, this Final Rule clarifies

§ 656.31(a) to state the Department may deny any application for permanent labor certification which contains false statements, is fraudulent, or otherwise was submitted in violation of the permanent labor certification program regulations.

The Department received a variety of comments on the proposed amendments to § 656.31. While we carefully considered these comments, we have elected to keep the provisions largely as proposed. However, in response to comments, the Final Rule amends the debarment provisions to clarify the intent requirements (''willful'') and other review standards applicable to debarment.

1. When an Employer, Attorney, or Agent Is Involved in Possible Fraud or Willful Misrepresentation

In § 656.31(b), the Final Rule revises what was § 656.31(a) in the NPRM and current regulation to clarify that if an employer, attorney, or agent connected to a permanent labor certification application is involved in either possible fraud or willful misrepresentation, the Department may, for up to 180 days, suspend the processing of any permanent labor certification application involving that employer, attorney, or agent. Thereafter, the Certifying Officer may either continue to process some or all of the applications or extend the suspension until completion of any investigation and/or judicial proceeding.

''Possible fraud'' standard—One commenter maintained § 656.31(b) (§ 656.31(a) in the NPRM) proposed a new legal standard of ''possible fraud.'' The discovery of ''possible fraud or willful misrepresentation'' is not a new legal standard. This basic provision, allowing applications to be suspended for a period of time if the Department discovers possible fraud or willful misrepresentation involving a labor certification, has been in the permanent labor certification regulations since 1977 (see 42 FR 3449 (January 18, 1977)). The Final Rule continues the use of the language ''discovers * * * possible fraud or willful misrepresentation.''

Use of ''knowing'' instead of ''willful''—One commenter suggested using ''knowing'' instead of ''willful'' in the phrase ''willful misrepresentation'' in § 656.31(b) (proposed as § 656.31(a)). The Department should be required to prove, the commenter continued, that the employer, attorney, or agent knew the nature of his acts, and that he or she knew his acts violated the regulation; and to promote fair notice and minimize risk of arbitrary enforcement, there should be an opportunity for persons to present an affirmative defense that they mistakenly believed their conduct was allowed.

As always, applicants must remain aware of their responsibilities under the permanent labor certification process and of the consequences of submitting false or misleading information to a Federal agency. The application form makes it clear that the person signing the form is certifying, under penalty of perjury, to the accuracy of the information contained in the application. No one who signs an application should be confused about the capacity in which he or she signs it.

After review of the comments, the Department has decided to retain the use of ''willful'' as the more appropriate terminology. *Black's Law Dictionary* provides that a ''[w]illful act may be described as one done intentionally, *knowingly,* and purposely'' [emphasis supplied]. Hence, the phrase ''willful misrepresentation'' as used in the permanent labor certification program regulations means a person who intentionally and knowingly meant to make a misrepresentation.

Suspension of case processing for 180 days—The Department proposed to increase the initial suspension of case processing in § 656.31(b) (§ 656.31(a) in the proposed rule) from 90 to 180 days and to allow the suspension of any permanent labor certification application involving such employer, attorney, or agent until completion of any investigation and/or judicial proceeding. The Department also proposed to revise § 656.31(b) and (c) (§ 656.31(a) and (b) in the NPRM)) to clarify the Department may suspend processing of any permanent labor certification application if an employer, attorney or agent connected to the application is involved in either possible fraud or willful misrepresentation or is named in a criminal indictment or information related to the permanent labor certification program. Virtually all commenters objected to these proposals.

The Department has concluded that, in view of the extensive history of fraud in the permanent labor certification program, the need to promulgate what are now paragraphs (b) and (c) of § 656.31—concerning initially suspending applications for 180 days and clarifying the Department's authority as to which permanent labor certification applications may be suspended—outweighs the concerns raised by the commenters. Our responsibility as a government agency to cooperate with law enforcement agencies in the investigation and prosecution of possible criminal activity supports this position. In addition, after due consideration, the Department has concluded the proposed provisions extending the suspension period are exempt from the notice and comment provision of the Administrative Procedure Act as matters of agency practice and procedure and as part of the agency's inherent authority to effectuate the labor certification review process. See 5 U.S.C. 553(b). Accordingly, this Final Rule includes the provisions allowing the Department to suspend, initially for up to 180 days, the processing of any application relating to an employer, attorney, or agent involved in possible fraud or willful misrepresentation.

Terms recommended for deletion and/or considered inappropriate in § 656.31(a)—In this Final Rule, the Department has taken the last sentence of proposed § 656.31(a) and finalized it as the entirety of § 656.31(a), moving the remainder of the proposed text to § 656.31(b). One commenter took issue with the portion of § 656.31(a) which reads: ''A Certifying Officer may deny any application for permanent labor certification if the officer finds the application contains false statements, is fraudulent, or was otherwise submitted in violation of the DOL permanent labor certification regulations.'' This commenter recommended the phrases ''false statements'' and ''or was otherwise submitted in violation of the regulations'' should be deleted from § 656.31(a). According to the commenter, the term ''false statements'' should be removed because attorneys, aliens, employers, or agents may inadvertently make mistakes on the labor certification application about minor details, or omit inconsequential information. The commenter believed it improper to equate such ''innocent errors or omissions'' with fraud, and insisted the section improperly imposed penalties for innocent errors. The phrase ''or was otherwise submitted in violation of the regulations,'' according to the commenter, is overbroad and simply too vague to be understood or fairly applied. Because other sections of the regulations already explain when denial is appropriate, the commenter recommended that § 656.31 should only focus on fraud and willful misrepresentation.

The technological enhancements to the PERM system discussed above make it difficult to have inadvertent errors or omissions, and those few that will be made despite these enhancements may still not rise to the level of a false statement. The provision is not designed to impose penalties for innocent errors

not in the control of the submitter but is applicable to any material inaccuracy. Although a false statement may not rise to the level of fraud, the statement may involve information or a subject matter that is material to the application. The phrase ''or was otherwise submitted in violation of the regulations'' is in large measure merely a restatement of the authority already provided in § 656.24(b)(1) of the current permanent labor certification regulations. Section 656.24(b)(1) provides, in relevant part, that one of the factors the Certifying Officer considers in making a determination to either grant or deny a certification is whether or not the employer has met the requirements of part 656.

As stated in the NPRM, we have added the above sentence to clarify the Department's authority. As a further clarification, the Department has removed the last sentence from § 656.31(a) as published in the NPRM and has placed it alone as the first paragraph and designated it § 656.31(a). The other paragraphs are redesignated accordingly.

2. When an Employer, Attorney, or Agent Is the Subject of a Criminal Indictment or Information

With minor changes from the proposed rule, the Final Rule revises § 656.31(c) (§ 656.31(b) in the NPRM) to clarify that, if the Department learns an employer, attorney, or agent is named in a criminal indictment or information in connection with the permanent labor certification program, it may suspend the processing of any applications related to that employer, attorney, or agent until the judicial process is completed. Further, the regulation provides that, unless the investigatory or prosecuting agency requests otherwise, the Department must provide written notification to the employer of the suspension in processing.

Provision of notice—One commenter objected that, under this section as proposed, no notice of an investigation was to be provided to the employer, attorney or agent. As noted above, the Final Rule does provide for limited notice to employers whose applications are impacted by an investigation of an agent or attorney. Our program experience has shown that notifying parties under investigation can impede the effectiveness and outcome of investigations that are initiated or ongoing, and the rule accordingly provides that an investigating or prosecuting agency, which is in the best position to judge the adverse impact of notice, can request that notification not be made.

Another commenter recommended that, when providing notice to employers not under investigation that processing of their applications has been suspended, the notice clarify for the employer receiving the notice that it is not under investigation. The Department will provide appropriate notice in cooperation with the investigatory and prosecuting agencies.

Notification by employer within 30 days when attorney or agent has committed fraud—In the case of a pending application involving a finding of fraud or willful misrepresentation by the employer's attorney or agent, § 656.31(e)(3) (§ 656.31(d)(3) in the NPRM) provides that the Department will notify the employer and allow 30 days for the employer to notify the Department, in writing, that the employer will withdraw the application, designate a new attorney or agent, or continue the application without representation. If the employer elects to continue representation by the attorney or agent, the Department shall suspend processing of affected applications.

One commenter maintained that 30 days was not a reasonable timeframe for notification. The commenter noted the decisions are complex, it takes time just to receive DOL's decisions, and time may be required to secure second opinions, decide whether to secure other representation, and provide the Department with a response.

We disagree. The 30 days required for notification is the same as the time provided for employers to submit requests for reconsideration pursuant to § 656.24(g) or review by the BALCA under § 656.26(a). Such requests for reconsideration or review involve making decisions similar to those involved in furnishing the notice required under the section now redesignated as § 656.31(e)(3). Like the § 656.31(e)(3) notice, the BALCA requests also require complex decisions to be made; time elapses between the mailing of the denial and its receipt by the employer; second opinions may be sought; a request for review must be prepared and submitted; and the employer may prepare a detailed brief of the matter. Accordingly, the Department has concluded 30 days is sufficient time for the employer to provide the notification required by § 656.31(e).

3. Determination of Fraud or Willful Misrepresentation

As proposed, § 656.31(d) (§ 656.31(c) in the NPRM) continues to provide the Certifying Officer will decide each application on its merits where the employer, attorney, or agent is acquitted of wrongdoing or if criminal charges otherwise fail to result in a finding of fraud or willful misrepresentation. The Department did not receive comments on these provisions and, consequently, is implementing the language as noted above in this Final Rule. Where a court, DHS, DOS, or another body finds the employer, attorney, or agent did commit fraud or willful misrepresentation, redesignated § 656.31(e), as revised in the Final Rule, provides that any pending applications related to the employer, attorney, or agent will be decided on their respective merits and may be denied in accordance with § 656.24 and § 656.31(a).

4. Debarment Proceedings

Commenters generally expressed concern that, as proposed, the debarment provisions of § 656.31(f)(1) (§ 656.31(e)(1) in the NPRM) failed to set a materiality standard and, hence, left employers and attorneys open to consequences that were inconsistent with the individual's intent and disproportionate to the violation's impact or importance. With respect to the various grounds for debarment, generally, commenters stated concern that the rule would impose a severe penalty for relatively minor and likely inadvertent offenses.

After reviewing the comments, we have modified the proposed rule to add in this Final Rule an intent requirement (''willfully''). The Final Rule revises the provisions on failure to comply with the terms of the form, failure to comply with the audit process, and failure to comply with Certifying Officer-ordered supervised recruitment by adding a requirement that, for there to be a basis for debarment, there must be a pattern or practice of misconduct. As elsewhere in the Final Rule, the determination of when debarment is appropriate is made by the Administrator, Office of Foreign Labor Certification, a nomenclature change from the proposed rule, which named the Chief of the former Division.

Improper or prohibited—One commenter maintained the term ''improper'' is impermissibly vague in the portion of § 656.31(f)(1) (§ 656.31(e)(1) of the NPRM) that provides for debarment from the program based upon any action that was improper or prohibited at the time the action occurred. The term improper is a broad term and does not necessarily imply illegality or an action that was in violation of the permanent labor certification program regulations. Accordingly, the Department has removed the term from § 656.31(f)(1).

Time limits to pursue debarment—A commenter maintained most punitive laws include a statute of limitations,

beyond which violations cannot be prosecuted or pursued. Further, according to this commenter, statutes of limitations are promulgated because evidence and recollections fade with time. Conceivably, DOL could pursue debarment 20 years after an application is filed. In this connection, the commenter noted the H–1B program imposes a one-year time limit to lodge a complaint.

The Department has concluded it would be appropriate to include a provision limiting the time in which to initiate debarment actions against employers, attorneys or agents. We considered requiring initiation of an investigation any time within the five years the employer is required to retain copies of applications for permanent employment certification filed with the Department and all supporting documentation from the date of filing the labor certification application (see § 656.10(f) at 69 FR 77390 (Dec. 27, 2004)), or within a reasonable time thereafter. Since investigations can be time consuming, we have provided in § 656.31(f)(1) of this Final Rule that debarment actions must be formally initiated within six years of the original filing date of the labor certification application on which the debarment action is based. For purposes of a pattern or practice, the statute of limitations will start to run with the last or most recent application that demonstrates or constitutes the pattern.

Mandatory and permanent debarment—One commenter proposed that debarment be mandatory rather than permissive. After carefully considering this option, the Department has concluded it should retain discretion in the administration of the debarment provision. Debarment is a serious remedial measure not to be undertaken lightly. Discretion is also necessary to administer the debarment provision in the manner stated above and in the preamble to the proposed rule at 71 FR 7660 (Feb. 13, 2006). As a result, we conclude the debarment provision in the Final Rule should remain discretionary rather than mandatory.

The same commenter proposed that repeat offenders should be permanently debarred from the program following a second offense. The Department has concluded that we should gain operational experience with the debarment provision in this Final Rule before considering a provision to make debarment permanent following a second or later offense. Further, the Department is of the opinion that notice and comment rulemaking should be undertaken before promulgating a regulation allowing for permanent debarment.

Requested changes to debarment proceedings—More than one commenter maintained debarment proceedings should include the right to specifically articulated charges; the right to request a hearing before an Administrative Law Judge (ALJ); the ability to present and confront witnesses; a transcript; and a stay of debarment upon timely appeal.

With respect to the request for clearly articulated charges, § 656.31(f)(2), as redesignated in this Final Rule, has been amended to provide that a notice of debarment must include a detailed explanation of how the employer, attorney, and/or agent has participated in or facilitated one or more of the bases for debarment listed in paragraphs (f)(1)(i) through (f)(1)(v) of § 656.31.

With respect to the right to request a hearing before an ALJ, this Final Rule provides, at § 656.26(a)(1), for the right to a review by the BALCA upon filing a written request with the Administrator, Office of Foreign Labor Certification, within 30 days of the date of the debarment. Section 656.27(e) authorizes the BALCA to hold hearings governed by the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, found at 29 CFR part 18, encompassing both the right to present evidence and confront witnesses. While historically the ALJs have held very few hearings in permanent labor certification cases, we assume the BALCA will order hearings in appropriate cases.

With respect to the ability to present and confront witnesses, the procedures outlined in 29 CFR part 18, which govern the Office of Administrative Law Judges and apply to the BALCA proceedings, establish the right to examine and cross-examine witnesses. 29 CFR 18.34. With respect to the right to a transcript, the BALCA procedures already provide for a hearing transcript. With respect to the right of a stay of debarment upon a timely appeal, the regulation at § 656.26(a) of this Final Rule has been amended to provide that debarment is stayed upon receipt of the request for review.

5. Debarment of Attorneys and Agents

Many commenters maintained the Department lacks the statutory authority to debar attorneys or agents. They argued, for example, that INA section 212(a)(5) relates solely to the admissibility of an alien coming to work in the United States and does not grant authority to legislate a system of penalties against an employer or its attorney or agent. Further, commenters suggested that, because the Congress did not explicitly establish debarment authority for the permanent labor certification program as it did in the H–1B and H–2A programs, the Department has no authority to create debarment mechanisms by this rule.

The Department has considered the comments and has decided to retain the proposed remedial measure of debarment for employers, attorneys and agents in the Final Rule. There is extensive case law establishing that Federal agencies have the authority to determine who can practice and participate in administrative proceedings before them. The general authority of an agency to prescribe its own rules of procedure is sufficient authority for an agency to determine who may practice and participate in administrative proceedings before it, even in the absence of an express statutory provision authorizing that agency to prescribe the qualifications of those individuals or entities. *Koden* v. *United States Department of Justice*, 546 F.2d 228, 232–233 (7th Cir. 1977) (citing *Goldsmith* v. *United States Board of Tax Appeals*, 270 U.S. 117 (1926)). See also *Schwebel* v. *Orrick,* 153 F. Supp. 701, 704 (D.D.C. 1957) (''The Securities and Exchange Commission has implied authority under its general statutory power to make rules and regulations necessary for the execution of its functions[,] to establish qualifications for the attorneys practicing before it and to take disciplinary action against attorneys found guilty of unethical or improper professional conduct''). In addition, an agency with the power to determine who may practice before it also has the authority to debar or discipline such individuals for unprofessional conduct. See *Koden,* 564 F. 2d at 233. Further, as the Department has the authority to prescribe regulations for the performance of its business (as is the case with all executive departments under 5 U.S.C. 301), it likewise has the authority to determine who may practice or participate in administrative proceedings before it and may debar or discipline those individuals engaging in unprofessional conduct. The Department has exercised such authority in the past in prescribing the qualifications, and procedures for denying the appearance, of attorneys and other representatives before the Department's Office of Administrative Law Judges under 29 CFR 18.34(g). See also *Smiley* v. *Director, Office of Workers' Compensation Programs,* 984 F.2d 278, 283 (9th Cir. 1993).

6. Debarment of Employers

At the time of the NPRM on the PERM program, some commenters recommended enhancing program integrity by establishing suspension and debarment procedures for employers that engage in fraudulent labor certification activities, prohibited transactions, or otherwise abuse the permanent certification process. In the NPRM to this rulemaking, the Department proposed establishing debarment procedures as an important part of efforts to avoid fraud, enhance and protect program integrity, and protect U.S. workers.

Many comments on the NPRM expressed support for the Department's effort to debar from the permanent alien labor certification program employers and others who defraud or abuse the system. However, similar to comments received on the debarment of attorneys and agents, some commenters questioned the Department's authority to debar employers.

The Department has carefully considered the comments on the proposal to debar employers and has determined that the availability of suspension of case processing and debarment mechanisms for employers, attorneys and agents is necessary to maintain program integrity. Therefore, these provisions are included in this Final Rule. The suspension and debarment of entities from participating in a Government program is an inherent part of an agency's responsibility to maintain the integrity of that program. As the Second Circuit found in *Janik Paving & Construction, Inc.* v. *Brock*, 828 F.2d 84 (2d Cir. 1987), the Department possesses an inherent authority to refuse to provide a benefit or lift a restriction for an employer that has acted contrary to the welfare of U.S. workers. In assessing DOL's authority to debar violators, the court found that ''[t]he Secretary may * * * make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions * * * as [s]he may find necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment of the conduct of Government business.'' *Id.* at 89. In that case, the implied authority to debar existed even though the statute in question ''specifically provided civil and criminal sanctions for violations of overtime work requirements but failed to mention debarment.'' *Id.* The court held that debarment may be necessary to ''effective enforcement of a statute.''

In order to encourage compliance, the regulatory scheme for PERM relies on attestations, audits and, through this Final Rule, the remedial measures of suspension and debarment proceedings to assure compliance. Use of debarment as a mechanism to encourage compliance has been endorsed in the INA for a number of foreign labor certification and attestation programs, e.g., the H–1A, H–1B, H–1C, H–2A and D visa programs. INA sections 212(m)(2)(E)(iv) and (v), 212(n)(2)(C), 218(b)(2), and 258(c)(4)(B).

In those programs, the Congress has chosen to delineate and establish limits on the manner in which debarment is imposed. Consequently, the H–1A, H–1B, and H–1C programs, under section 212(m)(2)(E) and (n)(2)(D) of the INA, impose specific penalties on employers who willfully make a misrepresentation of a material fact in an application. See Immigration Act of 1990, Public Law 101–649, 104 Stat. 104–4978 (1990); Immigration Nursing Relief Act of 1989, Public Law 101–238, 103 Stat. 2099 (1989); Nursing Relief for Disadvantaged Areas Act of 1999, Public Law 106–95, 113 Stat. 1312 (1999); and Nursing Relief for Disadvantaged Areas Reauthorization Act of 2005, Public Law 109–423, 120 Stat. 2900 (2006); see also INA section 258 (regarding penalties in the program for nonimmigrant maritime crewmembers performing longshore work). In each of these programs, Congress took for granted the Department's authority to debar, but acted to limit or expand that inherent authority to enforce compliance in the employment-based immigration programs under the Department's jurisdiction. In the case of the H–2A program, the Congress elevated existing practice to express statutory status. Immigration Reform and Control Act of 1986, Public Law 99–603, 100 Stat. 3359 (1986).

Beyond DOL's inherent authority to ensure compliance with the permanent alien labor certification program, there is an implied grant of statutory authority in section 122(b) of the Immigration Act of 1990, which requires the Secretary to accept reports from the public on violations of the terms and conditions of a permanent alien labor certification.[4] By specifically directing DOL to accept such reports, the Congress indicated its intent that DOL take action based on that information to address reported problems.

Ensuring the integrity of a statutory program enacted to protect U.S. workers is an important part of the Department's mission. The Department was established, ''to foster, promote, and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment [Act of Feb. 14, 1903, Pub. L. 62–426, sec. 1, 37 Stat. 736] * * *.'' See also *Janik Paving & Construction, Inc.* v. *Brock, supra.*

In December 2004, DOL changed, by regulation, the operation of the permanent labor certification program. Under the current regulation at 20 CFR part 656, employers may attest to compliance with requirements to recruit U.S. workers rather than engaging in all cases in supervised, post-filing recruitment. Essential to maintaining the integrity of the new, streamlined process is a need to audit compliance, already included in the regulations, and a remedial measure for continued and serious non-compliance, which is included in this Final Rule. A system of attestation and audit, relying heavily on the veracity of employer submissions, requires a system for ''effective enforcement,'' as described in the *Janik Paving* holding, supra.

For the above reasons, the remedial measure of debarment, modified as discussed above, is retained in this Final Rule as it applies to employers.

7. Provision of False or Inaccurate Information

Consistent with complaints about the other terms for debarment, many commenters expressed concern the rule would impose a severe penalty for providing false information that was, all things considered, minor, immaterial, or not meaningful. Numerous commenters submitted identical comments listing specific circumstances they believed could lead to unjustified debarment and unfair punishment of attorneys, including: (1) Typographical errors in the application regarding the alien's date of birth; (2) an inaccuracy in the foreign national's job history due to someone's faulty memory; (3) employer's relationship to the alien; or (4) an inadvertent mistake in the number of workers or the Federal Employer Identification Number (FEIN). Some commenters opined that attorneys should be allowed to rely on information provided by clients unless there is a clear indication of fraud, and that ''no conduct of any attorney in any

[4] The Secretary of Labor shall provide, in the labor certification process under section 212(a)(5)(A) of [the Act] that—

(2) any person may submit documentary evidence bearing on the application for certification (such as information on available workers, information on wages and working conditions, and information on the employer's failure to meet terms and conditions with respect to the employment of alien workers and co-workers). [Pub. L. 101–619, sec. 122(b), Nov. 29, 1990, 104 Stat. 4995.]

setting is punishable without the elements of materiality and fraud.''

Some commenters raised due process concerns. One commenter believed that existing mechanisms, e.g., denial of an application or imposition of supervised recruitment (but in future filings), were more viable options than what the commenter interpreted as indefinite suspension.

The Department has concluded that § 656.31(f)(1)(ii) (§ 656.31(e)(1)(ii) in the NPRM) should be modified to address the commenters' concerns. Accordingly, the term ''willful'' has been added to this section so this Final Rule now applies to ''the willful provision or willful assistance in the provision of false or inaccurate information in applying for permanent labor certification.'' The Department wants to make clear it views debarment as an extraordinary remedy and does not intend to invoke it except under the most serious of circumstances.

Authority to prohibit false or inaccurate information on an *Application for Permanent Employment Certification*—Commenters further argued the Department lacks the authority to regulate the information provided on an *Application for Permanent Employment Certification.* One commenter insisted the Department lacked the authority to prohibit an employer from providing false information on an application. As stated above, the authority given to the Department under the INA to approve applications carries with it the authority to regulate the program, debar abusers, and prohibit false or inaccurate information.

8. Failure To Comply With the Terms of the Labor Certification Application

Proposed § 656.31(f)(1)(iii) (§ 656.31(e)(1)(iii) in the NPRM) provided that failure to comply with the terms of the ETA 9089 or ETA 750 will be a factor in determining whether to issue a notice of debarment. Some commenters argued that such a rule would make the attorney the guarantor of the accuracy of the *Application for Permanent Employment Certification.* The Department disagrees. Section 656.3(f)(1) provides that a notice of debarment from the permanent labor certification program may be provided to an employer, attorney, agent, or any combination thereof. As stated in the preamble to the proposed rule the Department acknowledges that not all debarment triggers should be treated equally and will, therefore, take steps to ensure that any debarment is reasonable and proportionate to the improper activity.

Further, the attorney does not have to sign the application unless he or she is the ''preparer'' in Section M of the application. Presumably, the attorney will take reasonably prudent steps to apprise him or herself of the facts before signing the application. However, to allay any fears the regulated community may have concerning the Department's possible use of the debarment provision, the Department has added the requirement that there must be a pattern or practice with respect to failure to comply with the terms of the labor certification application (either Form ETA 9089 or Form ETA 750). A similar requirement for a pattern or practice has been added to § 656.31(f)(1)(iv), failure to comply in the audit process, and to § 656.31(f)(1)(v), failure to comply with the Certifying Officer-ordered supervised recruitment process.

Commenters asserted the provision discussing the failure to comply with the terms of the Form ETA 9089 or Form ETA 750 is vague or needs further clarification. We disagree. The terms and areas the Department is interested in are best represented in the certification sections of the two application forms, specifically, Section N, Employer Certifications, on the Form ETA 9089, and item 23, Employer Certifications, on the Form ETA 750. More detailed information on the employer certifications listed on the Form ETA 9089 in Section N of the application can be found in § 656.10(c) of the current regulation and in the preamble thereto at 69 FR 77389 (Dec. 27, 2004). Detailed information on the employer certifications listed in item 23, Form ETA 750, can be found in the former labor certification regulations at § 656.20 (2004), ''General filing instructions'' and in Technical Assistance Guide No. 656 Labor Certifications. These resources provide ample guidance to the information sought in these sections and no further clarification is required.

9. Failure To Comply in the Audit or Supervised Recruitment Process

Some commenters sought clarification of the provisions at § 656.31(f)(1)(iv) and (v) (§ 656.31(e)(1)(iv) and (v) in the NPRM) that failure to comply with the audit and supervised recruitment processes may be a factor in issuing a debarment. Section 656.31(f)(1)(iv) and (v) will not normally apply to applications submitted under the former permanent labor certification regulations (20 CFR part 656 (2004)), because audit and supervised recruitment are not procedures currently in place under the backlog program. The Department has determined that these debarment provisions are appropriate to apply to conduct under the streamlined PERM processes because that system depends on ensuring employers furnish the required documentation within the required timeframes, as required by §§ 656.20 and 656.21 (69 FR 77396 (Dec. 27, 2004)). Further, a repeated failure to comply with core program requirements signals not only disregard for the process, but an intentional abuse of valuable, limited administrative resources, a practice the Department cannot tolerate.

Some commenters provided scenarios in which an employer might fail to comply with audit or supervised recruitment requirements because the employer no longer wishes to go forward with the application, for example: (1) The employer has terminated the alien and, therefore, does not wish to respond to the audit request; (2) after an employer is requested to engage in supervised recruitment, its human resources office decides to terminate the application process; or (3) the employer decides to terminate the process after an audit when the employee resigns.

These comments do not warrant removal from this Final Rule of the (f)(1)(iv) and (f)(1)(v) bases for debarment. We recognize that there are legitimate reasons for terminating an application during the audit or supervised recruitment processes and do not intend that these reasons should provide a basis for debarment.[5] There are, however, cases in which the persistent failure to cooperate in the audit or supervised recruitment processes is evidence of an intent to avoid the discovery of serious violations of the regulations. Thus, the fact patterns these commenters cite must be considered individually as they arise. The existence of legitimate reasons to discontinue an application does not

[5] The Department reminds users of the labor certification program of the importance of the audit process to maintaining the integrity of PERM. As the Department stated in the 2004 preamble to the Final Permanent Labor Certification Regulation, we will ''minimize'' the impact of non-meritorious applications by adjusting the audit mechanism in the new system as needed. We have the authority under the regulations to increase the number of random audits or change the criteria for targeted audits. As we gain program experience, we will adjust the audit mechanism as necessary to maintain program integrity. We note that under § 656.21(a), the Certifying Officer has the authority to order supervised recruitment ''when he or she determines it to be appropriate.'' 69 FR 77329 (Dec. 27, 2004). It should also be noted that § 656.10(f) requires employers to maintain copies of applications and supporting documentation for up to five years from the date of the submission of the application.

moot the need for these debarment provisions.

F. Other Objections and Comments

Investigation of past substitution cases—Another commenter suggested that DOL investigate all past substitution cases with the help of USCIS. DOL does not have primary responsibility for investigation of past substitutions that were made after certification. The Department has participated in investigations and criminal prosecutions in appropriate cases involving substitution, and we will continue to work with DHS, DOL OIG, and DOJ when there are indications of possible fraud.

Adequacy of current fraud safeguards—According to one commenter, the PERM system's vulnerability to fraud provides insufficient justification for DOL's proposals as articulated in the proposed rule. A certain amount of fraud should be tolerated, the commenter insisted, citing Medicare, credit card systems, and the entire tax system as processes in which some level of fraud is simply accepted by society. This commenter invited DOL to ignore the PERM system's vulnerability to fraud as the price to be paid for offering what the commenter characterized as a ''benefit'' to all. Having acknowledged fraud exists, the commenter next pointed to the design of the PERM system itself as containing built-in fraud protection mechanisms. As examples, the commenter cited built-in safeguards to detect fraud prior to filing such as: Initial establishment of the PERM account; verification of employer's existence; establishment of PINs; and limiting changes to accounts and sub-accounts. Finally, the commenter viewed Federal prosecutions as significant in preventing fraud or abuse.

The Department declines the commenter's suggestion to simply acquiesce in a certain amount of fraud by those seeking certification. No regulatory scheme can eliminate all possibilities of fraud, but, as a matter of good government, the Department must make every reasonable effort to eliminate fraud. DOL takes its role and its statutory authority under the INA quite seriously and will continue to look for ways to eliminate fraud and the enticements to fraud in the permanent labor certification system. This Final Rule's elimination of substitution and of indefinite certification validity bolster fraud protection and reduce incentives and opportunities to commit fraud. The need to protect the system from fraud and eliminate vulnerabilities is clearly within DOL's authority and furthers the INA's statutory purpose.

While fraud cases arising under the new PERM system were not described in the NPRM, this should not be taken as proof that fraud is not occurring under the system. The system is new and has not had the full opportunity for investigation and prosecution as has occurred under the previous regulation. In fact, the Department is aware of and has referred cases of possible fraud for investigation under the new PERM system. Further, we disagree that the issue of fraud in the permanent labor certification program lies solely in the Backlog Processing Centers or that the fraud detection examples provided by the Department indicate we are asserting that fraud cannot or will not occur under the new re-engineered PERM program. We disagree that not providing anecdotal evidence of fraud under the new PERM program is proof that no fraud is being conducted by some employers, agents or attorneys.

PERM introduced many important safeguards that will help deter and detect fraud. However, these protections are insufficient to eliminate the incidence and incentives for fraud in the permanent labor certification program. The existence of some anti-fraud measures does not preclude the agency from initiating and establishing additional fraud detection and avoidance mechanisms, particularly when considering the value of such mechanisms against their relatively small costs. Our Federal partner agencies have demonstrated through investigations and prosecutions that the level of fraud today is far more advanced and sophisticated than it was 10 years ago and that it continues to evolve and become even more sophisticated. It is incumbent upon the Department to remain aware of these trends and to strengthen the program to withstand the changing nature of fraud being committed against it. Because the Department has direct experience with how fraudulent behavior within the permanent labor certification process is pervasive throughout the process and detrimental to the purpose and intent of the process, we can assess what systems and/or procedures are adequately detecting fraud and where improvements are needed.

Many commenters stated that because we currently possess the authority to invalidate an application for labor certification up to five years after it has been certified, we already have sufficient safeguards in the permanent labor certification program. We respectfully disagree. The invalidation of an application is what happens to an application once the Department has detected fraud and found the employer, agent or attorney willfully engaged in such fraudulent behavior. It remedies a particular instance of fraud, but it does not, in and of itself, deter or prevent the increasing fraud occurring in the program.

For the reasons stated throughout this preamble, the measures instituted by this Final Rule—eliminating substitution, limiting the validity period of a permanent labor certification, prohibiting sale of labor certifications, prohibiting employers from recouping recruitment costs and attorney fees from aliens, and prohibiting violators from using the permanent labor certification program—will deter and redress fraud and abuse in the permanent labor certification program. For the same reasons, the rule also clarifies the Department's authority to deny an *Application for Permanent Employment Certification* when we find an employer, agent or attorney has provided false information to us.

G. Comments Outside the Scope of the Rule

The Department received a number of comments not directly related to the issues raised by the NPRM. These comments generally addressed the following topic areas:

- Lack of consistency between agencies, especially related to the need for labor certifications in light of USCIS policies limiting the availability of National Interest Waivers when the need for the individual stems from a labor shortage.
- Suggestions of other measures the Department should consider related to the permanent labor certification program, including conducting more investigations of suspected fraud, eliminating the authority of agents to represent employers or aliens in labor certification cases, fixing problems in the PERM software, and revising current requirements for advertising.
- Descriptions of personal experiences with the immigration process generally provided as examples of fraud and abuse.
- Comments concerning delays in the processing centers and, specifically, delays resulting from the audit process.

We do not respond here to these issues individually, as they fall outside the scope of this rulemaking.

H. Other Amendments

In addition to the specific revisions described above, the Department has made other minor, technical, and editorial changes to the regulatory text, as appropriate.

IV. Required Administrative Information

A. Regulatory Flexibility Act

In crafting this Final Rule and reviewing public comments, the Department conferred with the Office of the Chief Counsel for Advocacy, Small Business Administration (SBA), as required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 609(b). This impact analysis reflects those consultations and generally incorporates the Chief Counsel's comments. Based on the analysis detailed below, the Department submits that this Final Rule will not have a significant economic impact on a substantial number of small entities.

In this rule, the Department takes measures to enhance program integrity and reduce the incentives and opportunities for fraud and abuse in the permanent employment of aliens in the United States. The rule's limitations on the acquisition and use of permanent labor certification applications and permanent labor certifications will have an economic effect on only those employers seeking DOL certification to hire foreign workers for permanent positions. The prohibition against substitution on the employer's permanent labor certification application and the validity period of 180 days on approved certifications each trigger a retest of the labor market (when original alien becomes unavailable a certification expires) to ensure that no U.S. workers are qualified and available to fill the job opportunity, carrying with it an economic cost. Employers' compliance with the procedures set forth in the Final Rule will not require completion of additional preprinted forms or the collection of information beyond that already required by Form ETA 9089, *Application for Permanent Employment Certification*.

In Program Year (PY) 2005 (July 1, 2005—June 30, 2006), the Department received approximately 115,952 applications from employers seeking labor certification under the PERM program. Because the Final Rule would also impact permanent labor certification applications being processed and certifications issued through ETA's Backlog Processing Centers, the Department also included in its analysis 176,496 backlogged applications in process as of September 7, 2006.[6]

To conduct its analysis, the Department looked to the major industries that PERM program data showed had applied for permanent labor certification in PY 2005, then applied a similar distribution (same industries and general percentages) to applications currently being processed through the Backlog Processing Centers.

Although some, but not all, employers will file multiple applications with the Department in a given year, the Department's analysis treated each application as a separate economic impact on the employer and, consequently, the estimated impacts of the Final Rule may be overstated. Based on anecdotal evidence, and in the absence of precise historical data to accurately track substitution requests, the analysis also assumed that 10 percent of all employer applications will request substitution of the alien on the permanent labor certification application prior to implementation of this Final Rule, even though the historical practice of alien substitution by employers participating in the Department's permanent labor certification process is far less. The analysis does not attempt to quantify lost productivity costs employers could potentially incur after the loss of an alien worker for whom a permanent labor certification application has been filed and for whom substitution is no longer permitted. In the Department's experience, such costs are believed to be negligible, since the overwhelming majority of applications filed are for nonimmigrants already working in the United States and in the position that is the subject of the application.

Under the Small Business Administration Act, a small business is one that is ''independently owned and operated and which is not dominant in its field of operation.'' The definition of small business varies from industry to industry to the extent necessary to properly reflect industry size differences.

The Department conducted its size standard analysis based on 13 CFR part 121, which describes the SBA's size standards for businesses in various industries. To group employers by size, the Department relied on information submitted by each employer on the permanent labor certification application, which provides data on the total number of employees in the area of intended employment for each application. Because the Department does not collect information with respect to the annual receipts of employers, it used the average employment level of firms in each industry that predominates in the permanent labor certification program as the size standard for small businesses in each of those industries.

To estimate the cost of the Final Rule on small businesses, the Department calculated each employer would likely pay in the range of $300 to $1,500 to meet the advertising and recruitment requirements for a job opportunity, and take one hour to prepare the recruitment report required for each application. The cost range for advertising and recruitment is taken from a recent (September 2006) sample of newspapers in various urban and rural U.S. cities, and reflects approximate costs for placing two 10-line advertisements in those newspapers. The cost to prepare the recruitment report is based on the median hourly wage rate for a Human Resources Manager ($36.52), as published by the U.S. Department of Labor's Occupational Information Network, O*Net OnLine, and increased by a factor of 1.42 to account for employee benefits and other compensation.[7]

The Department determined the following industries predominate in the permanent labor certification program: (1) Professional, Scientific, and Technical Services; (2) Manufacturing; (3) Accommodation and Food Services; (4) Healthcare and Social Assistance; (5) Educational Services; and (6) Construction. The Department has reviewed the data from each of these industries as described below to determine there is no significant impact on small businesses.

The U.S. Census Bureau's 2002 Economic Census reported that approximately 602,578 employer establishments were operating year-round in the Professional, Scientific, and Technical Services Industry, and 96.7 percent of those employed less than 50 employees. In PY 2005, 13,286 PERM applications were filed with the Department by employers who indicated they employed less than 50 workers in the area of intended employment for positions in this industry. We estimate approximately 20,223 of the backlogged applications currently in process were submitted by similarly sized employers in this industry sector. Assuming employers will attempt to substitute the alien on 10 percent of applications filed with the Department, we estimate the annual number of employer applications in this industry that may be impacted by the Final Rule is 3,351 at a cost range of $1,346,597 to $5,200,161.

The U.S. Census Bureau's 2002 Economic Census reported that

[6] Reserved.

[7] The O*Net OnLine summary information on Human Resources Manager positions may be found at *http://online.onetcenter.org/link/summary/11–3040.00*.

approximately 350,828 employer establishments were operating in the Manufacturing Industry, and 98.9 percent of those employed less than 500 employees. In PY 2005, 9,342 PERM applications were filed with the Department by employers who indicated they employed less than 500 workers in the area of intended employment for positions in this industry. We estimate approximately 14,220 of the backlogged applications currently in process were submitted by similarly sized employers in this industry sector. Assuming employers will attempt to substitute the alien on 10 percent of applications filed with the Department, we estimate the annual number of employer applications in this industry that may be impacted by the Final Rule is 2,356 at a cost range of $946,855 to $3,656,473.

The U.S. Census Bureau's 2002 Economic Census reported that approximately 456,856 employer establishments were operating year-round in the Accommodation and Food Services Industry, and 90.8 percent of those employed less than 50 employees. In PY 2005, 7,478 PERM applications were filed with the Department by employers who indicated they employed less than 50 workers in the area of intended employment for positions in this industry. We estimate approximately 11,383 of the backlogged applications currently in process were submitted by similarly sized employers in this industry sector. Assuming employers will attempt to substitute the alien on 10 percent of applications filed with the Department, we estimate the annual number of employer applications in this industry that may be impacted by the Final Rule is 1,886 at a cost range of $757,930 to $2,926,901.

The U.S. Census Bureau's 2002 Economic Census reported that approximately 619,517 employer establishments were operating year-round in the Healthcare and Social Assistance Industry, and 93 percent of those employed less than 50 employees. In PY 2005, 4,216 PERM applications were filed with the Department by employers who indicated they employed less than 50 workers in the area of intended employment for positions in this industry. We estimate approximately 6,417 of the backlogged applications currently in process were submitted by similarly sized employers in this industry sector. Assuming employers will attempt to substitute the alien on 10 percent of applications filed with the Department, we estimate the annual number of employer applications in this industry that may be impacted by the Final Rule is 1,063 at a cost range of $427,311 to $1,650,149.

The U.S. Census Bureau's 2002 Economic Census reported that approximately 38,293 employer establishments were operating year-round in the Educational Services Industry, and 98.9 percent of those employed less than 100 employees. In PY 2005, 1,336 PERM applications were filed with the Department by employers who indicated they employed less than 100 workers in the area of intended employment for positions in this industry. We estimate approximately 2,034 of the backlogged applications currently in process were submitted by similarly sized employers in this industry sector. Assuming employers will attempt to substitute the alien on 10 percent of applications filed with the Department, we estimate the annual number of employer applications in this industry that may be impacted by the Final Rule is 337 at a cost range of $135,410 to $522,912.

The U.S. Census Bureau's 2002 Economic Census reported that approximately 710,307 employer establishments were operating in the Construction Industry, and 99.9 percent of those employed less than 500 employees. In PY 2005 PERM, 5,579 PERM applications were filed with the Department by employers who indicated they employed less than 500 workers in the area of intended employment for positions in this industry. We estimate approximately 8,492 of the backlogged applications currently in process were submitted by similarly sized employers in this industry sector. Assuming employers will attempt to substitute the alien on 10 percent of applications filed with the Department, we estimate the annual number of employer applications in this industry that may be impacted by the Final Rule is 1,407 at a cost range of $565,457 to $2,183,629.

Several commenters maintained the rule would have a significant impact on a substantial number of small entities. One commenter challenged the analysis used by the Department to support its statement that the rule's impact on small business will be immaterial. The commenter maintained that although less than one percent of all small businesses would be affected, the appropriate universe to consider would consist only of those small businesses that wish to hire a foreign worker using the labor certification process. According to the commenter, the rule would not affect those businesses that do not submit applications. The commenter also suggested other measures of materiality, including: (1) Comparing the number of small businesses that have applied under the PERM and prior programs to the total number of businesses that have applied under those programs; and (2) comparing the number of labor certification applications filed by small businesses to the number filed by all businesses.

Several commenters focused on the impact on small businesses of the prohibitions on substitution and reimbursement as a subset of the costs incurred by small businesses in successfully obtaining labor certifications. One commenter described the steps employers take when submitting labor certification applications, including verifying the job skills and cultural fit of the worker, conducting labor market tests, and determining future needs based on demand. Another commenter described the requirement to advertise positions in print, along with other recruiting activities. One commenter estimated the cost for each application was approximately $10,000, based on informal conversations with others. The same commenter said the costs for applications were at least $1,000 each. Commenters claimed the costs to small businesses were substantial.

As described above, the Department's analysis focused only on those small businesses that filed or are likely to file applications for permanent labor certification, and accounts for costs of advertising and related recruitment activities. As stated in the section of the preamble addressing substitution, these are not costs unanticipated by the statute. Also, the Form ETA 9089 may be filed electronically and does not require a filing fee. The Department's analysis does not estimate reimbursement amounts, as the Department has always assumed an employer is not entitled to reimbursement; as explained in the section governing payments, above, the costs of labor certification are generally the employer's, and this rule simply codifies that responsibility. Our analysis leads us to conclude this rule's economic impact will not be significant.

B. Unfunded Mandates Reform Act of 1995

This Final Rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no action is necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

One commenter stated this rule would amount to an unfunded mandate because it would be difficult to enforce and would require ETA to employ a large police force to monitor compliance. The Department disagrees with this comment. We do not anticipate significant additional costs to State, local, or tribal governments as a result of this rule. Although we do not speak here to any budgetary implications of the rule, additional costs, if any, to ETA as a result of this regulation are strictly Federal and attendant to the Department's responsibility in administering the permanent labor certification program. The Unfunded Mandates Reform Act does not cover costs to Federal agencies.

C. Executive Order 12866

This Final Rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined, based on its benefit-cost analysis [8] of the key provisions of the regulation, that the rule is not an ''economically significant'' regulatory action within the meaning of section 3(f)(1) of the Executive Order. This rule will not have an annual effect on the economy of $100 million or more, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. We estimate the Final Rule's quantified benefits to be $64.3 million per year and the quantified costs to be $39.8 million per year. The Department made every effort, where feasible, to quantify and monetize the benefits and costs of this Final Rule. Where we could not quantify them—for example, due to data limitations—we described benefits and costs qualitatively. In such cases, the Department has provided a comprehensive qualitative discussion of the impacts of the rule. Finally, the Department has concluded, after consideration of both the quantitative and qualitative impacts of the rulemaking, that the benefits of the rule justify the costs.

Overall, the analysis estimated the benefits and costs associated with the Final Rule compared to the baseline, that is, the permanent labor certification application process before implementation of the rule. For a proper evaluation of the benefits and costs of the rule and its alternatives, we explain how the actions the rule requires of workers, employers, government agencies, and others are linked to the expected benefits. We also identify expected undesirable side effects of the Final Rule and the alternatives considered.

Following OMB Circular A–4, this analysis focuses primarily on benefits and costs that accrue to citizens and permanent residents of the United States; it does not factor in benefits and costs to aliens who, for example, may be named on labor certification applications but are not yet U.S. citizens or lawful permanent residents. As explained in greater detail below, to the extent this Final Rule's economic costs or benefits are affected by the existence of foreign workers who are already here in the United States and part of the economy, the analysis considers those costs or benefits to be transfers between U.S. and foreign workers and not measurably impacting the rule's net economic impact.

In most cases, this benefit-cost analysis covers 10 years to ensure it captures all major benefits and costs with respect to key entities and programmatic activities. For purposes of this analysis, the 10-year period starts in the next fiscal year on October 1, 2007. The analysis does not include permanent labor certification applications filed under the regulation in effect prior to March 28, 2005 and pending at the Department's Backlog Processing Centers. As stated above, we expect to eliminate the backlog by September 30, 2007. In the unlikely even that the Department does not completely eliminate the backlog by September 30, 2007, the costs of the rulemaking may be slightly underestimated.

With respect to immigrant worker petitions currently pending and open to substitution at the Department of Homeland Security, the analysis assumes a one-time impact (rather than recurring impact over 10 years) until those applications are adjudicated. As this preamble states earlier in response to commenter concerns about application of the rule to pending applications, program users have had sufficient notice of the Department's intent to eliminate the practice of substitution; therefore, we believe that employers have had the opportunity to act on any substitution requests they know to be required but remain outstanding and not yet submitted to DOL or DHS,[9] thus minimizing or eliminating impact of the prohibition on those employers for purposes of those applications.[10] Nonetheless, in acknowledgment of the multi-agency process required for employment-based immigration, the analysis makes a good faith attempt to quantify the most salient (potential) costs and benefits to employers with substitutable petitions currently pending at DHS, regardless of when filed. For purposes of a cost estimate, this analysis assumes that any employer who may find itself in need of substitution after the prohibition is in place could, in order to fill the vacancy, incur certain additional costs not required if substitution were still an option.

Because up-front, one-time costs associated with reading and understanding the Final Rule would not result in significant costs to employers or government agencies, we did not include them in our analysis. In addition, we assumed that annual costs would be the same each year. Following OMB guidance, we used discount rates of seven percent and three percent.

The Department separately analyzed the benefits and costs of the major provisions of the Final Rule. The Department's analysis (elimination of substitution, establishment of a validity period, etc.) and response to public comments are set forth below. The size of the net benefits, the absolute difference between the projected benefits and costs, indicates whether one policy is more efficient than another. We estimated that total 10-year discounted quantified and monetized benefits range from $445.0 to $540.4 million and the total 10-year discounted quantified and monetized cost ranges from $279.5 to $339.4 million for a net present value of the benefits of $165.5 to $201.0 million.

1. Employer Costs and Burden Generally

Some commenters maintained the proposed rule is a ''significant'' regulatory action within the meaning of Executive Order 12866 for several reasons, including its overall cost to

[8] The Department's analysis followed the guidelines provided by the Office of Management and Budget (OMB) in Circular A–4. This circular constitutes OMB's guidance to Federal agencies governing regulatory analysis pursuant to Executive Order 12866 and other statutes and authorities. It is available online at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*.

[9] This Final Rule's prohibition on substitution does not cover substitution requests submitted by the rule's effective date. Separately, the rule establishes a 180-day validity period for labor certifications not filed with DHS. Although we anticipate there are employers who—prior to the effective date of the rule—may either request substitutions they already know to be required or seek to file old but unused labor certifications in support of I–140 petitions with DHS, this analysis does not quantify the number of employers or labor certifications in these categories. There is simply no information from which to draw conclusions, and any such estimate would be at best speculative.

[10] This analysis assumes one substitution over the life of a labor certification application.

employers and its potential impact on the U.S. economy. These commenters based their concerns on the process they say employers generally undertake in successfully applying for a certification and their estimate of costs incurred by employers in pursuing those applications. One commenter pointed out the certification application is only one of several steps in hiring a foreign worker. In addition, according to the commenter, the employer must verify the job skills and cultural fit of the worker, conduct a labor market test, and determine its hiring and training needs based on demand. Another commenter made similar points, noting that it engages in required print advertising and other recruiting activities at a cost of more than $200,000 annually. It also reviews resumes, interviews candidates, and engages legal counsel to assist in preparing and reviewing materials required for the application. Although none of the commenters provided detailed figures for each of their activities, at least one commenter estimated, based largely on feedback it states it received from other companies, that the cost for each application was approximately $10,000.

Several commenters made broad observations related to the general burdens that the proposed rule would impose. One commenter stated the proposed rule is burdensome because the labor certification process itself has numerous requirements and is difficult to understand. Two other commenters argued the proposed rule is likely to curb business growth, inhibit job creation, and encourage employers to move jobs and operations offshore. Another commenter stated its concern that the rule would punish nonprofit research institutions due to the costs of compliance. One commenter suggested the rule could result in a reduction of foreign workers, which in itself would have an impact on the economy because foreign workers themselves create demand in the economy for housing, food and other essentials. Finally, one commenter protested that the rule will impose significant additional costs on the many employers who are honest in their acquisition and use of certifications, based on the misdeeds of a small number of employers who have abused the process.

The Department agrees with the commenters that this rule is a significant regulatory action under EO 12866, and has been submitted to OMB for review. While the commenters express general concern over possible harm to employers, however, they failed to articulate how the rule itself will adversely affect the economy in a material way within the meaning of Executive Order 12866. Moreover, the commenters made little effort to explain how costs associated with the rule could result in an annual effect on the economy of $100 million or more. Instead, the commenters took issue with the individual, activity-based costs and economic impact of the labor certification process itself.

The Department readily acknowledges that employers incur various costs associated with the decision to hire alien workers. The labor certification process, by its very nature, imposes costs to employers to establish, to the Secretary of Labor's satisfaction, the unavailability of and no adverse impact on U.S. workers. Since the costs are standard to the labor certification process, we do not consider these costs as incremental to the rulemaking.

Further, as detailed in each of the sections below, the Department's analysis reveals the Final Rule's quantified and monetized benefits outweigh costs, and will impose no significant economic impact or material adverse effect within the meaning of Section 3(f)(1) of Executive Order 12866.

2. Ban on Alien Substitution

Before this Final Rule takes effect, employers may substitute a different alien on a permanent labor certification application if the original alien named on the certification application is no longer available. Under the Final Rule, employers may not substitute the alien named on the application. Separately, the rule prohibits employers from amending any information on the application once it is submitted to the Department. If an alien is no longer available for the job described on the application, an employer must conduct a new labor market test, and if this test indicates no qualified U.S. workers are available and the only qualified worker is an alien, then the employer must submit a new permanent labor certification application.

We estimate the 10-year discounted quantified and monetized benefits associated with this provision of the Final Rule will be between $177.4 and $215.5 million, and total quantified and monetized costs will be between $147.0 and $178.6 million. Thus, the quantified benefits exceed the quantified costs, and the net present value over a 10-year time horizon will range from $30.4 to $36.9 million.

Benefits

The ban on alien substitution has several important benefits to society: improved program integrity, increased employment opportunities for U.S. workers, cost-savings to employers in the form of reduced staff time and incidental costs, cost savings to State governments in the form of reduced unemployment insurance benefits, and cost savings to the Federal Government in the form of reduced staff time resulting from a reduction in processing substitution requests.

The current practice of allowing substitution of alien beneficiaries provides a strong incentive for the filing of fraudulent labor certification applications. If substitution is permitted, permanent labor certification applications or resulting certifications can be marketed to aliens who are willing to pay a considerable sum of money to be substituted for the named aliens on the applications or certifications. The substitution ban increases program integrity by reducing the incentives or opportunities for fraud through the lawful permanent resident process. Due to a lack of adequate data, however, we were not able to quantify or monetize this important benefit.

Banning substitution will deter unscrupulous employers, attorneys, or agents from filing permanent labor certification applications simply to sell them later for profit, and reduce the number of fraudulent applications received by the Department. We estimate the cost savings achieved from recovery of processing resources by multiplying the number of fraudulent substitutions (assume a subset of the total number of substitution requests received) by the average number of hours spent by our staff on each fraudulent substitution, by the average compensation of our staff reviewing fraudulent substitutions. We estimate the annual cost saving to the Department at $2.8 million per year.[11] This analysis captures savings specifically linked to applications we estimate involve fraudulent substitutions, rather than all fraudulent applications (that is, applications employing fraud, regardless of type).

An important purpose of the substitution ban is to ensure that if an alien is no longer available, the employer will conduct a new labor market test to determine whether a suitable U.S. worker is available. Since labor market dynamics can change in a matter of months, it is possible that

[11] As described above, the Department estimated the annual number of substitutions to be approximately 11,595 and estimated that 10 percent of these substitutions are fraudulent. Average DOL staff time per fraudulent substitution is estimated at 40 hours and their average hourly salary (staff with pay grade GS 14, step 5) is $42.24, which was increased by 1.42 to account for employee benefits.

when the alien on a permanent labor certification is no longer available, and the employer conducts new recruiting efforts, qualified U.S. workers will be identified. Some U.S. workers hired would have otherwise remained unemployed.

Without the ban on substitution and required labor market test, the employer may not be aware that U.S. workers became available since their original test of the labor market, and may have otherwise hired an alien.[12] Therefore, the second labor market test required by the Final Rule should result in increased employment opportunities for U.S. workers. We estimate the monetary value of this benefit by examining the compensation earned by U.S. workers that would not have otherwise been hired. To estimate this benefit, we accounted for the number of U.S. workers that would be favored by requiring employers to conduct new labor market tests and the compensation of these workers, which includes both their salaries and benefits, and reflects the decrease in time that those workers would have stayed unemployed. We estimate this benefit to be $21.3 million per year.[13]

The analysis assumes the U.S. workers hired who were previously unemployed will no longer be required to seek unemployment insurance benefits. Therefore, other things being constant, as an added benefit we estimate the states will experience a reduction in unemployment insurance expenditures as a consequence of U.S. workers being hired after labor market tests are conducted. The Department, however, was not able to quantify this important benefit for lack of adequate data.

Further, because the employer would have otherwise hired an alien if it had not conducted the labor market test, the employer will experience cost savings by not continuing with the permanent labor certification application process. We estimate this cost savings by calculating the monetary value of the decrease in employer staff time for preparing, filing, and tracking labor certification applications; preparing and maintaining the recruitment report and submitting the recruitment report (to comply with an audit, where requested). We estimate this cost savings by multiplying the staff time required to conduct such activities by the staff compensation, by the number of U.S. workers hired as a result of labor market tests. It is important to note that this cost savings to employers partially offsets the costs of compliance to employers discussed below. The cost of compliance to employers outweighs this partial cost-savings. We also account for the incidental costs (such as delivery, copying, and telephone charges) incurred by employers. We estimate the annual cost savings to employers to be $1.2 million.[14]

In addition, we anticipate other cost savings or benefits associated with the ban on substitution will have a ripple effect through the publicly administered immigration system. We believe cost savings could be realized in the following areas: reduction in the Department of Labor's Office of Inspector General (OIG) staff time required to review or investigate potentially fraudulent substitutions; reduced DHS staff time to review I–140 immigrant petitions; reduced DHS staff time to review I–485 applications; a reduction in DOS staff time resulting from a need to conduct fewer interviews with aliens seeking permanent residence; and less DOJ staff time spent on investigation and prosecution of fraudulent substitutions. We believe that deterring and preventing substitution-related fraud will have an important and visible impact on other Federal agencies involved in the immigration system. However, due to a lack of adequate data, we were not able to quantify or monetize these benefits to society.

Costs

The ban on substitution does impose several costs to society: additional job advertising and recruitment by employers, increased employer staff time for filing labor certification applications, and increased staff time in State Workforce Agencies (SWAs) and the Department, all described in greater detail below. We estimate the 10-year discounted cost to society to be between $147.0 and $178.6 million.

If the employer's second labor market test indicates that no qualified U.S. workers are available, then the employer must submit a new permanent labor certification application with the name of the new alien. However, to fill the position, employers who otherwise might have substituted must test the market for U.S. workers and incur recruitment costs, independent of whether they eventually file a permanent labor certification application. To the extent an employer finds a qualified U.S. worker to fill the position, it is inappropriate to attribute those costs to the labor certification process, as in those cases the need for labor certification has been removed.

The main cost to employers associated with the substitution ban is the increase in employer staff time to prepare, file, and track labor certification applications. We estimate this cost by multiplying the number of substitutions leading to labor market tests not favoring U.S. workers by the number of employer staff hours to prepare, file, and track the labor certifications, by the compensation of the employer staff undertaking these activities.

Another cost to employers of the substitution ban results from the additional recruiting efforts, in particular job advertising, as well as the increased employer staff time to arrange for and track recruiting efforts and for receiving, compiling, interviewing, analyzing, and reporting the results of the recruitment.[15] The Department

[12] For purposes of this analysis, the Department assumed that U.S. workers favored by the new labor market tests were unemployed. However, a benefit to U.S. workers could still exist even if these workers were employed elsewhere: their departure from their old jobs would open up new employment opportunities for other U.S. workers and potentially result in higher wages being earned.

[13] The Department estimated that of the 115,952 PERM applications filed between July 1, 2005 and June 30, 2006, 10 percent requested a substitution. This is also the Department's estimate of percentage of substitution requests in cases filed under the preceding regulations. This analysis estimates 15 percent of labor market tests favor U.S. workers. The average annual wage on permanent labor certifications applications in the PERM database is $69,000 per year. The average wage was increased by 1.42 to account for employee benefits (source: Bureau of Labor Statistics). DOL assumed that workers would have been unemployed for an additional 1.5 months. There may be some portion of these jobs filled by U.S. workers already employed. For these employees the range of benefits may, as a result of their being employed when taking the new opportunity, be less than the full salary and benefits accounted for in this range found in this analysis. This analysis does not quantify that lesser amount.

[14] The Department estimated that employers spend 10 staff hours on average preparing, filing, and tracking the labor certifications. As stated in the preamble to the PERM Final Rule, it takes on average one (1) hour for an employer to prepare a recruitment report for each application it files. We estimated that 10 percent of these applications are audited, which will require an additional hour for the employer to submit the report. We assumed that Human Resources Managers (or their equivalent) conduct this activity for the employer and that their median hourly wage is $36.52, which we increased by 1.42 to account for employee benefits (source: Bureau of Labor Statistics). The Department estimated that employers spend $100 in incidental costs per application.

[15] It is possible some employers would not have conducted any recruiting activities to locate a second applicant if substitution were allowed (e.g., if a qualified alien was already working for the employer under a temporary H1B visa). If an employer would normally hire another alien that is already employed by the employer, then most of the recruiting activities required by PERM would be additional cost. If the employer would normally conduct an extensive recruiting effort to find a new qualified employee, few of the PERM required recruiting activities would constitute an additional

included in its cost estimate the time spent to comply in excess of the time the employer would normally spend in recruiting efforts. We estimate the recruiting costs by examining what recruiting efforts were reported by employers filing PERM applications and by surveying local newspapers, websites, and SWAs to determine the costs associated with these activities.[16] We estimate the costs for filing applications and preparing recruitment reports by multiplying the staff time required to conduct such activities by the staff's compensation by the annual number of additional labor certification applications.[17] We estimated the total annual cost to employers to process and track labor certification applications and conduct additional recruitment efforts to be $19.8 million per year.[18]

SWAs also experience an additional cost. The substitution ban may increase the number of applications filed by employers, which requires employers to place a job order with the SWA serving the area of intended employment for a period of 30 days. Employers must also obtain a prevailing wage determination from the SWA. SWAs will incur some additional costs associated with increased SWA staff time to process job orders and provide employers with prevailing wage determinations. We estimate this cost by multiplying the SWA staff time to process job orders and determine the prevailing wage by the compensation of the staff, by the annual number of substitution requests. We estimate the annual costs to SWAs to be $0.5 million per year.[19]

The primary cost government-wide is the increased staff time to review additional labor certification applications, immigrant petitions, etc., that may be submitted when a legitimate change in the alien beneficiary is necessary. If employers must resubmit labor certification applications when the original alien becomes unavailable, then Department of Labor staff will spend that much more time reviewing applications. We estimate this cost to the Department by multiplying the time spent reviewing each application by the compensation of our analysts, by the increased number of applications.[20]

Another related cost to the Federal Government is the increased Departmental staff time to audit an increased number of recruitment reports. We estimate this cost by multiplying the time spent auditing each recruitment report by the average compensation of one of our analysts, by the increased number of recruitment reports that will be audited.[21] We estimated the total annual Departmental costs to be $0.7 million per year.

In addition, the Department considered potential costs to employers associated with a later priority date and a longer wait for an alien who would otherwise be the beneficiary of a substitution. However, this analysis does not quantify such costs. As stated previously, to the extent such costs are quantifiable, they are potentially negligible since most substituted jobs are already held by the alien to be substituted. To the extent they stem from a longer wait, or backlogs at other Federal agencies, the number of factors bearing on such costs (variables determining time in respective queues, mitigating factors such as options for interim sources of labor, etc.), and the relative impact of each factor, are simply too speculative for the Department to be able to accurately measure.

Impact of Prohibition Based on Availability of Alien

As stated above, the analysis assumes 10% of employers may require substitution at the labor certification stage (11,595 applications). The analysis assumes all of those applications will require a second market test, 15% (1,739 applications) of which will favor U.S. workers. As stated, in that 15% of cases in which an employer finds a qualified U.S. worker, recruitment costs related to the labor certification process should not be attributed to this rulemaking. In the remaining 9,856 cases, the analysis already includes the costs of the second labor market test and other costs of the labor certification process, including average filing and application management expenditures (recruitment, staff time, etc.) for each employer.

As a refinement on this estimate, it is possible to make some broad assumptions about impact on different categories of employers holding those remaining 9,856 applications. We may assume, broadly and based on our programmatic experience, that approximately 80% of employers (7,885 applications) have replacements at the ready (at their own place of business or another U.S. establishment), and the remaining 20% (1,971 applications, or 1.7% of total applications processed in the system) must reach outside the country when the original alien becomes unavailable.[22]

As a general proposition, an employer who now has the option to substitute but would normally have another alien at the ready (thereby incurring no need to advertise) would incur additional recruitment costs after the substitution prohibition to meet the requirement for a second labor market test. An employer who can now substitute but must generally look outside the country to fill vacancies may not necessarily incur additional costs specifically for

cost. For the purposes of this analysis, DOL assumed that on average, an employer would place an ad in a Sunday paper and conduct other recruiting efforts, such as placing a notice on the organization's website or attending a job fair.

[16] The Department estimated that the cost of an advertisement in a Sunday paper is $750. DOL also estimated it would take an employer 0.5 hours to place the advertisement with the Sunday paper and 0.5 hours to place a job order with the SWA. In addition, this analysis assumes an employer would spend 10 hours to arrange for and track recruiting efforts and an additional 10 hours for receiving, compiling, interviewing, analyzing, and reporting the results of the recruitment.

[17] According to the preamble to the PERM Final Rule, it takes on average one (1) hour for an employer to prepare a recruitment report for each application it files. DOL estimated that 10 percent of these applications are audited, which will require an additional hour for the employer to submit the report. DOL assumed that Human Resources Managers (or their equivalent) conduct this activity for the employer.

[18] As mentioned above, the Department estimated that employers spend 10 staff hours on average preparing, filing, and tracking the labor certifications. DOL assumed Human Resources Managers (or their equivalent) conduct this work for the employer and that the median hourly wage for Human Resource Managers is $36.52, which DOL increased by 1.42 to account for employee benefits. This analysis assumes 85 percent of the required labor market tests favor aliens, and that employers request substitutions on 10 percent of the 115,952 applications submitted per year, resulting in approximately 9,856 additional permanent labor certification applications to be filed with DOL each year.

[19] The Department estimated SWA staff spend one (1) hour on average to process job orders and determine the prevailing wage. We also estimated the hourly rate for SWA staff to be $34.94 per hour, which was increased by 1.42 to account for employee benefits (source: Bureau of Labor Statistics).

[20] The Department estimated that 70 percent of applications are ''clean'' and do not raise any audit flags. ''Clean'' applications require 0.25 hours of DOL staff time. We assumed that the remaining applications raise audit flags and must be reviewed manually, requiring four (4) hours of DOL staff time. We estimated that the median hourly wage for DOL reviewers is $30.06 (GS 12, step 5, which was increased by 1.42 to account for employee benefits (source: Bureau of Labor Statistics). As explained above, DOL assumed that approximately 9,856 additional permanent labor certification applications will be filed with DOL each year.

[21] The Department assumed auditors spend two (2) hours to audit recruitment reports. We assumed the median hourly wage for DOL auditors is $30.06 (GS 12, step 5; source: DOL), which DOL increased by 1.42 to account for employee benefits (source: Bureau of Labor Statistics). As explained above, DOL assumed that approximately 9,856 additional permanent labor certification applications will be filed with DOL each year.

[22] The Department's longstanding programmatic experience, both under the previous regulation and the more current PERM rule, is that a significant percentage of applications for permanent labor certification name aliens already here and participating in another visa program. Recent program data indicate approximately 80% name aliens on H–1B visas.

recruitment as a result of the prohibition (assuming even with substitution, there would be similar costs associated with foreign recruiters and locating another worker abroad). For both groups of employers—those with ready candidates and without—the analysis assumes expenses associated with beginning the process anew, and builds in costs in addition to recruitment. Accordingly, as described in the main costs discussion above, the analysis already accounts for an average cost across employers for labor certification expenses in the absence of substitution (e.g., preparation, filing and tracking of a second labor certification). To the extent that potentially there is greater incremental impact at the labor certification stage to employers who, in the event they must substitute, must seek workers outside the country—over and above the diverse costs already included and explained above—there is insufficient data to quantify it. Additional impact to these employers may be captured in the discussion below, covering substitutable petitions pending at DHS.

Application of the Prohibition to Pending Applications

As explained above, this analysis considers the additional, one-time impact of this rulemaking on employers with substitutable immigrant worker petitions currently pending at DHS. As DHS is a separate Federal agency, and as employer decisionmaking, unique case circumstances, and agency processing dynamics at the I–140 stage are not within either the Department of Labor's expertise or, even more importantly, its influence, this analysis can make only the broadest of assumptions. The Department cannot estimate with precision this rule's benefits or costs to those employers or to DHS program activities. However, these data limitations notwithstanding, we have included in this analysis an estimate of the potential impact on employers. Noting that the rule does not impact labor certifications already filed with DHS, the prohibition on substitution will impact DHS processing at least to some extent going forward.

The extensive benefits of the substitution prohibition described above apply equally to those labor certification applications currently in the immigrant petition backlog at DHS, and are also deemed part of this one-time impact. In addition to other benefits described above, DHS's workload would benefit from a reduction, as some of those abandoned immigrant petitions would not be replaced with foreign workers but with U.S. workers. Potential costs specifically to employers with petitions pending with DHS are described in greater detail below. These benefits and costs are in addition to the overall regulatory impact estimates provided above.

As of April 2007, a total of approximately 70,000 immigrant petitions were pending at USCIS in immigrant preferences categories that were identified by DHS as dependent upon a labor certification. The Department assumed the same 10 percent substitution rate for labor certification applications now attached to a pending immigrant petition at DHS that would be prohibited from a future substitution. The analysis accordingly assumes all of the 7,000 applications identified will require a second test of the labor market. As above, the Department has assumed that 15% of these applications (1,050 applications) will favor U.S. workers, and thus recruitment costs are not attributable. The costs of the labor certification process leading to labor market tests not favoring U.S. workers, including average filing and application management expenditures (staff time as indicated by staff compensation, costs of additional recruitment, etc.) for each employer, are then attributed to the remaining 5,950 applications for a total of $10.62 million. The Department is mindful that amount represents a one-time expense for a discrete group of applications and is, moreover, not discounted by the likelihood that some percentage of these applications that would otherwise be substituted would be too far into the adjudicatory process at DHS to be the subject of a future substitution.[23]

Transfer

To the extent the ban on substitution will have an economic impact on foreign labor—that impact could be a carve-out from the overall economic impact of the rule as measured in this analysis, and not an additive. The foreign worker who is substituted has by definition become unavailable for the position for reasons unrelated to this rulemaking, and therefore does not incur either a cost or benefit in this analysis. The vacancy created results in both costs and benefits for the employer, U.S. workers, and foreign workers. Costs are associated with recruitment; we assume the employer will take steps necessary to fill the vacancy, whether with a foreign or U.S. worker. Benefits result from long-term stability and productivity gains to the employer from filling the vacancy, and pay and satisfaction to a new worker from a permanent position. The potential benefit to the employer—and the economy—from filling the vacancy would not change significantly whether the new worker is a U.S. or foreign worker; assuming a qualified individual fills the slot, the worker is meeting the same legitimate business need, and the employer incurs similar costs for comparable fringe benefits and compensation. The analysis already discusses the potential impact and assumptions associated with filling the vacancy with a U.S. worker. If, alternatively, the vacancy is filled with a second foreign worker—and to the extent foreign workers physically in the country and working are deemed part of the U.S. economy—the potential benefit to U.S. workers would be decreased by that number of slots and transferred to foreign workers who now enter the stream for permanent residency. So although total economic benefits do not change, their relative allocation does transfer between foreign and domestic workers, depending on who is awarded the permanent position. And in fact, non-material benefits to foreign workers may even be higher than to U.S. workers, were the analysis to factor in the positive impact that comes with a permanent residency-bound immigration track.

Issues Raised by Public Comment

Several commenters argued the rule's prohibition of substitution of alien beneficiaries will create significant economic impact. One commenter, presuming direct employer costs per application of $10,000, stated the impact would be at least $1 billion if employers could no longer substitute beneficiaries. Another commenter focused on the effect it believed the substitution prohibition could have on the recruitment of workers. Noting that backlogs have reached 4.5 to five years at times, the commenter claimed the application process, which he characterized as lengthy, makes it imperative that employers be permitted to use certifications that are ''abandoned.'' One commenter stated the substitution prohibition would increase the likelihood that employers would take jobs offshore because they would be unable to recruit and obtain certification for foreign workers in a timely manner. The same commenter also suggested that a few plant closings or other business disruption could

[23] For example, no discounting has been applied to remove labor certification applications from the calculation that are part of a filing which includes an adjustment application and for which a visa is immediately available, which would greatly reduce the chances that a substitution to benefit another alien would follow.

easily result in an economic impact in excess of $100 million.

One commenter focused on the costs and expenses of abandoning and reapplying for a labor certification due solely to the unavailability of a foreign worker. Noting the costs of advertising, market surveys, attorneys and recruitment, the commenter also pointed out the loss in productivity from delayed approval of applications, all of which it said results in thousands of dollars in employer expenses. The commenter argued that substitution is and should remain ''perfectly legitimate'' because it ''mitigates the employer's investment risk in an employment-based immigration visa process that still takes (and will likely continue to take) many years to complete.'' In addition to claiming the economic impact was significant, the commenter asserted the rule's substitution prohibition was an attempt to eliminate an unknown, but likely insignificant, quantum of fraud. Finally, the commenter stated that the impact on high technology industry employers would be substantial because such employers must recruit foreign nationals, often from U.S. universities, given the limited supply of U.S. citizens available for technical positions.

The commenters have failed to explain how the elimination of the practice of substitution itself will result in material adverse impact, let alone economic impact exceeding $100 million. While some commenters estimated the costs of obtaining a new certification at nearly $10,000, the Department finds no support for that claim, and has estimated the costs as much lower as noted above.

As stated elsewhere, the INA's treatment of employment-based immigration is designed to protect the wages and working conditions of U.S. workers. The Department meets the requirements of the statute through the labor certification process. As the administrator of that process, the Department has an obvious interest in and responsibility to identify, address and eliminate fraud, which is what the Final Rule will accomplish. The Department's experience, as articulated and discussed herein, resulted in the PERM process, which increased fraud protection. The Department's experience also shows the practice of substitution leaves the process susceptible to fraud.

As discussed extensively throughout this Final Rule, the Department is concerned that various immigration practices, including the substitution of alien beneficiaries and the indefinite validity of permanent labor certifications, were subject to a significant degree of fraud and abuse. The purpose of this Final Rule is to impose clear limitations on the acquisition and use of permanent labor certifications in order to reduce incentives and opportunities for fraud and abuse, and enhance the integrity of the permanent labor certification program to the benefit of the U.S. workforce.

The ban on substituting alien beneficiaries reduces the incentives and opportunities for fraud in important ways. First, absent this regulatory action, employers possess incomplete information about the current availability of qualified U.S. workers in the labor market. Because labor markets are inherently dynamic, even well informed employers may not keep abreast of changes in worker availability after their initial recruitment for a job opportunity. In addition, information may not always be accurate or widely available if it is costly to produce, analyze, or disseminate. Banning substitution ''remedies'' the problem of imperfect information, consistent with the statutory intent to protect U.S. workers, by requiring employers to go back to the labor market a second time when the original alien becomes unavailable. This measure improves employer decision-making with respect to filling critical job openings, and improves the probability that a qualified U.S. worker will be selected for the job.

Second, the ban on alien substitution significantly reduces the incidence of ''overconsumption,'' where unscrupulous employers, attorneys, or agents submit large numbers of applications for processing and, once certified, sell the certification to a different alien at prices that grossly exceed marginal costs. This overconsumption is driven by the exchangeability of the alien name on the certification, which in turn increases the document's transferability. In the absence of this Final Rule, a certification that was granted to be used to benefit or name one alien and no one other than the parties originally named for purposes of filing with DHS (in economic terms, a ''rivalrous and excludable good''), can be used by another alien simply by exchanging the name (in economic terms, a ''rivalrous and non-excludable good'').

These individuals or entities are not equating marginal social costs with marginal benefits, but rather marginal private costs with marginal benefits; hence, they overconsume from the permanent labor certification program. In other words, unscrupulous employers or attorneys have no incentive to consider the marginal social costs of filing the next fraudulent labor certification applications as long as the marginal private benefits (i.e., revenue from selling the labor certifications to a different alien) continue to exceed the marginal private costs (i.e., costs to process and track the labor certification) of the transaction.

By eliminating alien substitution, this rule seeks to restore to certifications their rivalrous and excludable qualities, in that they may no longer be transferred, sold, bartered, or purchased; the employer, job opportunity, and alien beneficiary on the application are exclusive and cannot be transferred to a different alien beneficiary. By requiring appropriate, timely market tests; promoting better information on market conditions and worker availability; and restoring the exclusivity and integrity of labor certifications, we believe this regulatory action will more effectively align the marginal social costs of processing permanent labor certifications with the marginal benefits.

3. Validity Period

Permanent labor certifications have thus far been valid indefinitely, and employers have been free to submit a permanent labor certification to DHS at any time. At least one commenter argued that a 45-day proposed validity period such as that proposed in the NPRM would result in a significant impact. The Department disagrees with this conclusion. However, in response to other comments and our own analysis, we have lengthened the validity period to 180 days. Under this Final Rule, all permanent labor certifications will expire after 180 calendar days of certification unless filed in support of an I–140 immigrant petition with DHS.

The 180-day period in which a permanent labor certification can be filed in connection with the I–140 petition to the DHS effectively limits the time in which certifications may be marketed. The ban on substitution and the establishment of a finite validity period, when taken together, effectively reduce the likelihood of validating stale recruitment while simultaneously eliminating ''rent-seeking'' behavior on the part of unscrupulous employers, attorneys, and agents in selling these certifications to uninformed alien beneficiaries. We estimate the cost impact of a 180-day validity period will be insignificant because sufficient time is provided to put the certification to use, since it is granted to the employer under the presumption that there is a critical need for the foreign worker and no qualified U.S. workers are available.

This analysis does not quantify the marginal value of eliminating indefinite validity of labor certifications—that is, the value of establishing a limited validity period over and above the value gained from prohibiting substitution. The commoditization of labor certifications is a function of the availability of substitution and the absence of a finite expiration date. As this Final Rule eliminates both root causes, the analysis assumes most if not all quantifiable benefits are captured by the analysis above with respect to substitution.

The analysis does measure two major benefits associated with a defined validity period. First, a validity period ensures labor market information is current, the prevailing wage recorded on the permanent labor certification is current and accurate, and the bona fide job opportunity exists as it appeared on the original application. When a certification becomes invalid, an employer must conduct new recruiting efforts that may indicate qualified U.S. workers are available and open that job opportunity for their consideration. Second, a validity period will slow the ''black market'' in approved labor certifications.

As discussed in the benefit-cost analysis below, enforcing a validity period will increase costs for employers that do not file with DHS prior to the end of the validity period. In these cases, the employer must conduct a new labor market test and submit a new permanent labor certification application to the Department. The Department's costs will also increase, since it will review additional applications that are submitted because the original certification expired.

The Department considered two periods of validity, 45 days and 180 days. Both alternatives are discussed further below.

3(A). Validity Period of 180 Days

We estimate that the 10-year discounted quantified benefits associated with this provision of the Final Rule will be between $74.8 and $90.9 million, and total quantified costs will be between $132.4 and $160.8 million. Thus, the net present value over a 10-year time horizon will range from −$57.6 to −$70 million. Due to a lack of adequate data, we were not able to quantify or monetize some important benefits of this provision of the Final Rule.

Benefits

The 180-day validity period has several important benefits to society: Increased employment opportunities for U.S. workers, improved program integrity, and cost savings to the Federal Government resulting from positions filled with U.S. workers.

An important purpose of the 180-day validity is to ensure that the certified job opportunity still exists as described on the initial application. If an employer files with DHS 180 days or more after the certification was approved by the Department, the passage of time may have impacted worker availability for purposes of the job opportunity that is the subject of the certification. This provision requires employers to conduct new labor market tests and submit a new application to the Department once validity expires.

As with the benefits discussed under the substitution section, above, the Department estimates that without the 180-day validity period and required labor market test, the employer may not be aware that U.S. workers are available, and may have otherwise hired an alien.[24] Therefore, the second labor market test required by the Final Rule may favor and result in increased employment opportunities for U.S. workers. As under the substitution section above, we estimated the monetary value of this benefit by examining the compensation earned by U.S. workers that would not have otherwise been hired. To estimate this benefit, we accounted for the number of U.S. workers that would be favored by requiring employers to conduct new labor market tests and the compensation of these workers, which includes both their salaries and benefits, and reflects the decrease in time that the U.S. workers favored by the 180-day validity period stay unemployed. We estimate this benefit to be $10.7 million per year.[25]

The 180-day validity period decreases the opportunity for fraud through the lawful permanent resident process. The current indefinite validity of approved permanent labor certifications has contributed, along with substitution, to the growth of a secondary market in approved labor certifications. A 180-validity period promotes more security in the labor market test conducted, adding significant protections for U.S. workers in the strength of the tests regarding availability and adverse effects of the test on wages and working conditions of the affected U.S. worker population. Having a defined validity period in combination with the elimination of substitution does not lessen fraud as much as it enhances the validity of the labor market test that was done. Due to a lack of adequate data, however, we were not able to quantify or monetize this important benefit.

Enforcing a 180-day validity period will result in a small decrease in the number of applications dependent on a successful labor market test that are submitted to DHS and DOS. An employer that does not submit the permanent labor certification to DHS within 180 days will need to conduct a new labor market test and, if the test favors an alien, the employer must file a new application with the Department. If the test favors a U.S. worker, then the employer will not submit an application to the Department. Employers will submit fewer applications to DHS and DOS because after the original certifications expire, some of the new labor market tests will favor U.S. workers or may not be further pursued. In these cases, cost savings results from the reduced DHS staff time to review I–140 immigrant petitions and I–485 applications to adjust to permanent resident status. In addition, DOS will have fewer interviews to conduct with aliens seeking a lawful immigrant visa to obtain permanent residence. Because of data limitations, we are not able to provide a quantitative or monetary value of these benefits.[26]

Costs

The 180-day validity period imposes several costs to society: Additional job advertising and recruiting from employers, increased employer staff time for filing labor certification applications, and increased staff time at the Department. In addition, a 180-day validity period requires employers to conduct labor market tests that will favor U.S. workers in some cases, which

[24] For purposes of this analysis, the Department assumed that U.S. workers favored by the new labor market tests were unemployed. However, a benefit to U.S. workers could still exist even if these workers were employed elsewhere; their departure from their old jobs would open up new employment opportunities for other U.S. workers and a move to a new job may imply a higher wage for the U.S. worker.

[25] The Department assumed that of the 115,952 PERM applications filed between July 1, 2005 and June 30, 2006, five (5) percent would expire prior to filing with DHS within 180 days. As before, we assumed 15 percent of the labor market tests favor U.S. workers. The average annual wage on permanent labor certifications applications in the PERM database is $69,000. The average wage was increased by 1.42 to account for employee benefits (source: Bureau of Labor Statistics). We assumed workers would have been unemployed for an additional 1.5 months.

[26] The 180-day validity period will help deter unscrupulous employers, attorneys, or agents filing permanent labor certification applications with DOL because there will be fewer opportunities to profit off of fraudulent applications. In addition, Department of Justice staff time can be expected to be reduced from avoided investigation and prosecution of fraudulent applications for positions filled by U.S. workers.

results in a small reduction in revenue to DHS from I–140 petitions and I–485 applications and to DOS from immigrant visa applications. We estimate the 10-year discounted costs to society to range between $132.4 and $160.8 million.

As described above, approved permanent labor certifications will expire if employers do not file the labor certification in support of an immigrant petition with DHS within 180 calendar days of the date the Department grants certification. If the certification expires, the employer must conduct a new labor market test if it chooses to pursue the foreign labor option. If the test favors a U.S. worker, then the employer will hire a U.S. worker. If the labor market test indicates that no qualified U.S. workers are available, then the employer must resubmit a permanent labor certification application.

A significant cost to employers of the 180-day validity period is the increase in employer staff time to prepare, file, and track labor certification applications. We estimate this cost by multiplying the number of expired certifications leading to labor market tests not favoring U.S. workers by the number of employer staff hours to prepare, file, and track the labor certifications, by the compensation of the employer staff undertaking these activities.[27]

Another significant cost to employers of the 180-day validity period is the additional recruitment efforts, in particular job advertising, as well as the increased employer staff time to arrange for and track recruitment efforts and for receiving, compiling, interviewing, analyzing, and reporting the results of the recruitment. We estimate the costs for preparing recruitment reports by multiplying the staff time required to conduct such activities by the staff's compensation, by the annual number of additional labor certification applications.[28] We estimated the total annual costs to employers for processing labor certifications and additional recruitment efforts to be $18.5 million per year.

A small cost to the Federal Government resulting from the 180-day validity period is the increased time for Departmental staff time to review the relatively small number of applications that are resubmitted if the original certification expired and subsequent labor market tests favor an alien. If employers resubmit applications, then our staff must spend additional time reviewing an increased number of applications. We estimated this cost by multiplying the time spent reviewing each application by the compensation of a foreign labor certification analyst, by the increased number of applications.[29] We also factored in the potential increase in our staff time to audit additional recruitment reports. We estimated this cost by multiplying the time spent auditing each recruitment report by the average compensation of a DOL auditor by the increased number of recruitment reports that will be audited.[30] We estimated the total annual costs to the Federal government to be $0.3 million per year.

Finally, DHS and DOS will experience small decreases in revenue from application fees. Since employers must conduct a labor market test after a certification expires and since some of the labor market tests will favor U.S. workers, there will be a slight decrease in the number of Forms I–140 and I–485 that would have been submitted to DHS and immigrant visa applications that would have been submitted to DOS. Because these forms have application fees, DHS and DOS will experience a small decrease in revenue.[31] Due to a lack of adequate data, we could not quantify or monetize these costs.

3(B). Validity Period of 45 Days

In the proposed rule, the Department proposed a validity period of 45 calendar days. In response to public comments regarding the hardships associated with a 45-day validity period, we increased the validity period to 180 calendar days. The most important benefit of the validity period is increased employment opportunities for U.S. workers, and the primary cost is to employers that must conduct new labor market tests and file new applications with the Department if approved certifications are not filed with DHS within the validity period and the labor market test favors an alien.

In the section below, the Department analyzed the major benefits and costs. We assumed that twice as many certifications would expire before reaching DHS with a 45-day validity period as compared to a 180-day validity period. We estimated the 10-year discounted benefits associated with a 45-day validity period to be between $149.6 and $181.7 million, and the total costs to be between $264.9 and $321.7 million. Thus, the net present value over a 10-year time horizon will range from −$115.2 to −$140.0 million.

Benefits

We estimate the monetary value of this benefit by examining the compensation earned by U.S. workers that would not have otherwise been hired. To estimate this benefit, we account for the number of U.S. workers that would be favored by requiring employers to conduct new labor market tests and the compensation of these workers, which includes both their salaries and benefits and reflects the decrease in time that those workers stay unemployed. We estimate this benefit to be $21.3 million per year.[32]

[27] As mentioned above, the Department estimated that employers spend 10 staff hours on average preparing, filing, and tracking the labor certifications. We assumed that Human Resource Managers (or their equivalent) conduct this activity for the employer and that their media hourly wage is $36.52, which was increased by 1.42 to account for employee benefits (source: Bureau of Labor Statistics). We assumed that five (5) percent of all certifications will expire and that 85 percent of the required labor market tests favor aliens, resulting in an additional 4,928 permanent labor certification applications to be filed with DOL.

[28] The Department estimated the cost of a Sunday paper advertisement is $750. We also estimated it would take an employer 0.5 hours to place the advertisement with the Sunday paper and 0.5 hours to place a job order with the SWA, and 1.5 hours to conduct additional recruiting, as required by PERM. In addition, DOL estimated that the employer would spend 25 hours to arrange for and track recruiting efforts and for receiving, compiling, interviewing, analyzing, and reporting the results of the recruitment. According to the preamble to the PERM Final Rule, it takes an average of one (1) hour for an employer to prepare a recruitment report for each application it files. For purposes of this analysis, we estimated that 10 percent of these applications are audited, which will require an additional hour for the employer to submit the report. We assumed that Human Resources Managers (or their equivalent) conduct this work for the employer and that their median hourly wage is $36.52, which was increased by 1.42 to account for benefits (source: Bureau of Labor Statistics). This analysis assumes five (5) percent of all certifications will expire and that 85 percent of the required labor market tests favor aliens, resulting in an additional 4,928 permanent labor certification applications to be filed with DOL.

[29] The Department estimated that 70 percent of applications are ''clean'' and do not raise any audit flags. ''Clean'' applications require 0.25 hours of our staff time. We assumed that the remaining applications raise audit flags and must be reviewed manually, requiring 4 hours of our staff time. We estimated that the median hourly wage for our staff analysts is $30.06 (GS 12, step 5, which was escalated by 1.42 to account for employee benefits (source: Bureau of Labor Statistics). As explained above, we estimated that approximately 4,928 additional permanent labor certification applications will be filed with the Department each year as a result of this provision.

[30] The Department assumed auditors spend two (2) hours to audit recruitment reports. We assumed the median hourly wage for DOL auditors is $30.06 (GS 12, step 5), which was increased by 1.42 to account for employee benefits (source: Bureau of Labor Statistics). As explained above, we assumed approximately 4,928 additional permanent labor certification applications will be filed with DOL each year as a result of this provision.

[31] At time of publication, the DHS form I–140 immigrant petition filing fee is $195 and the immigrant visa application processing fee charged by DOS is $335 per person.

[32] The Department estimated of the 115,952 PERM applications filed between July 1, 2005 and

Continued

Costs

The Department assumed that twice as many applications would expire under a 45-day validity period as compared to the 180-day validity period. The Department estimated the costs for a 45-day validity period by assuming the cost per application would be the same but the number of applications submitted by employers would double. We estimate the annual cost to employers to be $37 million per year. This cost includes additional job advertising, and employer staff time to arrange for and track recruiting efforts, prepare and file certification applications, and prepare and maintain recruitment reports.

The 45-day validity period imposes a cost to the Department resulting from the need for increased foreign labor certification staff time to review additional applications resulting from expired applications. We estimated this cost to be $0.7 million per year. Also, if employers rush to file the I–140 to satisfy a 45-day rule, this will slow processing at DHS and increase the number of requests for additional evidence issued by that agency. However, due to a lack of adequate data, we were unable to quantify or monetize this cost.

4. Prohibition on the Sale, Barter, or Purchase of Applications for Permanent Labor Certification and of Approved Permanent Labor Certifications, and on Related Payments

The Department is prohibiting improper commerce and certain payments related to permanent labor certification applications and certifications. We estimate that the 10-year discounted benefits associated with this provision of the Final Rule will be between $16.9 and $20.5 million. Due to a lack of adequate data, we were unable to specifically quantify the costs to this provision of the Final Rule.

Benefits

The prohibition on the sale, barter, or purchase of applications or certifications has several important benefits to society: Improved program integrity, a small cost savings to employers in the form of increased staff time to clear up their names when they are unknowingly used for fraudulent applications, and cost savings to the Federal Government in the form of reduced staff time resulting from the reduction in fraudulent applications. We estimate the cost savings to be $2.4 million per year.

On the ''black market,'' employers or agents agree to broker applications for permanent labor certification on behalf of aliens in exchange for payment. Such payments are not compatible with the purposes of the permanent labor certification program and may indicate a lack of a bona fide job opportunity that is and has been truly open to U.S. workers. The Department is instituting this ban because allowing the sale of a government benefit to continue is simply bad government. Due to a lack of adequate data, we were not able to quantify or monetize the benefits to society of increased program integrity as a result of this provision of the Final Rule.

The Department of Justice, DHS and DOL OIG spend a significant amount of time and resources to investigate fraudulent applications. Some of these applications are submitted by unscrupulous attorneys or agents filing on behalf of an alien, although the business named on the application did not provide authorization and may not even have been aware that its name was being used. When the Federal Government determines the application is fraudulent, the employer is often placed in an uncomfortable, precarious position and required to explain to the Department that it did not authorize the use of its name in the application.

We estimate this cost savings by calculating the monetary value of the increase in employer staff time to discuss the findings and write an explanation to the Department. We estimate this cost savings by multiplying the staff time required to conduct such activities by the staff compensation, by the number of fraudulent applications submitted to the Department. We estimate the annual cost savings to employers to be $2.4 million per year.[33]

Enforcing a prohibition on the sale, barter, or purchase of applications of permanent labor certifications or approved permanent labor certifications will deter unscrupulous attorneys, employers, and agents from submitting fraudulent applications. Thus, all else being equal, the prohibition will result in fewer applications that are submitted to the Department, DHS, and DOS. Cost savings result from reduced OIG staff time to review and audit permanent labor certification applications and reduced DHS staff time to review I–140 and I–485 applications. In addition, DOS will have fewer interviews to conduct with aliens seeking permanent residence. Finally, DOJ staff time can be expected to be reduced from avoided investigation and prosecution of fraudulent applications (for example, under existing racketeering laws). Because of data limitations, we were not able to quantify or monetize this important benefit.

Costs

The prohibition of the sale, barter, or purchase of permanent labor applications and certifications imposes several costs to the Federal Government in terms of increased DOJ staff time to prosecute unscrupulous agents, attorneys, or employers that submit fraudulent applications, and a small reduction in revenue to DHS from I–140 petitions and I–485 applications and to DOS from immigrant visa applications. Due to a lack of adequate data, we were unable to quantify the costs to this provision of the Final Rule.

The main cost to the Federal Government is the increased DOJ staff time to investigate and prosecute unscrupulous agents, attorneys, or employers suspected of violating this prohibition. In addition, DHS and DOS will experience small decreases in revenue from application fees. Since unscrupulous agents, employers, and attorneys will no longer submit fraudulent applications to the Department, there will be a slight decrease in the number of I–140 petitions and I–485 applications that would have been submitted to DHS and an immigrant visa application that would have been submitted to DOS. Because both these forms have application fees, DHS and DOS will experience small decreases in revenue.[34]

June 30, 2006, 10 percent would expire prior to filing with DHS. In addition, we estimated 15 percent of labor market tests favor U.S. workers. The average annual wage on permanent labor certifications applications in the PERM database is $69,000, which was increased by 1.42 to account for employee benefits (source: Bureau of Labor Statistics). We assumed workers would have been unemployed for an additional 1.5 months.

[33] The Department estimated that 10 percent of applications are fraudulent and that half of these fraudulent applications involve businesses whose names are used without authorization. We also estimated that a Human Resources Manager or their equivalent staff spends on average eight (8) hours to discuss the findings and write a letter to DOL. This analysis assumes Human Resources Managers (or their equivalent) conduct this work for the employer and that their median hourly wage is $36.52, which we increased by 1.42 to account for employee benefits (source: Bureau of Labor Statistics).

[34] The DHS form I–140 application fee is $195 per application and the immigrant visa application processing fee is $335 per person. The Department did not monetize the total estimated reduction in revenue to DHS and DOS due to data limitations. In addition, the costs may be offset by the cost savings, since staff at DHS and DOS will spend less time processing applications.

Issues Raised by Public Comment

At least two commenters stated that a large financial impact would result from the proposed rule's prohibition on payment or reimbursement of the employer's attorneys' fees or other employer costs. One of those commenting reported that it ''heard [f]rom several large companies and universities'' that the application process may cost as much as $15,000 to $20,000, including attorneys' fees, although it conceded that the numbers were informal and not based on systematic research.

The Department has considered comments from several sources regarding the prohibition on payment or reimbursement by alien workers of the employer's expenses. We believe there are compelling reasons to maintain in substantial part the prohibitions proposed in the NPRM, including the prohibition against employers seeking reimbursement of employers' attorneys' fees. The Department has detailed these reasons above. We reiterate, in addition, that assistance of counsel is at the employer's option, and not a requirement of the program.

The ban on sale, barter, purchase and certain payments related to permanent labor certifications is also justified for its social purpose, which is to prevent labor certifications from becoming a commodity that can be sold by unscrupulous employers, attorneys, and agents to aliens seeking a ''green card.'' The public disclosure that permanent labor certifications cannot be sold, bartered, or purchased reduces information asymmetry in the sense that alien beneficiaries are now informed that they should no longer be purchasing these certifications under any circumstances.

5. Debarment

The Department may suspend processing of any permanent labor certification application if an employer, attorney, or agent connected to that application is involved in either possible fraud or willful misrepresentation or is named in a criminal indictment or information related to the permanent labor certification program. The Department has instituted a public debarment mechanism to effectively deter individuals or entities from engaging in fraudulent permanent labor certification activities or prohibited transactions, and provide employers who seek assistance from attorneys or agents with better information about which individuals or entities have committed fraud or abuse. In addition, this regulatory action will increase government efficiency in processing legitimate permanent labor certification applications as debarred employers, attorneys, or agents are prevented from participating in the program for a specified period of time (i.e., up to three years).

We estimate that the 10-year discounted benefits associated with this provision of the Final Rule ranges from $175.9 to $213.6 million. Due to a lack of adequate data, we were unable to quantify the costs to this provision of the Final Rule.

Benefits

The debarment provision has several important benefits to society, including improved program integrity and cost savings to the Federal Government in the form of reduced staff time resulting from the reduction in fraudulent applications.

We are implementing this provision to promote the program's integrity and to assist the Department in obtaining compliance with existing program requirements and this rulemaking. Given the breadth and increased sophistication of the immigration fraud that has been identified in the recent past, the Department added this provision to attain the necessary flexibility to respond to potential improprieties in labor certification filings.

Debarring unscrupulous employers, attorneys, or agents who willfully or repeatedly violate program requirements will prevent such conduct in the future. To the extent that these provisions deter, prevent, or forestall inaccurate, inappropriate, or fraudulent applications, debarment will reduce the number of applications received by the Department, all other factors being constant. We estimate this cost savings by multiplying the number of fraudulent applications submitted by the average number of hours spent by foreign labor certification staff on each fraudulent application, by the average compensation of staff reviewing fraudulent applications. We estimate the annual cost savings to the Federal Government associated with debarment to be $25 million per year.[35]

In addition, the Department anticipates that there will be other cost savings associated with the debarment provision but, because of data limitations, no quantitative or monetary values could be provided. One portion of cost savings results from reduced DHS staff time to review I–140 petitions and I–485 applications. In addition, DOS will have fewer interviews to conduct with aliens seeking lawful residence.

Costs

The debarment provision imposes a small cost to the Federal Government in the form of reduced revenue to DHS and DOS related to fewer I–140 petitions and I–485 applications and immigrant visa applications. We were unable to monetize these costs because of inadequate data.

The cost to the Department associated with debarment can be expected to be low, since we have experience creating and implementing electronic tracking systems to prevent debarred individuals from filing applications with the Department. For example, the Department's H–1B Labor Condition Application (LCA) System already includes a ''debarment'' table that is automatically updated with the names of debarred individuals. LCAs filed by individuals on the list are electronically flagged, and there is minimal staff time associated with this process. Although the Department does not possess data to estimate this cost, we do not believe that enforcing the debarment provisions in this rule will require a significant amount of resources.

Finally, DHS and DOS will experience small decreases in revenue from application fees. Debarred individuals will not be able to submit applications to the Department, and thus will be unable to proceed to the next steps of the process in DHS and DOS. Because these forms have application fees, DHS and DOS will experience a small decrease in revenue.[36] The Department does not have sufficient data to estimate this cost.

[35] The benefits estimated by the section of this analysis covering the elimination of substitution assume only the fraud associated with substitution and thereby eliminated by prohibiting the practice. The benefits estimated by this section—covering the institution of debarment—considers the benefits of eliminating non-substitution fraud as well as the benefits from the substitution analysis. The Department estimated that 10 percent of applications are fraudulent and would not be filed because the employer or attorney/agent would be debarred from filing applications. We estimated the cost savings by multiplying the number of fraudulent applications that were not fraudulent substitutions by the average review time per fraudulent application (40 hours). This estimate does not include cost savings from the decrease in fraudulent substitutions to avoid double counting the cost savings that are already accounted for in the first provision of this rule, the ban on substitution. The average compensation of DOL staff reviewing the fraudulent applications (staff with pay grade GS 14, step 5) is $42.24, which was increased by 1.42 to account for employee benefits.

[36] The DHS Form I–140 immigrant petition filing fee is $195, and the Form I–485 filing fee is $395. The immigrant visa application processing fee charged by DOS is $335 per person.

D. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The standards for determining whether a rule is a major rule as defined by section 804 of SBREFA are similar to those used to determine whether a rule is an ''economically significant rule under Executive Order 12866.'' Because we certified that this is not a major rule under Executive Order 12866, we also certify it is not a major rule under SBREFA. The rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

One commenter took the position that the rule would constitute a ''major rule'' within the meaning of SBREFA. The commenter assumed that employers must spend approximately $10,000 for each new application that must be submitted in light of the substitution prohibition. Based on that analysis, and noting that as many 100,000 applications are filed each year, the commenter argues that the impact could amount to $1 billion.

While we are aware of and sensitive to the costs employers incur as part of the labor certification process, our regulatory analysis, as detailed above, indicates the rule will not have a significant economic effect. Separately, as pointed out earlier in this preamble, the costs borne by employers are not unanticipated by the statute. Therefore, under SBREFA, the rule is not ''major.''

E. Executive Order 13132

This Final Rule will not have a substantial direct effect on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, we have determined this rule does not have sufficient federalism implications to warrant the preparation of a summary impact statement. The Department received no comments that addressed Executive Order 13132.

F. Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988. The Department received no comments regarding this Executive Order.

G. Paperwork Reduction Act

The collection of information under part 656 is currently approved under OMB control number 1205–0015. This Final Rule does not include a substantive or material modification of that collection of information, because it will not add to or change paperwork requirements for employers applying for permanent labor certification. The only consequence of this amendment eliminating the current practice allowing substitution of alien beneficiaries on applications and approved permanent labor certifications is to require those relatively few employers that could have availed themselves of the substitution practice to file new applications on behalf of alien beneficiaries. The Department does not anticipate any paperwork burden resulting from the creation of a 180-day validity period for approved certifications, the prohibition on sale, purchase, and barter of applications and labor certifications and on related payments, the ban on changes to applications filed under the new streamlined permanent labor certification procedures, nor the additional enforcement mechanisms in this Final Rule. The Department anticipates an insignificant increase in volume of permanent labor certification applications filed as a result of either employers withdrawing and then filing a corrected application or employers allowing a certification to expire and then filing a new application. In either situation, employers could avoid the need to file additional applications by proofreading and complying with regulatory requirements. The Department did not receive comments related to this section.

H. Assessment of Federal Regulations and Policies on Families

This Final Rule does not affect family well-being. The Department did not receive any comments related to this section.

I. Administrative Procedure Act (APA)

The Department has made this regulation available for notice and comment and, consequently, has complied with the relevant provisions of the Administrative Procedure Act.

J. Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* at Number 17.203, ''Certification for Immigrant Workers.''

List of Subjects in 20 CFR Part 656

Administrative practice and procedure, Aliens, Employment, Employment and training, Enforcement, Fraud, Health professions, Immigration, Labor, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

■ Accordingly, for the reasons stated in the preamble, part 656 of Chapter V, Title 20, Code of Federal Regulations, is amended as follows:

PART 656—LABOR CERTIFICATION PROCESS FOR PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

■ 1. The authority citation for part 656 is revised to read as follows:

Authority: 8 U.S.C. 1182(a)(5)(A), 1189(p)(1); section 122, Pub. L. 101–649, 109 Stat. 4978; and Title IV, Pub. L. 105–277, 112 Stat. 2681.

■ 2. Amend § 656.3 to add the following definitions:

§ 656.3 Definitions, for purposes of this part, of terms used in this part.

* * * * *

Barter, for purposes of an Application for Permanent Employment Certification (Form ETA 9089) or an Application for Alien Labor Certification (Form ETA 750), means the transfer of ownership of a labor certification application or certification from one person to another by voluntary act or agreement in exchange for a commodity, service, property or other valuable consideration.

* * * * *

Purchase, for purposes of an Application for Permanent Employment Certification (Form ETA 9089) or an Application for Alien Labor Certification (Form ETA 750), means the transfer of ownership of a labor certification application or certification from one person to another by voluntary act and agreement, based on a valuable consideration.

Sale, for purposes of an Application for Permanent Employment Certification (Form ETA 9089) or an Application for Alien Labor Certification (Form ETA 750), means an agreement between two parties, called, respectively, the seller (or vendor) and the buyer (or purchaser) by which the seller, in consideration of the payment or promise of payment of a certain price in money terms, transfers ownership of a labor certification application or certification to the buyer.

* * * * *

■ 3. Add § 656.11 to read as follows:

§ 656.11 Substitutions and modifications to applications.

(a) Substitution or change to the identity of an alien beneficiary on any application for permanent labor certification, whether filed under this part or 20 CFR part 656 in effect prior to March 28, 2005, and on any resulting certification, is prohibited for any request to substitute submitted after July 16, 2007.

(b) Requests for modifications to an application will not be accepted for applications submitted after July 16, 2007.

■ 4. Add § 656.12 to read as follows:

§ 656.12 Improper commerce and payment.

The following provision applies to applications filed under both this part and 20 CFR part 656 in effect prior to March 28, 2005, and to any certification resulting from those applications:

(a) Applications for permanent labor certification and approved labor certifications are not articles of commerce. They shall not be offered for sale, barter or purchase by individuals or entities. Any evidence that an application for permanent labor certification or an approved labor certification has been sold, bartered, or purchased shall be grounds for investigation under this part and may be grounds for denial under § 656.24, revocation under § 656.32, debarment under § 656.31(f), or any combination thereof.

(b) An employer must not seek or receive payment of any kind for any activity related to obtaining permanent labor certification, including payment of the employer's attorneys' fees, whether as an incentive or inducement to filing, or as a reimbursement for costs incurred in preparing or filing a permanent labor certification application, except when work to be performed by the alien in connection with the job opportunity would benefit or accrue to the person or entity making the payment, based on that person's or entity's established business relationship with the employer. An alien may pay his or her own costs in connection with a labor certification, including attorneys' fees for representation of the alien, except that where the same attorney represents both the alien and the employer, such costs shall be borne by the employer. For purposes of this paragraph (b), payment includes, but is not limited to, monetary payments; wage concessions, including deductions from wages, salary, or benefits; kickbacks, bribes, or tributes; in kind payments; and free labor.

(c) Evidence that an employer has sought or received payment from any source in connection with an application for permanent labor certification or an approved labor certification, except for a third party to whose benefit work to be performed in connection with the job opportunity would accrue, based on that person's or entity's established business relationship with the employer, shall be grounds for investigation under this part or any appropriate Government agency's procedures, and may be grounds for denial under § 656.32, revocation under § 656.32, debarment under § 656.31(f), or any combination thereof.

■ 5. Amend § 656.24 by revising paragraph (g) to read as follows:

§ 656.24 Labor certification determinations.

* * * * *

(g)(1) The employer may request reconsideration within 30 days from the date of issuance of the denial.

(2) For applications submitted after July 16, 2007, a request for reconsideration may include only:

(i) Documentation that the Department actually received from the employer in response to a request from the Certifying Officer to the employer; or

(ii) Documentation that the employer did not have an opportunity to present previously to the Certifying Officer, but that existed at the time the Application for Permanent Labor Certification was filed, and was maintained by the employer to support the application for permanent labor certification in compliance with the requirements of § 656.10(f).

(3) Paragraphs (g)(1) and (2) of this section notwithstanding, the Certifying Officer will not grant any request for reconsideration where the deficiency that caused denial resulted from the applicant's disregard of a system prompt or other direct instruction.

(4) The Certifying Officer may, in his or her discretion, reconsider the determination or treat it as a request for review under § 656.26(a).

■ 6. Amend § 656.26 by revising paragraph (a) and adding a new paragraph (c), to read as follows:

§ 656.26 Board of Alien Labor Certification Appeals review of denials of labor certification.

(a) *Request for review.* (1) If a labor certification is denied, if a labor certification is revoked pursuant to § 656.32, or if a debarment is issued under § 656.31(f), a request for review of the denial, revocation, or debarment may be made to the Board of Alien Labor Certification Appeals by the employer or debarred person or entity by making a request for such an administrative review in accordance with the procedures provided in paragraph (a) of this section. In the case of a finding of debarment, receipt by the Department of a request for review, if made in accordance with this section, shall stay the debarment until such time as the review has been completed and a decision rendered thereon.

(2) A request for review of a denial or revocation:

(i) Must be sent within 30 days of the date of the determination to the Certifying Officer who denied the application or revoked the certification;

(ii) Must clearly identify the particular labor certification determination for which review is sought;

(iii) Must set forth the particular grounds for the request; and

(iv) Must include a copy of the Final Determination.

(3) A request for review of debarment:

(i) Must be sent to the Administrator, Office of Foreign Labor Certification, within 30 days of the date of the debarment determination;

(ii) Must clearly identify the particular debarment determination for which review is sought;

(iii) Must set forth the particular grounds for the request; and

(iv) Must include a copy of the Notice of Debarment.

(4)(i) With respect to a denial of the request for review, statements, briefs, and other submissions of the parties and amicus curiae must contain only legal argument and only such evidence that was within the record upon which the denial of labor certification was based.

(ii) With respect to a revocation or a debarment determination, the BALCA proceeding may be de novo.

* * * * *

(c) *Debarment Appeal File.* Upon the receipt of a request for review of debarment, the Administrator, Office of Foreign Labor Certification, immediately must assemble an indexed Appeal File:

(1) The Appeal File must be in chronological order, must have the index on top followed by the most recent document, and must have consecutively numbered pages. The Appeal File must contain the request for review, the complete application file(s), and copies of all written materials, such as pertinent parts and pages of surveys and/or reports or documents received from any court, DHS, or the Department of State, upon which the debarment was based.

(2) The Administrator, Office of Foreign Labor Certification, must send the Appeal File to the Board of Alien Labor Certification Appeals, Office of Administrative Law Judges, 800 K St., NW., Suite 400–N, Washington, DC 20001–8002.

(3) The Administrator, Office of Foreign Labor Certification, must send a copy of the Appeal File to the debarred person or entity. The debarred person or entity may furnish or suggest directly to the Board of Alien Labor Certification Appeals the addition of any documentation that is not in the Appeal File. The debarred person or entity must submit such documentation in writing, and must send a copy to the Associate Solicitor for Employment and Training Legal Services, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

■ 7. Amend § 656.30 by: revising paragraphs (a), (b), and (c); and adding a new paragraph (e)(3), to read as follows:

§ 656.30 Validity of and invalidation of labor certifications.

(a) *Priority Date.* (1) The filing date for a Schedule A occupation or sheepherders is the date the application was dated by the Immigration Officer.

(2) The filing date, established under § 656.17(c), of an approved labor certification may be used as a priority date by the Department of Homeland Security and the Department of State, as appropriate.

(b) *Expiration of labor certifications.* For certifications resulting from applications filed under this part and 20 CFR part 656 in effect prior to March 28, 2005, the following applies:

(1) An approved permanent labor certification granted on or after July 16, 2007 expires if not filed in support of a Form I–140 petition with the Department of Homeland Security within 180 calendar days of the date the Department of Labor granted the certification.

(2) An approved permanent labor certification granted before July 16, 2007 expires if not filed in support of a Form I–140 petition with the Department of Homeland Security within 180 calendar days of July 16, 2007.

(c) *Scope of validity.* For certifications resulting from applications filed under this part or 20 CFR part 656 in effect prior to March 28, 2005, the following applies:

(1) A permanent labor certification for a Schedule A occupation or sheepherders is valid only for the occupation set forth on the *Application for Alien Employment Certification* (Form ETA 750) or the *Application for Permanent Employment Certification* (Form ETA 9089) and only for the alien named on the original application, unless a substitution was approved prior to July 16, 2007. The certification is valid throughout the United States unless the certification contains a geographic limitation.

(2) A permanent labor certification involving a specific job offer is valid only for the particular job opportunity, the alien named on the original application (unless a substitution was approved prior to July 16, 2007), and the area of intended employment stated on the *Application for Alien Employment Certification* (Form ETA 750) or the *Application for Permanent Employment Certification* (Form ETA 9089).

* * * * *

(e)* * *

(3) A duplicate labor certification shall be issued by the Certifying Officer with the same filing and expiration dates, as described in paragraphs (a) and (b) of this section, as the original approved labor certification.

■ 8. Revise § 656.31 to read as follows:

§ 656.31 Labor certification applications involving fraud, willful misrepresentation, or violations of this part.

The following provisions apply to applications filed under both this part and 20 CFR part 656 in effect prior to March 28, 2005, and to any certifications resulting from those applications.

(a) *Denial.* A Certifying Officer may deny any application for permanent labor certification if the officer finds the application contains false statements, is fraudulent, or was otherwise submitted in violation of the Department's permanent labor certification regulations.

(b) *Possible fraud or willful misrepresentation.* (1) If the Department learns an employer, attorney, or agent is involved in possible fraud or willful misrepresentation in connection with the permanent labor certification program, the Department will refer the matter to the Department of Justice, Department of Homeland Security, or other government entity, as appropriate, for investigation, and send a copy of the referral to the Department of Labor's Office of Inspector General (OIG). In these cases, or if the Department learns an employer, attorney, or agent is under investigation by the Department of Justice, Department of Homeland Security, or other government entity for possible fraud or willful misrepresentation in connection with the permanent labor certification program, the Department may suspend processing of any permanent labor certification application involving such employer, attorney, or agent until completion of any investigation and/or judicial proceedings. Unless the investigatory agency, in writing, requests the Department to do otherwise, the Department shall provide written notification to the employer of the suspension in processing.

(2) A suspension pursuant to paragraph (b)(1) of this section may last initially for up to 180 days. No later than 180 days after the suspension began, if no criminal indictment or information has been issued, or judicial proceedings have not been concluded, the National Certifying Officer may resume processing some or all of the applications, or may extend the suspension in processing until completion of any investigation and/or judicial proceedings.

(c) *Criminal indictment or information.* If the Department learns that an employer, attorney, or agent is named in a criminal indictment or information in connection with the permanent labor certification program, the processing of applications related to that employer, attorney, or agent may be suspended until the judicial process is completed. Unless the investigatory or prosecutorial agency, in writing, requests the Department to do otherwise, the Department shall provide written notification to the employer of the suspension in processing.

(d) *No finding of fraud or willful misrepresentation.* If an employer, attorney, or agent is acquitted of fraud or willful misrepresentation charges, or if such criminal charges are withdrawn or otherwise fail to result in a finding of fraud or willful misrepresentation, the Certifying Officer shall decide each pending permanent labor certification application related to that employer, attorney, or agent on the merits of the application.

(e) *Finding of fraud or willful misrepresentation.* If an employer, attorney, or agent is found to have committed fraud or willful misrepresentation involving the permanent labor certification program, whether by a court, the Department of State or DHS, as referenced in § 656.30(d), or through other proceedings:

(1) Any suspension of processing of pending applications related to that employer, attorney, or agent will terminate.

(2) The Certifying Officer will decide each such application on its merits, and may deny any such application as provided in § 656.24 and in paragraph (a) of this section.

(3) In the case of a pending application involving an attorney or agent found to have committed fraud or willful misrepresentation, DOL will notify the employer associated with that application of the finding and require the employer to notify DOL in writing, within 30 days of the notification, whether the employer will withdraw the application, designate a new attorney or agent, or continue the application without representation. Failure of the employer to respond within 30 days of the notification will result in a denial. If the employer elects to continue representation by the attorney or agent, DOL will suspend processing of affected applications while debarment proceedings are conducted under paragraph (f) of this section.

(f) *Debarment.* (1) No later than six years after the date of filing of the labor certification application that is the basis for the finding, or, if such basis requires a pattern or practice as provided in paragraphs (f)(1)(iii), (iv), and (v) of this section, no later than six years after the date of filing of the last labor certification application which constitutes a part of the pattern or practice, the Administrator, Office of Foreign Labor Certification, may issue to an employer, attorney, agent, or any combination thereof a Notice of Debarment from the permanent labor certification program for a reasonable period of no more than three years, based upon any action that was prohibited at the time the action occurred, upon determining the employer, attorney, or agent has participated in or facilitated one or more of the following:

(i) The sale, barter, or purchase of permanent labor applications or certifications, or any other action prohibited under § 656.12;

(ii) The willful provision or willful assistance in the provision of false or inaccurate information in applying for permanent labor certification;

(iii) A pattern or practice of a failure to comply with the terms of the Form ETA 9089 or Form ETA 750;

(iv) A pattern or practice of failure to comply in the audit process pursuant to § 656.20;

(v) A pattern or practice of failure to comply in the supervised recruitment process pursuant to § 656.21; or

(vi) Conduct resulting in a determination by a court, DHS or the Department of State of fraud or willful misrepresentation involving a permanent labor certification application, as referenced in § 656.31(e).

(2) The Notice of Debarment shall be in writing; shall state the reason for the debarment finding, including a detailed explanation of how the employer, attorney or agent has participated in or facilitated one or more of the actions listed in paragraphs (f)(1)(i) through (v) of this section; shall state the start date and term of the debarment; and shall identify appeal opportunities under § 656.26. The debarment shall take effect on the start date identified in the Notice of Debarment unless a request for review is filed within the time permitted by § 656.26. DOL will notify DHS and the Department of State regarding any Notice of Debarment.

(g) *False Statements.* To knowingly and willfully furnish any false information in the preparation of the *Application for Permanent Employment Certification* (Form ETA 9089) or the *Application for Alien Employment Certification* (Form ETA 750) and any supporting documentation, or to aid, abet, or counsel another to do so is a Federal offense, punishable by fine or imprisonment up to five years, or both under 18 U.S.C. 2 and 1001. Other penalties apply as well to fraud or misuse of ETA immigration documents and to perjury with respect to such documents under 18 U.S.C. 1546 and 1621.

Signed in Washington, DC, this 1st day of May, 2007.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. E7–9250 Filed 5–16–07; 8:45 am]

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Vol. 72, No. 95

Thursday, May 17, 2007

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FEDERAL REGISTER PAGES AND DATE, MAY

23761–24176 1
24177–24522 2
24523–25188 3
25189–25676 4
25677–25944 7
25945–26280 8
26281–26532 9
26533–26708 10
26709–27052 11
27053–27240 14
27241–27406 15
27407–27720 16
27721–27948 17

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8133 24173
8134 24175
8135 24177
8136 25181
8137 25183
8138 25185
8139 25187
8140 26705
8141 27240
8142 27401
8143 27403
8144 27405

Executive Orders:
12866 (See 13432) 27717
13338 (See Notice of May 8, 2007 26707
13399 (See Notice of May 8, 2007 26707
13423 (See 13432) 27717
13431 26709
13432 27717

Administrative Orders:
Notices:
Notice of May 8, 2007 26707
Presidential Determinations:
No. 2007–17 of April 25, 2007 26281

5 CFR

Ch. LXIV 26533

Proposed Rules:
315 23772
752 23772

7 CFR

210 24179
220 24179
225 24179
226 24179
246 24179
247 24179
251 24179
319 26711
457 24523
800 27407
801 27407
916 25945
917 25945
959 25677
966 24530
982 23761
4279 27241

Proposed Rules:
205 27252
810 23775
925 24551
929 23777
930 24553
955 25207
1000 25986
1001 25986
1005 25986
1006 25986
1007 25986
1030 25986
1032 25986
1033 25986
1124 25986
1126 25986
1131 25986
1210 26005
1738 26742
1924 27470

9 CFR

205 25947

Proposed Rules:
149 27656
160 27656
161 27656
381 26567

10 CFR

11 27408
25 27408
72 26535

Proposed Rules:
26 27766
51 27068
60 27766
63 27766
72 26568
73 27766
74 27766
609 27471

11 CFR

Proposed Rules:
106 26569

12 CFR

509 25948
585 25948

13 CFR

120 25189

14 CFR

39 .....23765, 25957, 25960, 26283, 26285, 26538, 26711, 26714, 26716, 27721, 27723, 27725, 27730
71 .....23767, 23768, 25962, 25963, 26287, 27053, 27054, 27412, 27413, 27415, 27416, 27417, 27418, 27420, 27421
97 .....23769, 27241, 27422
121 26540
135 26540
401 27732

415 27732
431 27732
435 27732
440 27732
460 27732
Proposed Rules:
1 25207
33 25207
39 ....26008, 27489, 27491, 27493, 27497, 27766, 27768
71 25712
217 27770
234 27771
241 27770
248 27770
250 27770
291 27770
298 27770
374a 27770

15 CFR

705 25194
730 25194
736 25194
744 25194
747 25194
754 25194
756 25194
760 25194
766 25194
768 25194
770 25194
772 ....25194, 25680
774 25680

16 CFR

Proposed Rules:
259 26328

18 CFR

Proposed Rules:
35 23778

19 CFR

123 25965

20 CFR

404 27424
416 27424
498 27425
656 27904

21 CFR

510 ....24184, 26288
520 ....24185, 27733
522 ....27733, 27734
529 26289
866 26290
1308 24532
Proposed Rules:
878 26011

22 CFR

303 27055

24 CFR

3280 27222
3282 27222
3288 27222
Proposed Rules:
203 27048
320 25926
350 25926
983 24080

26 CFR

1 ....23771, 26542
602 24678
Proposed Rules:
1 ....24192, 26011, 26012, 26576, 26689

28 CFR

Proposed Rules:
16 26037

29 CFR

4022 27243
4044 27243
Proposed Rules:
1910 27771
1915 27771
1917 27771
1918 27771

30 CFR

202 24448
203 25197
206 24448
210 24448
217 24448
218 24448
250 25197
251 25197
260 25197
935 26291
Proposed Rules
Ch. VII 27069
946 26329
948 27782

32 CFR

Proposed Rules:
216 25713
571 26576

33 CFR

100 ....25202, 25685, 25966, 27735
117 ....24534, 25203
151 27738
165 ....23771, 24185, 24534, 25686, 25966, 26296, 26298, 27244, 27740
Proposed Rules:
100 ....25214, 27499
117 ....26038, 27264
165 ....23779, 23781, 24196, 25217, 25219, 25226, 25720, 27070

34 CFR

Proposed Rules:
200 25228
303 26456

36 CFR

242 25688
Proposed Rules:
7 27499
261 26578
1193 26580
1194 26580

37 CFR

380 24084

38 CFR

2 27246
Proposed Rules:
1 25930
14 25930
19 25930
20 25930

39 CFR

111 26543

40 CFR

9 ....24496, 26544
35 24496
49 25698
51 24060
52 ....24060, 25203, 25967, 25969, 25971, 25973, 25975, 26718, 27056, 27060, 27247, 27425, 27640, 27644, 27648, 27652
60 27437
61 27437
62 25978
63 ....25138, 25980, 27437
70 24060
71 24060
80 23900
81 ....25967, 26718, 27060, 27247, 27425, 27640, 27644, 27648, 27652
112 27443
174 26300
180 ....24188, 26304, 26310, 26317, 26322, 27448, 27452, 27456, 27460, 27463
372 26544
Proposed Rules:
51 ....24472, 26202
52 ....23783, 25241, 26040, 26045, 26046, 26057, 26202, 26581, 26759, 27265, 27787
60 27178
62 26069
63 26069
81 ....23783, 26046, 26057, 26581, 26759, 27265
93 24472
122 26582
131 27789
141 24016
180 24198
412 26582

41 CFR

Proposed Rules:
101-42 25723
101-45 25723
102-40 25723

42 CFR

412 26870
413 26870
Proposed Rules:
411 24680
412 ....24680, 26230
413 ....24680, 25526
418 24116
484 ....25356, 26887
489 24680

43 CFR

3000 24358
3200 24358
3280 24358

44 CFR

65 27741
67 27752

47 CFR

1 27688
15 26554
20 27688
27 27688
73 ....24190, 24191
90 27688
Proposed Rules:
1 ....24213, 27519
20 27519
27 24238
43 27519
73 ....26331, 26332

48 CFR

Ch. 1 (2 documents) 27364, 27397
1 27364
2 27364
4 27364
7 27364
14 27364
15 27364
16 27364
17 27364
18 27364
19 27364
22 27364
28 27364
31 27364
32 27364
35 27364
37 27364
41 27364
42 27364
43 27364
44 27364
45 27364
46 27364
49 27364
51 27364
52 27364
53 27364
1804 26560
1852 26560
3001 24536
3002 24536
3033 24536
Proposed Rules:
12 24554
23 24554
42 24554
52 24554

49 CFR

107 24536
171 25162
172 25162
173 25162
175 25162
176 25162
571 25484
585 25484
Proposed Rules:
571 27535

50 CFR

100 25688
223 26722
622 27251
635 26735
648 ....25709, 26325, 26563
660 ....24539, 27064, 27759
665 27065
679 27067
Proposed Rules:
17 24253
648 ....25735, 26770

660.....27276 665.....26771 679.....27798

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 17, 2007

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery and conservation management:

Western Pacific fisheries—

Electronic logbook forms; optional use; published 4-17-07

Fishery conservation and management:

Caribbean, Gulf, and South Atlantic fisheries—

Snapper/grouper; published 5-15-07

International fisheries regulations:

Pacific albacore tuna—

U.S. vessels eligible to fish in Canadian waters; annual listing; published 4-17-07

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Filing fees; annual update; published 4-17-07

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Ivermectin and clorsulon; implantation or injectable dosage form; published 5-17-07

Pimobendan; oral dosage form; published 5-17-07

HOMELAND SECURITY DEPARTMENT

Coast Guard

Pollution:

Vessels carrying oil, noxious liquid substances, garbage, municipal or commercial waste, and ballast water; published 5-17-07

PERSONNEL MANAGEMENT OFFICE

Health benefits; Federal employees:

Continued coverage during retirement; requirements waiver; published 4-17-07

Pay administration:

Compensatory time off for travel; published 4-17-07

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

McCauley Propeller Systems; published 4-12-07

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT

Acquisition regulations:

Administrative changes; comments due by 5-21-07; published 4-19-07 [FR E7-07437]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Citrus canker; comments due by 5-21-07; published 3-22-07 [FR E7-05229]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:

Poultry product exportation to United States; eligible countries; addition—

Chile; comments due by 5-25-07; published 5-10-07 [FR 07-02202]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands groundfish; comments due by 5-25-07; published 3-26-07 [FR E7-05474]

Northeastern United States fisheries—

Summer flounder, scup, and black sea bass; comments due by 5-24-07; published 4-24-07 [FR 07-02016]

DEFENSE DEPARTMENT

Civilian health and medical program of uniformed services (CHAMPUS):

TRICARE program —

Dental Program; John Warner National Defense Authorization Act changes; comments due by 5-22-07; published 3-23-07 [FR 07-01375]

Federal Acquisition Regulation (FAR):

Contractor code of ethics and business conduct; comments due by 5-23-07; published 4-23-07 [FR 07-01985]

Contracts with religious entities; comments due by 5-21-07; published 3-22-07 [FR 07-01357]

Subcontractor award data, reporting requirements; comments due by 5-21-07; published 3-21-07 [FR 07-01318]

DEFENSE DEPARTMENT

Engineers Corps

Danger zones and restricted areas:

Marine Corps Air Station Cherry Point, NC; rifle range; comments due by 5-25-07; published 4-25-07 [FR E7-07901]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Surface coating of automobiles, light-duty trucks, and plastic parts and products; comments due by 5-24-07; published 4-24-07 [FR E7-07758]

Air pollution control:

State operating permits programs—

Hawaii; comments due by 5-21-07; published 4-20-07 [FR E7-07550]

Hawaii; comments due by 5-21-07; published 4-20-07 [FR E7-07549]

Maryland; comments due by 5-25-07; published 4-25-07 [FR E7-07919]

Maryland; comments due by 5-25-07; published 4-25-07 [FR E7-07920]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Montana; comments due by 5-25-07; published 4-25-07 [FR E7-07900]

Air quality implementation plans; approval and promulgation; various States:

Nevada; comments due by 5-21-07; published 4-20-07 [FR E7-07546]

Wisconsin; comments due by 5-21-07; published 4-20-07 [FR E7-07541]

Pesticide programs:

Plant-incorporated protectant tolerance exemptions; administrative revisions; comments due by 5-25-07; published 4-25-07 [FR E7-07767]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

6-benzyladenine; comments due by 5-21-07; published 3-21-07 [FR 07-01386]

Spinosad; comments due by 5-21-07; published 3-21-07 [FR E7-04760]

Thifensulfuron methyl; comments due by 5-21-07; published 3-21-07 [FR E7-04762]

Solid wastes:

Safe and environmentally sound recycling and resource conservation; and solid waste definition revisions; comments due by 5-25-07; published 3-26-07 [FR E7-05159]

EXECUTIVE OFFICE OF THE PRESIDENT

Privacy and Civil Liberties Oversight Board

Freedom of Information Act; implementation; comments due by 5-25-07; published 4-10-07 [FR E7-05812]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Wireless telecommunication services—

698-806 MHz band enhanced 911 emergency calling systems and hearing-aid compatible telephones; comments due by 5-23-07; published 5-2-07 [FR E7-08440]

Radio services, special:

Fixed microwave services—

10.7-11.7 GHz band; antenna requirements; comments due by 5-25-07; published 4-25-07 [FR E7-07796]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Contractor code of ethics and business conduct; comments due by 5-23-07; published 4-23-07 [FR 07-01985]

Contracts with religious entities; comments due by

5-21-07; published 3-22-07 [FR 07-01357]
Subcontractor award data, reporting requirements; comments due by 5-21-07; published 3-21-07 [FR 07-01318]

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicaid:
Health care-related taxes; comments due by 5-22-07; published 3-23-07 [FR 07-01331]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs:
Internal analgesic, antipyretic, and antirheumatic products (OTC); tentative final monograph; required warnings and other labeling; comments due by 5-25-07; published 12-26-06 [FR E6-21855]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Maryland; comments due by 5-21-07; published 4-5-07 [FR E7-06303]
Virginia; comments due by 5-21-07; published 4-6-07 [FR E7-06146]
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Columbia River, OR; comments due by 5-23-07; published 4-23-07 [FR E7-07634]

HOMELAND SECURITY DEPARTMENT
Transportation Security Administration
Air cargo security requirements; compliance dates; comments due by 5-21-07; published 3-20-07 [FR 07-01327]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
FHA programs; introduction:
Uniform physical condition standards and physical inspection requirements; physical inspection report response time; comments due by 5-24-07; published 4-24-07 [FR E7-07706]
Grants and agreements:
Nonprocurement debarment and suspension; OMB guidance; implementation; comments due by 5-22-07; published 3-23-07 [FR E7-05167]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Migratory bird permits:
Migratory birds removal from buildings; comments due by 5-25-07; published 3-26-07 [FR E7-05120]

INTERIOR DEPARTMENT
National Park Service
Special regulations:
National Capital Region; parking violations; comments due by 5-21-07; published 3-21-07 [FR E7-05112]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Contractor code of ethics and business conduct; comments due by 5-23-07; published 4-23-07 [FR 07-01985]
Contracts with religious entities; comments due by 5-21-07; published 3-22-07 [FR 07-01357]
Subcontractor award data, reporting requirements; comments due by 5-21-07; published 3-21-07 [FR 07-01318]

POSTAL SERVICE
Domestic Mail Manual:
Lithium batteries; revised mailing standards; comments due by 5-25-07; published 4-25-07 [FR E7-07817]
Sharps and other regulated medical waste containers; revised mailing standards; comments due by 5-25-07; published 4-25-07 [FR E7-07816]

SOCIAL SECURITY ADMINISTRATION
Social security benefits and supplemental security income:
Federal old age, survivors, and disability insurance, and aged, blind, and disabled—
Consultative examinations; annual onsite review of medical providers; threshold billing amount revision; comments due by 5-21-07; published 3-20-07 [FR E7-04958]
Supplemental security income:
Aged, blind, and disabled—
Individuals residing in medical treatment facilities; reduced benefit rate; comments due by 5-25-07; published 3-26-07 [FR E7-05134]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Light-sport aircraft; definition; comments due by 5-21-07; published 4-19-07 [FR E7-07453]
Airworthiness directives:
Airbus; comments due by 5-21-07; published 4-20-07 [FR E7-07516]
Alpha Aviation Design Ltd.; comments due by 5-23-07; published 4-23-07 [FR E7-07644]
Avions Marcel Dassault-Breguet; comments due by 5-24-07; published 4-24-07 [FR E7-07741]
Bombardier; comments due by 5-21-07; published 4-26-07 [FR E7-07979]
Diamond Aircraft Industries GmbH; comments due by 5-24-07; published 4-24-07 [FR E7-07752]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 5-24-07; published 4-24-07 [FR E7-07736]
Eurocopter Deutschland GmbH; comments due by 5-22-07; published 3-23-07 [FR E7-05139]
McDonnell Douglas; comments due by 5-21-07; published 4-4-07 [FR E7-06269]
Short Brothers; comments due by 5-23-07; published 4-23-07 [FR E7-07118]
SOCATA-Groupe Aerospatiale; comments due by 5-24-07; published 4-24-07 [FR E7-07756]
Stemme GmbH & Co.; comments due by 5-23-07; published 4-23-07 [FR E7-07642]
Airworthiness standards:
Special conditions—
Boeing Model 787-8 airplane; comments due by 5-24-07; published 4-9-07 [FR E7-06542]
McDonnell Douglas Models DC-10-10, 10-15, 10-30, 10-30F, 10-40, and 10-40F airplanes; comments due by 5-23-07; published 4-23-07 [FR E7-07699]
Class E airspace; comments due by 5-24-07; published 4-9-07 [FR E7-06539]

TREASURY DEPARTMENT
National Customs Automation Program:
Merchandise entry; remote location filing; comments due by 5-22-07; published 3-23-07 [FR 07-01330]

U.S. CUSTOMS AND BORDER PROTECTION
National Customs Automation Program:
Merchandise entry; remote location filing; comments due by 5-22-07; published 3-23-07 [FR 07-01330]

VETERANS AFFAIRS DEPARTMENT
Board of Veterans' Appeals:
Appeals regulations and rules of practice—
Supplemental statement of case; response period change; comments due by 5-25-07; published 3-26-07 [FR E7-05435]

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. 1681 / P.L. 110-26
The American National Red Cross Governance Modernization Act of 2007 (May 11, 2007; 121 Stat. 103; 8 pages)
Last List May 10, 2007

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