AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Federal Register

1–12–06 Thursday
Vol. 71 No. 8 Jan. 12, 2006

Pages 1915–2134

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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How To Cite This Publication: Use the volume number and the page number. Example: 71 FR 12345.

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Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV05–930–1 FR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2005–2006 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes final free and restricted percentages for the 2005–2006 crop year. The percentages are 58 percent free and 42 percent restricted and will establish the proportion of cherries from the 2005 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body that locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

EFFECTIVE DATE: January 13, 2006. This final rule applies to all 2005–2006 crop year restricted cherries until they are properly disposed of in accordance with marketing order requirements.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; Telephone: (301) 734–5243, or Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW. STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Fax: (202) 720–8938. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW. STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule establishes final free and restricted percentages for tart cherries for the 2005–2006 crop year, beginning July 1, 2005, through June 30, 2006. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (to obtain diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated Districts for this season are: District one—Northern Michigan; District two—Central Michigan; District three—Southwest Michigan; District four—New York; District seven—Utah; District eight—Washington, and District nine—Wisconsin. Districts five and six (Oregon and Pennsylvania, respectively) will not be regulated for the 2005–2006 season.

The order prescribes under § 930.52 that those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded six million pounds. A district not meeting the six million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the Districts of Oregon and Pennsylvania, handlers in those districts will not be subject to volume regulation during the 2005–2006 crop year.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. Demand for tart cherries and tart cherry products tend to be relatively stable from year to year. The supply of tart cherries, by contrast, varies greatly from crop year to crop year. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, because tart cherries are processed either into cans or frozen, they can be stored and carried over from

crop year to crop year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely balanced. The primary purpose of setting free and restricted percentages is to balance supply with demand, reduce large surpluses that may occur, and to assure adequate supplies in short crop production years.

Section 930.50(a) of the order prescribes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year.

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the actual carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and subtracting that figure from the current year's USDA crop forecast. If the resulting number is positive, this represents the estimated over-production, which would be the restricted percentage tonnage. The restricted percentage tonnage is then divided by the sum of the USDA crop forecast or by an average of such other crop estimates for the regulated districts to obtain percentages for the regulated districts. The Board is required to establish a preliminary restricted percentage equal to the quotient, rounded to the nearest whole number, with the complement being the preliminary free tonnage percentage. If the tonnage requirements for the year are more than the USDA crop forecast, the Board is required to establish a preliminary free tonnage percentage of 100 percent and a preliminary restricted percentage of zero. The Board is required to announce the preliminary percentages in accordance with paragraph (h) of § 930.50.

The Board met on June 23, 2005, and computed, for the 2005–2006 crop year, an optimum supply of 169 million pounds. The Board recommended that the desirable carryout figure be zero pounds. Desirable carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds, or such other amount, as the Board with the approval of the Secretary, may establish.

The Board also recommended an economic adjustment of 16 million pounds to be subtracted from the surplus to recognize the decrease in the optimum supply formula which includes total production amounts from the 2002 crop disaster year. The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop for the entire production area was 244 million pounds; a 28 million pound carryin (based on Board estimates) was subtracted from the optimum supply of 169 pounds which resulted in 2005–2006 tonnage requirements (adjusted optimum supply) of 141 million pounds. The carryin figure reflects the amount of cherries that handlers actually had in inventory at the beginning of the 2005–2006 crop year. Subtracting the adjusted optimum supply of 141 million pounds from the USDA crop estimate (244 million pounds) results in a surplus of 103 million pounds of tart cherries. An economic adjustment of 16 million pounds is subtracted from the 103 million pound surplus that leaves a total surplus of 87 million pounds. The surplus was divided by the production in the regulated districts (241 million pounds) and resulted in a restricted percentage of 36 percent for the 2005–2006 crop year. The free percentage was 64 percent (100 percent minus 36 percent). The Board established these percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information available at the June meeting for the 2005–2006 year:

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Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry. No modifications were made this crop year.

USDA establishes final free and restricted percentages through the informal rulemaking process. These percentages make available the tart cherries necessary to achieve the optimum supply figure calculated by the Board. The difference between any final free percentage designated by the USDA and 100 percent is the final restricted percentage. The Board met on September 9, 2005, to recommend final free and restricted percentages.

The actual production reported by the Board was 267 million pounds, which is a 23 million pound increase from the USDA crop estimate of 244 million pounds.

A 29 million pound carryin (based on handler reports) was subtracted from the Board's optimum supply of 169 million pounds, yielding an adjusted optimum supply for the current crop year of 140 million pounds. The optimum supply of 140 million pounds was subtracted from the actual production of 267 million pounds, which resulted in a 127 million pound surplus. An economic adjustment of 16 million pounds was subtracted from the surplus to equal 111 million pounds of surplus tart cherries. The total surplus of 111 million pounds is divided by the 264 million-pound volume of tart cherries produced in the regulated districts. This results in a 42 percent restricted percentage and a corresponding 58 percent free percentage for the regulated districts.

The final percentages are based on the Board's reported production figures and the following supply and demand information available in September for the 2005–2006 crop year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	169
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board	169
Preliminary Percentages:	
(4) Board reported production	267
(5) Carryin held by handlers as of July 1, 2005	29
(6) Adjusted optimum supply (Item 3 minus Item 5)	140
(7) Surplus (restricted tonnage) (Item 4 minus Item 6)	127
(8) Economic Adjustment	16
(9) Total Surplus (Item 7 minus Item 8)	111
(10) Production in regulated districts	264

	Percentages	
	Free	Restricted
(11) Final percentages (Item 9 divided by Item 10 × 100 equals the restricted percentage; 100 minus the restricted percentage equals the free percentage)	58	42

USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal will be met by this action which releases 100 percent of the optimum supply and the additional release of tart cherries provided under for § 930.50(g).

This release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board recommended that such release should be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive on the December and May release dates. Once released, such cherries are released for free use by such handler. Approximately 17 million pounds would be made available to handlers this season in accordance with USDA Guidelines. This release will be made available to every handler and released to such handler in proportion to the handler's percentage of the total regulated crop handled. If a handler does not take his/her proportionate amount, such amount remains in the inventory reserve.

The Regulatory Flexibility Act and Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $6,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the producers and handlers are considered small entities under SBA's standards.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 2000/2001 through 2004/2005, approximately 93.4 percent of the U.S. tart cherry crop, or 216.8 million pounds, was processed annually. Of the 216.8 million pounds of tart cherries processed, 59 percent was frozen, 28 percent was canned, and 13 percent was utilized for juice and other products.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. Bearing acreage has declined from a high of 50,050 acres in 1987/88 to 36,950 acres in 2004/2005. This represents a 26 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 73 percent of the total and produces about 70 percent of the U.S. tart cherry crop each year.

The 2005/2006 crop is relatively large in size at 266.7 million pounds. This is the highest level of production since the 2001/2002 crop. The largest crop occurred in 1995/1996 with production in the regulated districts reaching a record 395.6 million pounds. The price per pound received by tart cherry growers ranged from a low of 7.3 cents

in 1987 to a high of 46.4 cents in 1991. Wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the ''marketing margin.''

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages. These restricted percentages are only applied to states or districts with a 3-year average of production greater than six million pounds, and to states or districts in which the production is 50 percent or more of the previous 5-year processed production average.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the costs for storage, interest, and handling of the stored cherries.

The price that growers receive for their crop is largely determined by the total production volume and carrying inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry results in decreased shipments to primary markets. Without volume control the primary markets would likely be over-supplied, resulting in lower grower prices.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. The econometric model provides a way to see what impacts volume control may have on grower prices. The three districts in Michigan, along with the districts in Utah, New York, Washington, and Wisconsin are the restricted areas for this crop year and their combined total production is 264 million pounds. A 42 percent restriction means 185 million pounds is available to be shipped to primary markets.

In addition, USDA requires a 10 percent release from reserves as a market growth factor. This results in an additional 17 million pounds being available for the primary market. A total of 202 million pounds are available for primary market sales.

The econometric model is used to estimate grower prices with and without regulation. Without the volume controls, grower prices are estimated to be approximately $0.08 higher than without volume controls.

The use of volume controls is estimated to have a positive impact on growers' total revenues. With restriction, revenues are estimated to be $3.9 million higher than without restrictions. The without restrictions scenario assumes that all tart cherries produced would be delivered to processors for payments.

It is concluded that the 42 percent volume control would not unduly burden producers, particularly smaller growers. The 42 percent restriction would be applied to the growers in Michigan, New York, Utah, Washington, and Wisconsin. The growers and handlers in the other two states covered under the marketing order will benefit from this restriction.

Without the use of volume controls, the industry could be expected to start to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carrying inventories, a decrease in grower prices of $0.0033 per pound occurs. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products. The use of reserve cherries in the production shortened 2002–2003 crop year proved to be very useful and beneficial to growers and packers.

In discussing the possibility of marketing percentages for the 2005–2006 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the

estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in September 2005 of the free and restricted percentages established by this rule (58 percent free and 42 percent restricted).

One alternative to this action would be not to have volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry due to the size of the 2005–2006 crop.

As mentioned earlier, the USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements under the tart cherry marketing order have been previously approved by OMB and assigned OMB Number 0581–0177.

Reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

A proposed rule concerning this action was published in the **Federal Register** on November 7, 2005 (70 FR 67375). Copies of the rule were mailed or sent via facsimile to all Board members and handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending December 7, 2005, was provided to allow interested persons to respond to the proposal. No comments were received.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping tart cherries from the 2005–2006 crop. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

■ For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 930.254 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 930.254 Final free and restricted percentages for the 2005–2006 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2005, which shall be free and restricted, respectively, are designated as follows: Free percentage, 58 percent and restricted percentage, 42 percent.

Dated: January 6, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–273 Filed 1–11–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. FV05–946–3 FIR]

Irish Potatoes Grown in Washington; Modification of Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that modified the pack requirements prescribed under the Washington potato marketing order. The marketing order regulates the handling of Irish potatoes grown in Washington, and is administered locally by the State of Washington Potato Committee (Committee). This rule continues in effect the action that modified the pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in cartons to better meet buyer needs. Prior to this action, only potatoes grading U.S. No. 1 or better, or potatoes failing to grade U.S. No. 1 only because of internal defects, were allowed to be shipped in

cartons. The relaxation in pack requirements will help maximize producer returns.

EFFECTIVE DATE: February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 946, as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that modified the pack requirements by allowing handlers to ship U.S. No. 2 grade potatoes in cartons provided the cartons are permanently and conspicuously marked as to grade. This change will enable handlers to ship U.S. No. 2 potatoes in cartons, thus meeting customer demands and maximizing producer returns. Prior to this action, only potatoes grading U.S. No. 1 grade or better, or potatoes failing to grade U.S. No. 1 only because of internal defects, were allowed to be shipped in cartons.

Section 946.52 of the order authorizes the establishment of grade, size, quality, or maturity regulations for any variety or varieties of potatoes grown in the production area. Section 946.52 also authorizes the regulation of the size, capacity, weight, dimensions, pack, and marking or labeling of the container, or containers, which may be used in the packing or handling of potatoes, or both (70 FR 41129; July 18, 2005). Section 946.51 further authorizes the modification, suspension, or termination of regulations issued under § 946.52. Section 946.60 provides that whenever potatoes are regulated pursuant to § 946.52 such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

Section 946.336 of the order's administrative rules prescribes the quality, size, maturity, cleanness, pack, and inspection requirements for fresh market Washington potatoes. Section 946.336(c) prescribes the pack requirements for domestic and export shipments of potatoes. Grade requirements are based on the U.S. Standards for Grades of Potatoes (7 CFR part 51.1540–51.1566).

At a telephone meeting on July 26, 2005, the Committee unanimously recommended the relaxation of pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in cartons that are permanently and conspicuously marked as to grade. Requirements in effect prior to this action provided that all potatoes packed in cartons shall be U.S. No. 1 grade or better, except that potatoes failing to grade U.S. No. 1 only because of internal defects may be shipped in cartons. Lots of potatoes failing U.S. No. 1 only account of internal defects cannot contain more than 10 percent damage by any internal defect or combination of internal defects, and not more than 5 percent serious damage by any internal defect or combination of internal defects.

Customers have been requesting U.S. No. 2 grade potatoes in cartons because of difficulties encountered in handling 50-pound burlap or paper bags. The burlap bags are messy, difficult to handle, and do not stack well on pallets. The paper bags often tear and are equally difficult to handle or stack. Warehouses that use electronic bar codes have reported less administration and recordkeeping problems with cartons than bags because the codes are more legible on cartons.

Many customers now purchase potatoes from other areas where U.S. No. 2 grade potatoes are packed in cartons. The Committee would like to respond to these changing market conditions so that handlers remain competitive with other areas and not lose sales.

The Committee also recognized the need to distinguish these U.S. No. 2 grade potatoes in cartons from the industry's traditional premium packs of potatoes that grade U.S. No. 1, and potatoes that fail to grade U.S. No. 1 only because of internal defects. Without such distinction, buyers might become confused and the U.S. No. 2 grade potatoes in cartons might have a price depressing effect on these premium packs. Therefore, the Committee included in its recommendation that cartons containing such potatoes be permanently and conspicuously marked to grade.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 51 handlers of Washington potatoes who are subject to regulation under the marketing order and approximately 272 potato producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $6,000,000, and small

agricultural producers are defined as those having annual receipts of less than $750,000.

During the 2003–2004 marketing year 10,652,495 hundredweight of Washington potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of $7.45 per hundredweight, the Committee estimates that 48 handlers, or about 94 percent, had annual receipts of less than $6,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Washington potatoes for the 2003 marketing year (the most recent period that final statistics are available) was $5.25 per hundredweight. The average annual producer revenue for each of the 272 Washington potato producers is therefore calculated to be approximately $205,609.

In view of the foregoing, the majority of the Washington potato producers and handlers may be classified as small entities.

This rule continues in effect the action that modified the pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in cartons provided the cartons are permanently and conspicuously marked as to grade. This change enables handlers to ship U.S. No. 2 potatoes in cartons, thus meeting customer demands and maximizing producer returns.

The authority for the pack and marking or labeling requirements is provided in § 946.52 of the order (70 FR 41129; July 18, 2005). Section 946.336(c) of the order's administrative rules prescribes the pack requirements for domestic and export shipments of potatoes.

The Committee believes that the recommendation should increase sales of U.S. No. 2 grade potatoes. This action is expected to further increase shipments of U.S. No. 2 potatoes to the food service industry, and help the Washington potato industry benefit from the increased growth in the food service industry. These changes might require the purchase of new equipment to mark the cartons. However, these costs will be minimal and would be offset by the benefits of being able to ship U.S. No. 2 grade potatoes in cartons. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than large entities.

The Committee discussed several alternatives to this recommendation, including not allowing U.S. No. 2 grade potatoes to be shipped in cartons. However, the Committee believed that it was important to be able to respond to changing market conditions and meet customer needs.

The Committee considered restricting carton size, carton types, as well as the size and location of the marking on the carton. However, the Committee decided not to specify size or type of container or size and location of the markings to allow handlers more flexibility in marketing U.S. No. 2 grade potatoes in cartons provided the cartons were marked permanently and conspicuously as to grade.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's July 26, 2005, meeting was widely publicized throughout the Washington potato industry and all interested persons were invited to participate in Committee deliberations on all issues. Like all Committee meetings, all entities, both large and small, were able to express views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on September 12, 2005. Copies of the rule were mailed by Committee staff to all Committee members and Washington potato handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended November 14, 2005. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (70 FR 53723, September 12, 2005) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 946—IRISH POTATOES GROWN IN WASHINGTON

■ Accordingly, the interim final rule amending 7 CFR part 946 which was published at 70 FR 53723 on September 12, 2005, is adopted as a final rule without change.

Dated: January 6, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–274 Filed 1–11–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV06–982–1 IFR]

Hazelnuts Grown in Oregon and Washington; Establishment of Final Free and Restricted Percentages for the 2005–2006 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes final free and restricted percentages for domestic inshell hazelnuts for the 2005–2006 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The final free and restricted percentages are 11.4388 and 88.5612 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market (free) and the quantity of domestically produced hazelnuts that must be disposed of in outlets approved by the Board (restricted). Volume regulation is intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts with the goal of providing producers with reasonable returns. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

DATES: *Effective Date:* January 13, 2006. This interim final rule applies to all 2005–2006 marketing year restricted hazelnuts until they are properly disposed of in accordance with

marketing order requirements. Comments received by March 13, 2006 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, E-mail: *moab.docketclerk@usda.gov*, or Internet: *http://www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 115 and Marketing Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended that this action apply to all merchantable hazelnuts handled during the 2005–2006 marketing year (July 1, 2005, through June 30, 2006). This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule establishes free and restricted percentages which allocate the quantity of domestically produced hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which must be exported, shelled, or otherwise disposed of by handlers (restricted). The Board met and, after determining that volume regulation would tend to effectuate the declared policy of the Act, developed a marketing policy to be employed for the duration of the 2005–2006 marketing year. Using statistical compilations and a well defined procedure, the Board estimated inshell trade demand and total available supply for the coming marketing year and subsequently used those estimates as the basis for computing and announcing the free and restricted marketing percentages for the year. The Board determined that, for the 2005–2006 marketing year, projected inshell trade demand is 3,095 tons and projected total available new supply is 27,057 tons. Using those estimates, the Board voted unanimously at their November 15, 2005, meeting to recommend to USDA that the final free and restricted percentages for the 2005–2006 marketing year be established at 11.4388 and 88.5612 percent, respectively.

The Board's authority to recommend volume regulation and use computations to determine the allocation of hazelnuts to individual markets is specified in § 982.40 of the order. Under the order's provisions, free and restricted market allocations of hazelnuts are expressed as percentages of the total supply subject to regulation and are derived by dividing the computed inshell trade demand by the Board's estimate of the total domestically produced supply of hazelnuts that will be available over the course of the marketing year.

Inshell trade demand, the key component of the marketing policy, is the quantity of inshell hazelnuts necessary to adequately supply the needs of the domestic market for the duration of the marketing year. The Board determines the inshell trade demand for each year and uses that estimate as the basis for setting the percentage of the available hazelnuts that handlers may ship to the domestic inshell market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three years' trade acquisitions of inshell hazelnuts, allowing adjustments for abnormal crop or marketing conditions. The Board may increase the computed inshell trade demand by up to 25 percent, if market conditions warrant an increase.

Prior to September 20 of each marketing year, the Board follows a procedure, specified by the order, to compute and announce preliminary free and restricted percentages. The preliminary free percentage releases 80 percent of the adjusted inshell trade demand to the domestic market. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against any potential underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation where total supply is the sum of the estimated crop production less the three-year average disappearance plus the undeclared carry-in from the previous marketing year.

On or before November 15 of each marketing year, the Board must meet again to recommend interim final and final free and restricted percentages and to authorize permitted outlets for restricted percentages. Interim final percentages release 100 percent of the inshell trade demand (effectively releasing the 20 percent held back during the preliminary stage). Final percentages may release an additional 15 percent for desirable carryout and are effective 30 days prior to the end of the marketing year, or earlier as recommended by the Board.

On August 23, 2005, the National Agricultural Statistics Service (NASS) released an estimate of 2005 hazelnut production for the Oregon and Washington area at 28,000 dry orchard-

run tons. NASS uses an objective yield survey method to estimate hazelnut production which has historically been very accurate.

On August 25, 2005, the Board met and estimated total available supply for the 2005 crop year at 27,057 tons. The Board arrived at this estimate by using the crop estimate compiled by NASS (28,000 tons) and then adjusting that estimate to account for disappearance and carry-in. The order requires the Board to reduce the estimate by the average disappearance over the preceding three years (1,075 tons) and to increase it by the amount of undeclared carry-in from previous years' production (132 tons.)

Disappearance is the difference between the estimated orchard-run production and the actual supply of merchantable product available for sale by handlers. Disappearance can consist of (1) unharvested hazelnuts; (2) culled product (nuts that are delivered to handlers but later discarded); (3) product used on the farm, sold locally, or otherwise disposed of by producers; and (4) statistical error in the orchard-run production estimate.

Undeclared carry-in is hazelnuts that were produced in a previous marketing year but were not subject to regulation because they were not shipped during that marketing year. Undeclared carry-in is subject to regulation during the current marketing year and is accounted for as such by the Board.

As provided by the order, the Board computed inshell trade demand to be 3,095 tons by taking the average of the past three years' sales (2,775 tons), increasing the three year average by 15 percent to encourage increased sales (416 tons), and then reducing that quantity by the declared carry-in from last year's crop (96 tons). Declared carry-in is product regulated under the order during a preceding marketing year but not shipped during that year. This inventory must be accounted for when estimating the quantity of product to make available to adequately supply the market.

The Board computed and announced preliminary free and restricted percentages of 9.1511 percent and 90.8489 percent, respectively, at its August 25, 2005, meeting. The Board computed the preliminary free percentage by multiplying the adjusted trade demand by 80 percent and dividing the result by the total available supply subject to regulation (3,095 tons × 80 percent/27,057 tons = 9.1511 percent). The preliminary free percentage initially released 2,476 tons of hazelnuts from the 2005–2006 supply for domestic inshell use, and the preliminary restricted percentage withheld 24,581 tons for the export and kernel markets.

Under the order, the Board must meet again on or before November 15 to recommend interim final and final percentages. The Board uses current crop estimates to calculate interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release the remaining 20 percent (to total 100 percent of the inshell trade demand) previously computed by the Board. Final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season (i.e., desirable carryout). The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by USDA. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 15, 2005, and reviewed and approved an amended marketing policy and recommended the establishment of final free and restricted percentages. The Board decided that market conditions were such that it would not be necessary to release additional domestic inshell hazelnuts to ensure adequate carryout. Accordingly, no interim final free and restricted percentages were recommended. The Board recommended final free and restricted percentages of 11.4388 and 88.5612 percent, respectively, and that those percentages be effective immediately. The final free percentage releases approximately 3,095 tons of inshell hazelnuts from the 2005–2006 supply for domestic use.

The final marketing percentages are based on the Board's final production estimate and the following supply and demand information for the 2005–2006 marketing year:

	Tons
Total Available Supply:	
(1) Production forecast (crop estimate)	28,000
(2) Less disappearance (three year average; 3.84 percent of Item 1)	1,075
(3) Merchantable production (Item 1 minus Item 2)	26,925
(4) Plus undeclared carry-in as of July 1, 2005 (subject to regulation)	132
(5) Available supply subject to regulation (Item 3 plus Item 4)	27,057
Inshell Trade Demand:	
(6) Average trade acquisitions of inshell hazelnuts (three prior years domestic sales)	2,775
(7) Add: Increase to encourage increased sales (15% of average trade acquisitions)	416
(8) Less: Declared carry-in as of July 1, 2005 (not subject to 2005–2006 regulation)	96
(9) Adjusted inshell trade demand (Item 6 plus Item 7 minus Item 8)	3,095

	Percentages	
	Free	Restricted
(10) Final percentages (Item 9 divided by Item 5) × 100	11.4388	88.5612
(11) Final free tonnage (Item 9)	3,095	.....
(12) Final restricted tonnage (Item 5 minus Item 11)	.....	23,962

In addition to complying with the provisions of the order, the Board also considered USDA's 1982 ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has

available a quantity equal to 110 percent of prior years' shipments before allocating supplies for the export inshell, export kernel, and domestic kernel markets. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages will make available approximately 416 additional tons to encourage increased sales. The total free supply for the 2005–2006 marketing year is estimated to be 3,095 tons of hazelnuts. That amount would be 112 percent of prior years' sales and would exceed the goal of the Guidelines.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $6,000,000. There are approximately 703 producers of hazelnuts in the production area and approximately 18 handlers subject to regulation under the order. Average annual hazelnut revenue per producer is approximately $64,000. This is computed by dividing NASS figures for the average value of production for 2003 and 2004 ($44,863,000) by the number of producers. The level of sales of other crops by hazelnut producers is not known. In addition, based on Board records, about 83 percent of the handlers ship under $6,000,000 worth of hazelnuts on an annual basis. In view of the foregoing, it can be concluded that the majority of hazelnut producers and handlers may be classified as small entities.

Board meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

Currently, U.S. hazelnut production is allocated among three main market outlets: domestic inshell, export inshell, and kernel markets. Handlers and growers receive the highest return for sales in the domestic inshell market. They receive less for product going to export inshell, and the least for kernels. Based on Board records of average shipments for 1995–2004, the percentage going to each of these markets was 11 percent (domestic inshell), 49 percent (export inshell), and 38 percent (kernels). Other minor market outlets make up the remaining 2 percent.

The inshell hazelnut market can be characterized as having limited and inelastic demand with a very short primary marketing period. On average, 76 percent of domestic inshell hazelnut shipments occur between October 1 and November 30, primarily to supply holiday nut demand. The inshell market is, therefore, prone to oversupply and correspondingly low grower prices in the absence of supply restrictions. This volume control regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the continental U.S. and thereby mitigate market oversupply conditions.

Many years of marketing experience led to the development of the current volume control procedures. These procedures have helped the industry solve its marketing problems by keeping inshell supplies in balance with domestic needs. Volume controls ensure that the domestic inshell market is fully supplied while protecting the market from the negative effects of oversupply.

Although the domestic inshell market is a relatively small portion of total hazelnut sales (11 percent of total shipments), it remains a profitable market segment. The volume control provisions of the marketing order are designed to avoid oversupplying this particular market segment, because that would likely lead to substantially lower grower prices. The other market segments, export inshell and kernels, are expected to continue to provide good outlets for U.S. hazelnut production. Adverse climatic conditions have negatively impacted production in the other hazelnut producing regions of the world, creating lower than normal world supplies. As a result, it is expected that demand and producer price for U.S. hazelnuts will remain above average for some time.

In Oregon and Washington, low hazelnut production years typically follow high production years (a historically consistent pattern), and such was the case in 2005. The 2004 crop of 37,500 tons was 15 percent above the 10-year average (1995–2004) for hazelnut production. The 2005 crop is estimated to be 14 percent below the average. It is predicted that the 2006 crop will follow this pattern and will be larger than the current crop year. This cyclical trait also leads to inversely corresponding cyclical price patterns for hazelnuts. The intrinsic cyclical nature of the hazelnut industry lends credibility to the volume control measures enacted by the Board under the marketing order.

Recent production and price data reflect the stabilizing effect of volume control regulations. Industry statistics show that total hazelnut production has varied widely over the 10-year period between 1995 and 2004, from a low of 16,500 tons in 1998 to a high of 49,500 tons in 2001. Production in the smallest crop year and the largest crop year were 47 percent and 151 percent, respectively, of the 10-year average of 32,685 tons. Grower price, however, has not fluctuated to the extent of production. Prices in the lowest price year and the highest price year were 90 percent and 150 percent, respectively, of the 10-year average price of $959 per ton. The coefficient of variation (a standard statistical measure of variability; ''CV'') for hazelnut production over the 10-year period is 0.36. In contrast, the coefficient of variation for hazelnut grower prices is 0.19, about half of the CV for production. The lower level of variability of price versus the variability of production provides an illustration of the order's price-stabilizing impact.

Comparing grower revenue to cost is useful in highlighting the impact on growers of recent product and price levels. A recent hazelnut production cost study from Oregon State University estimated cost-of-production per acre to be approximately $1,340 for a typical 100-acre hazelnut enterprise. Average grower revenue per bearing acre (based on NASS acreage and value of production data) equaled or exceeded that typical cost level only three times from 1995 to 2004. Average grower revenue was below typical costs in the other years. Without the stabilizing influence of the order, growers may have lost more money. While crop size has fluctuated, volume regulations contribute to orderly marketing and market stability by moderating the

variation in returns for all producers and handlers, both large and small.

While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though hazelnut supplies fluctuate widely from season to season. This regulation provides equitable allotment of the most profitable market, the domestic inshell market. That market is available to all handlers, regardless of size.

As an alternative to this regulation, the Board discussed not regulating the 2005–2006 hazelnut crop. However, without any regulations in effect, the Board believes that the industry would tend to oversupply the inshell domestic market. Even though the 2005–2006 hazelnut crop is much smaller than last year's crop and 16 percent below the ten-year average, the unregulated release of 27,057 tons on the domestic inshell market would oversupply that small, but lucrative market. The Board believes that any oversupply would completely disrupt the market, causing producer returns to decrease dramatically.

Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to USDA establishment of preliminary, interim final, and final percentages of hazelnuts to be released to the free and restricted markets each marketing year. The program results in plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations.

Hazelnuts produced under the order comprise virtually all of the hazelnuts produced in the U.S. This production represents, on average, less than 3 percent of total U.S. production of all tree nuts, and less than 6 percent of the world's hazelnut production.

Last season, 68 percent of the domestically produced hazelnut kernels were marketed in the domestic market and 32 percent were exported. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop and expand other markets with emphasis on the domestic kernel market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

Inshell hazelnuts produced under the order compete well in export markets because of quality. Based on Board statistics, Europe has historically been the primary export market for U.S. produced inshell hazelnuts. Recent years, though, have seen a significant shift in export destinations. Last season, inshell shipments to Europe totaled 4,304 tons, representing just 22 percent of exports, with the largest share going to Germany. Inshell shipments to Southwest Pacific countries, and Hong Kong in particular, have increased dramatically in the past few years, rising to 68 percent of total exports of 19,881 tons in 2004. The industry continues to pursue export opportunities.

There are some reporting, recordkeeping, and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The information collection requirements have been previously approved by the Office of Management and Budget under OMB No. 0581–0178. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. This rule does not change those requirements. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Further, the Board's meetings were widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meetings and participate in Board deliberations. Like all Board meetings, those held on August 25, and November 15, 2005, were public meetings and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the establishment of final free and restricted percentages for the 2005–2006 marketing year under the hazelnut marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 2005–2006 marketing year began July 1, 2005, and the percentages established herein apply to all merchantable hazelnuts handled from the beginning of the crop year; (2) the percentages make the full trade demand available so handlers can take advantage of inshell marketing opportunities; (3) handlers are aware of this rule, which was recommended at an open Board meeting, and need no additional time to comply with this rule; and (4) interested persons are provided a 60-day comment period in which to respond, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. A new section 982.253 is added to read as follows:

[**Note:** This section will not be published in the annual Code of Federal Regulations.]

§ 982.253 Free and restricted percentages—2005–2006 marketing year.

The final free and restricted percentages for merchantable hazelnuts for the 2005–2006 marketing year shall be 11.4388 and 88.5612 percent, respectively.

Dated: January 6, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–271 Filed 1–11–06; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

RIN 3150–AH19

Medical Use of Byproduct Material—Recognition of Specialty Boards; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final regulations which were published in the **Federal Register** of Wednesday, March 30, 2005 (70 FR 16336) amending the Commission's training and experience requirements in 10 CFR part 35. The regulations related to the requirements for recognition of specialty boards whose certifications may be used to demonstrate the adequacy of the training and experience of individuals to serve as radiation safety officers, authorized medical physicists, authorized nuclear pharmacists, or authorized users. This action corrects the regulations by inserting a reference that was inadvertently omitted.

EFFECTIVE DATE: January 12, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–6233, e-mail *ant@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On March 30, 2005 (70 FR 16361), NRC published a final rule amending its regulations in part 35 regarding the medical use of byproduct material. In Section 35.50, ''Training for Radiation Safety Officer,'' the reference to paragraph (c)(2) in paragraph (d) was inadvertently omitted.

Section 35.50 specifies that an individual fulfilling the responsibilities of Radiation Safety Officer must be:

(a) An individual who is certified by a specialty board recognized under this section,

(b) An individual who has completed a structured educational program,

(c)(1) A medical physicist who has been certified by a specialty board recognized under § 35.51(a) and who has experience in radiation safety, or

(c)(2) An authorized user (AU), authorized medical physicist (AMP), or authorized nuclear pharmacist (ANP) who has experience in radiation safety.

Currently, § 35.50(d) requires an individual seeking radiation safety officer status to obtain written attestation that the individual has satisfactorily completed the requirements in paragraphs (a), (b), or (c)(1) of this section. However, reference to paragraph (c)(2) was inadvertently omitted. This rule inserts the reference to paragraph (c)(2) in paragraph (d).

List of Subjects for Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

■ Accordingly, 10 CFR part 35 is corrected by making the following correcting amendment:

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

■ 1. The authority citation for part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 2. In § 35.50, paragraph (d) is revised to read as follows:

§ 35.50 Training for Radiation Safety Officer.

* * * * *

(d) Has obtained written attestation, signed by a preceptor Radiation Safety Officer, that the individual has satisfactorily completed the requirements in paragraph (e) and in paragraphs (a)(1)(i) and (a)(1)(ii) or (a)(2)(i) and (a)(2)(ii) or (b)(1) or (c)(1) or (c)(2) of this section, and has achieved a level of radiation safety knowledge sufficient to function independently as a Radiation Safety Officer for a medical use licensee; and

* * * * *

Dated at Rockville, Maryland, this 6th day of January, 2006.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 06–266 Filed 1–11–06; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE187; Special Conditions No. 23–127A–SC]

Special Conditions: Chelton Flight Systems, Inc.; Various Airplane Models; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions: amendment.

SUMMARY: The FAA published a document in the **Federal Register** on August 30, 2002 (Volume 67, Number 169) regarding Special Condition 23–127–SC for Chelton Flight Systems, Various Airplane Models; Protection of Systems for High Intensity Radiated Fields (HIRF). This amendment is being published to add several airplane models to the existing special condition to cover current and future amendments to the Approved Model List (AML) STC. These special conditions address HIRF certification requirements for digital systems not addressed by the current regulations. See the attached AML for the airplanes that are added by this amendment.

These airplanes, as modified by Chelton Flight Systems, will have a novel or unusual design feature(s) associated with the installation of an electronic flight instrument system. These special conditions address the protection of these systems from the effects of high intensity radiated field (HIRF) environments. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these amended special conditions is December 22, 2005. Comments must be received on or before February 13, 2006.

ADDRESSES: Comments on these amended special conditions may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket CE187, 901 Locust, Room 506, Kansas City, Missouri 64106; or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE187. Comments may be inspected in the Rules Docket

weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Wes Ryan, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri 64106, 816–329–4127, fax 816–329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to CE187.'' The postcard will be date stamped and returned to the commenter.

Background

On April 25, 2002, Chelton Flight Systems, Incorporated, 1109 Main Street, Suite 560, Boise, ID 83702 made application to the FAA for a new Supplemental Type Certificate for the airplane models listed in the ''Type Certification Basis'' Section of this Special Condition. The proposed modification incorporates a new and novel feature, such as an electronic flight instrument system, that may be vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Chelton Flight Systems, Inc., must show that affected airplane models, as changed, continue to meet the applicable provisions, of the regulations incorporated by reference in Type Certificate Numbers listed below or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the original ''type certification basis'' and can be found in the Type Certificate Numbers listed below. In addition, the type certification basis of airplane models that embody this modification will include § 23.1301 of Amendment 23–20; §§ 23.1309, 23.1311, and 23.1321 of Amendment 23–49; and § 23.1322 of Amendment 23–43; exemptions, if any; and the special conditions adopted by this rulemaking action. The following models are covered by this special condition:

Models	Type certificate number
Aero Planes, LLC: Models G–21C, G–21D, G–21E, G–21G 4A24, Rev. 7, 8/22/05	4A24, Rev. 7, 8/22/05
Aerostar Models 360/400	A11WE, Rev. 4, 10/22/92
Aerostar Models PA–60–600/–601/–601P/–602P/–700P	A17WE, Rev. 22
Alliance Aircraft Helio 550, 550A (USAF AU–24A) A4EA, Rev. 13, 9/18/97	A4EA, Rev. 13, 9/18/97
American Champion Models 8GCBC/8KCAB	A21CE, Rev. 11, 8/25/97
Aviat A–1/–1A/–1B	A22NM, Rev. 12, 6/15/00
Beechcraft 60/A60/B60	A12CE, Rev. 23, 4/15/96
Beechcraft Model 2000	A38CE, Rev. 10, 8/23/01
Beechcraft Model 3000	A00009WI, Rev. 8, 11/29/01
Beechcraft Model 76	A29CE, Rev. 5, 4/15/96
Beechcraft Model F90	A31CE, Rev. 7, 4/15/96
Beechcraft Models 100/99/A/A100/A/C/A99/A/100B9/C99	A14CE, Rev. 35, 5/18/00
Beechcraft Models 18D/A18A/D/S18D/SA18A/D	A–684, Rev. 2, 4/15/96
Beechcraft Models 35/R/A35/B35/C35/D35/E35/F35/G35	A–777, Rev. 57, 4/15/96
Beechcraft Models 35–33/A33/B33/C33/C33A/36/A36/A36TC/B36TC/E33/A/C/F33/A/C/G33/H35/J35/K35/M35/N35/P35/S35/V35/V35A/V35B.	3A15, Rev. 88, 1/15/00
Beechcraft Models 3N/3NM/3TM/C–45G/H/D18C/D18S/E18S/–9700/G18S/H18/JRB–6/RC–45J/TC–45G/TC–45H/TC–45J.	A–765, Rev. 74, 4/15/96
Beechcraft Models 45, A45, D45	5A3, Rev. 25, 4/15/96
Beechcraft Models 50/B50/C50/D50/D50A/B/C/E/E–5990/E50/F50/G50/H50/J50	5A4, Rev. 60, 4/15/96
Beechcraft Models 56TC/58/58A/95/95–55/95–A55/A56TC/95–B55/95–B55A/95–B55B/95–C55/95–C55A/B95/B95A/D55/D55A/D95A/E55/E55A/E95.	3A16, Rev. 80, 1/15/00
Beechcraft Models 58P/PA/TC/TCA	A23CE, Rev. 14, 4/15/96
Beechcraft Models 65/–80/–88/–90/–A80/–A80–8800/–A90/–A90–1/–A90–2/–A90–3/–A90–4/–B80/70/A65/–8200/B90/C90/A/E90/H90.	3A20, Rev. 60, 9/10/01
Britten-Norman Models BN–2/A/2A–2/2A–20/2A–21/2A–26/2A–27/2A–3/2A–6/2A–8/2A–9/2B–20/2B–21/2B–26/2B–27/2T//2T–4R.	A17EU, Rev. 15, 1/3/96
Beechcraft Models 200, 200C, 200CT, 200T, B200, B200C, B200CT, B200T, 300, 300LW, B300, B300C, 1900, 1900C, 1900D, A100–1 (U–21J), A200 (C–12A), A200 (C–12C), A200C (UC–12B), A200CT (C–12D), A200CT (FWC–12D), A200CT (C–12F), A200CT (RC–12D), A200CT (RC–12G), A200CT (RC–12H), A200CT (RC–12K), A200CT (RC–12P), A200CT (RC–12Q), B200C (C–12F), B200C (UC–12M), B200C (C–12R), B200C (UC–12F), 1900C (UC–12J).	A24CE, Rev. 89, 1/17/05
Britten-Norman Models BN2A MK. 111/–2/–3	A29EU, Rev. 3, 6/21/78
British Aerospace Models HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101	A21EU, Rev. 16, 10/6/03
British Aerospace Model Jetstream 3201	A56EU, Rev. 5, 10/6/03
Cessna 206/H/P206/A/B/C/D/E/H/TP206A/B/C/D/E/TU206A/B/C/D/E/F/G/U206/A/B/C/D/E/F/G	A4CE, Rev. 40, 6/19/02
Cessna 207/A/T207/A	A16CE, Rev. 20, 10/15/94

Models	Type certificate number
Cessna Model 177RG	A20CE, Rev. 18, 10/15/94
Cessna Model 336	A2CE, Rev. 6, 6/15/99
Cessna Model 441	A28CE, Rev. 11, 8/15/99
Cessna Model T303	A34CE, Rev. 5, 10/15/94
Cessna Models 170/A/B	A–799, Rev. 51, 7/15/98
Cessna Models 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, 172M, 172N, 172P, 172Q, 172R, 172S.	3A12, Rev. 69, 3/31/03
Cessna Models 172RG/175/A/B/C/P172D/R172E/F/G/H/J/K	3A17, Rev. 45, 3/31/03
Cessna Models 177/A/B	A13CE, Rev. 23, 10/15/94
Cessna Model 177RG	A19SO, Rev. 9, 2/5/03
Cessna Models 180A/B/C/D/E/F/G/H/J/K	5A6, Rev. 64, 10/11/01
Cessna Models 182/A/B/C/D/E/F/G/H/J/K/L/M/N/P/Q/R/S/T/R182/T182/T/TR182	3A13, Rev. 59, 12/12/01
Cessna Models 185/A/B/C/D/E/A185E/F	3A24, Rev. 36, 11/15/99
Cessna 190, (LC–126A, B, C) 195, 195A, 195B	A–790, Rev. 36, 3/15/03
Cessna Models 206/H/P206/A/B/C/D/E/H/TP206A/B/C/D/E/TU206A/B/C/D/E/F/G/U206/A/B/C/D/E/F/G	A4CE, Rev. 41, 3/31/03
Cessna Models 207/207A/T207/T207A	A16CE, Rev. 21, 3/31/03
Cessna Models 208/A/B	A37CE, Rev. 12, 6/15/99
Cessna Models 210/–5 (205)/–5A (205A)/A/B/C/D/E/F/G/H/J/K/L/M/N/R/P210N/R/T210F/G/H/J/K/L/M/N/R	3A21, Rev. 45, 8/15/96
Cessna Model T303	A34CE, Rev. 6, 3/31/03
Cessna Models 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R/E310H/E310J/T310P/Q/R	3A10, Rev. 61, 11/15/97
Cessna Models 320/–1/A/B/C/D/E/F/335/340/A	3A25, Rev. 25, 8/15/94
Cessna Model 336	A2CE, Rev. 7, 3/31/03
Cessna Models 337/A/B/C/D/E/F/G/H/M337B/P337H/T337B/C/D/E/F/G/H/H–SP	A6CE, Rev. 38, 10/11/01
Cessna Models 401/A/B/402/A/B/C/411/A/414/A/421/A/B/C/425	A7CE, Rev. 44, 5/15/99
Cessna Models 404/406	A25CE, Rev. 11, 6/15/95
Cessna Model 441	A28CE, Rev. 12, 9/22/03
Cessna Models 501/551	A27CE, Rev. 15, 2/25/02
Cessna Models 525/A	A1WI, Rev. 11, 7/9/01
Cirrus Models SR20/22	A00009CH, Rev. 3, 9/28/01
Commander Model 700	A12SW, Rev. 10, 1/1/90
Commander Models 112/B/TC/TCA/114/A/B/TC	A12SO, Rev. 21, 8/4/95
Commander Models 500/–A/–B/–S/–U/520/560/A/–E	6A1, Rev. 45, 1/1/90
Commander Models 560–F/680/E/F/FL/FL(P)/F(P)/T/V/W/681/685/690/A/B/C/D/695/A/B/720	2A4, Rev. 46 04/03/2000
de Havilland Model DHC–3	A–815, Rev. 4, 6/26/98
de Havilland Models DHC–2 Mk.I/II/III	A–806, Rev. 21, 1/21/94
de Havilland Models DHC–6–1/–100/–200/–300	A9EA, Rev. 11, 6/20/00
Diamond Model DA–40	A47CE, Rev. 2, 4/8/02
Dornier Models Do 28 D, Do 28 D–1, Dornier 228–100, Dornier 228–101, Dornier 228–200, Dornier 228–201, Dornier 228–202, Dornier 228–212.	A16EU, Rev. 8, 10/23/90
EMBRAER Models EMB–110P1, EMB–110P2	A21SO, Rev. 6, 10/16/96
Extra Models EA–200/300/L/S	A67EU, Rev. 5, 06/03/99
Extra Model EA–400	A43CE, Rev. 5, 3/5/02
Fairchild Models SA26–T, SA26–AT, SA226–T, SA226–AT, SA226–T(B), SA227–AT, SA227–TT	A5SW, Rev. 26, 8/24/04
Fairchild Models SA226–TC, SA227–AC (C–26A), SA227–PC, SA227–BC (C–26A)	A8SW, Rev. 22, 8/24/04
Fairchild Models SA227–CC, SA227–DC (C–26B)	A18SW, Rev. 4, 8/24/04
Found Aircraft Models FBA–2C, FBA–2C1	A7EA, Rev. 2, 4/9/01
Found Brothers Model FBA Centennial ''100''	A13EA, Rev. 0, 1/1/70
Grob Models G115EG/G115/A/B/C/C2/D/D2	A57EU, Rev. 10, 2/6/01
Harbin Aircraft Manufacturing (HAMC): Model Y 12 IV	A00006WI, Rev. 3, 7/16/96
Helio Courier Models 15A/20	3A3, Rev. 7, 3/1/91
Helio Courier Models H–250/295/391/391B/395/395A/700/800/T–295	1A8, Rev. 33, 9/18/97
Israel Aircraft Models ARAVA 101, ARAVA 101B	A32EU, Rev. 3, 7/26/88
KWAD (Mitchell) Super-V	A5IN, Rev. 1, 10/13/78
Lancair Model LC40–550FG	A00003SE, Rev.8, 2/26/02
Learjet Model 23	A5CE, Rev. 10, 7/15/90
LET Model L–420	A42CE, Rev. 3, 1/20/05
Maule Models MX–7–235, MX–7–180, MX–7–420, M–8–235, MX–7–160, MX–7–180A, MX–7–180B, MX–7–180C, M–7–260C, M–7–420AC, MX–7–160C, MX–7–180AC.	3A23, Rev. 29, 3/06/03
Maule Models Bee Dee M–4/M–4/–180C/S/T/–210/C/S/T/–220/C/S/T/M–4C/S/T/M–5–180C/–200/–210C/–210TC/–220C/–235C/M–6–180/6–235/M–7–235/A/B/C/–260MT–7–235/–260/–160/–160C/–180/A/AC/B/C/–235/–420 MXT–7–160/–180/A/–420/C/–420AC/M–8–235.	3A23, Rev. 28, 4/6/00
Mitsubishi Models MU–2B/–10/–15/–20/–25/–26/–30/–35/–36	A2PC, Rev. 16, 6/30/75
Mitsubishi Models MU–2B–25/–26/A/–35/–36/A/–40/–60	A10SW, Rev. 13, 4/2/98
Mooney Models M20/A/B/C/D/E/F/G/J/K/L/M/R/S	2A3, Rev. 46, 8/10/99
Mooney Model M22	A6SW, Rev. 6, 12/1/73
ParisJet Models M.S. 760 (Paris I)/M.S. 760B (Paris II)/M.S. 760.A (Paris IA)	7A3, Rev. 3, 3/17/98
Partenavia/Vulcanair Models P68/B/C/C– TC/''OBSERVER''/AP68TP300''SPARTACUS''/P68TC ''OBSERVER''/AP68TP''VIATOR''/P68''OBSERVER 2''.	A31EU, Rev. 14, 5/30/00
Piaggio Model P–180	A59EU, Rev. 9, 10/25/00
Piaggio Models P.166, P.166B, P.166C, P.166DL3	7A4, Rev. 7, 10/31/78
Pilatus Model PC–7	A50EU, Rev. 2, 7/1/96
Pilatus Models PC–12/–12/45	A78EU, Rev. 9, 3/30/01
Pilatus Models PC–6/–H1/–H2/PC–6/350/–H1/–H2 PC–6/A/–H1/–H2/B–H2/B1–H2/B2–H2/B2–H4/C–H2/C1–H2.	7A15, Rev. 11, 8/9/99

Models	Type certificate number
Piper Models PA–12/S	A–780, Rev. 13, 3/30/01
FS 2002/Piper PA–14	A–797, Rev. 11, 3/30/01
Piper Models PA–18/105/125/135/A/A–135/A–150/AS/AS–125/AS–135/AS–150/S/S–105/S–125/S–135/S–150.	1A2, Rev. 37, 9/4/96
Piper Models PA–18 "150", PA–19 (Army L–18C), PA–19S	1A2, Rev. 37, 9/4/96
Piper Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250	1A10, Rev. 50, 9/10/03
Piper Models PA–24/250/260/400	1A15, Rev. 33, 10/1/97
Piper Models PA–28–140/150/151/160/161/180/181/201T/235/236/R–180/RT–201T/S–160/S–180/R–200/R–201/R–201T//RT–201.	2A13, Rev. 45, 12/12/01
Piper Models PA–28R–200, PA–28R–201, PA–28R–201T	2A13, Rev. 45, 12/12/01
Piper Models PA–30/–39/–40	A1EA, Rev. 15, 10/1/97
Piper Models PA–31/–300/–325/–350	A20SO, Rev.9, 3/19/01
Piper Models PA–31P/–350/PA–31T/1/2/3	A8EA, Rev. 21, 4/8/98
Piper Models PA–32–301FT, PA–32–301XTC	A3SO, Rev. 27, 11/25/03
Piper Models PA–32–260/–300/–301/T/PA–32R–300/–301/–301T/PA–32RT–300/–300T/PA–32S–300.	A3SO, Rev. 26, 7/23/97
Piper Models PA–34–200/–200T/–220T	A7SO, Rev. 14, 6/1/01
Piper Models PA–42/–42–1000/–42–720 A23SO, Rev. 14, 11/16/01.	
Piper Models PA–44–180/T	A19SO, Rev. 8, 11/14/01
Piper Models PA–46–310P/–350P/–500TP	A25SO, Rev. 10, 1/2/02
Polskie Zaklady Lotnicze Model PZL M28 05	A56CE, Original, 3/19/04
Revo Models Colonial C–1/–2, Lake LA–4/A/P/–200/250	1A13, Rev. 25, 11/8/99
Ruschmeyer Model R90–230RG	A77EU, Rev. 0, 6/24/94
SIAI Marchetti: Models SF600, SF600A	A61EU, Rev. 2, 6/05/96
Shorts Models SC–7 Series 2/SC–7 Series 3	A15EU, Rev. 9, 8/1/90
Slingsby Models T67M260/–T3A	A73EU, Rev. 4, 7/27/00
Socata Model TBM–700	A60EU, Rev. 8, 11/6/01
Socata Models TB 10/20/200/21/9	A51EU, Rev. 14, 4/6/01
Thurston/Teal Models TSC–1A, TSC–1A1, TSC–1A2	A15EA, Rev. 11, 2/10/93

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101(b)(2) of Amendment 21–69.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Chelton Flight Systems, Inc., plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid-state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined as follows:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions, whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to one modification to the airplane models listed under the heading ''Type Certification Basis.'' Should Chelton Flight Systems, Inc., apply to extend this modification to include additional airplane models, the special conditions would extend to these models as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features of one modification to several models of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of some airplane models, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and § 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for airplane models listed under the ''Type Certification Basis'' heading modified by Chelton Flight Systems, Inc., to add an EFIS.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri, on December 22, 2005.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–253 Filed 1–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18038; Directorate Identifier 2004–NE–01–AD; Amendment 39–14444; AD 2006–01–05]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. (Formerly AlliedSignal, Inc., Formerly Textron Lycoming, Formerly Avco Lycoming) T5309, T5311, T5313B, T5317A, T5317A–1, and T5317B Series, and T53–L–9, T53–L–11, T53–L–13B, T53–L–13BA, T53–L–13B S/SA, T53–L–13B S/SB, T53–L–13B/D, and T53–L–703 Series Turboshaft Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Honeywell International Inc., (formerly AlliedSignal, Inc., formerly Textron Lycoming, formerly Avco Lycoming) T53 turboshaft engines, installed on, but not limited to, Bell 204, Bell 205, Kaman K–1200 series, Bell AH–1, and Bell UH–1 helicopters, certified under 14 CFR 21.25 or 14 CFR 21.27. This AD requires implementing reduced life limits for certain parts, using cycle counting methods, and using draw-down schedules to replace components that exceed the new limits. This AD results from the manufacturer informing us of test and analysis showing lower calculated service life limits for certain parts, than previously published. We are issuing this AD to prevent failure of

certain compressor, gas producer, and power turbine rotating components, which could result in failure of the engine and possible damage to the helicopter.

DATES: This AD becomes effective February 16, 2006. The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in the regulations as of February 16, 2006. The Director of the **Federal Register** approved the incorporation by reference of a certain other publication listed in the regulations as of June 13, 2002 (67 FR 31111, May 9, 2002).

ADDRESSES: Contact Honeywell International Inc., Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone: (602) 365–2493; fax: (602) 365–5577 for the service information identified in this AD.

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

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone: (562) 627–5245, fax: (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a new AD, applicable to Honeywell International Inc., (formerly AlliedSignal, Inc., formerly Textron Lycoming, formerly Avco Lycoming) T5309, T5311, T5313B, T5317A, T5317A–1, and T5317B series turboshaft engines, installed on Bell 204, Bell 205, and Kaman K–1200 series helicopters, and T53–L–9, T53–L–11, T53–L–13B, T53–L–13BA, T53–L–13B S/SA, T53–L–13B S/SB, T53–L–13B/D, and T53–L–703 series turboshaft engines, installed on Bell AH–1 and Bell UH–1 helicopters, certified under 14 CFR 21.25 or 14 CFR 21.27. We published the proposed AD in the **Federal Register** on June 16, 2004 (69 FR 33599). We proposed to require operators to remove from service affected compressor, gas producer, and power turbine rotating components at reduced life limits. We also proposed to require using draw-down schedules to replace components that exceed the new limits.

On January 6, 2005, the **Federal Register** (70 FR 1215) published notice that we would hold a public meeting to gather additional comments and data on the proposed AD. We held the meeting February 8, 2005, in Anaheim, California, at the Anaheim Convention Center. As a result of the comments we received, we reopened the comment period for the proposed AD as found in the **Federal Register** on March 14, 2005 (70 FR 12421).

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. They provided comments during the public meeting we held in Anaheim, California on February 8, 2005, and during the reopened comment period, which ran from March 14, 2005 to March 31, 2005. We reopened the comment period because of some of the comments we received during the February 8th meeting. We considered all comments we received.

Lack of Proof, Data, or Evidence of an Unsafe Condition

Twenty commenters oppose the AD as proposed, citing lack of proof, data, or evidence of an unsafe condition. We disagree. We determined that the identified parts are likely to fail before reaching their present life limits. These parts, therefore, present an unsafe condition. We are issuing this AD to correct that unsafe condition. As a result we did not change the AD.

Request for Help From the Helicopter Industry

One commenter states that during the public meeting on this issue, held in Anaheim, CA, the FAA requested that the industry step up to help the manufacturer develop data after-the-fact. In addition, that the FAA has blindly accepted the manufacturer's unsupported safety theory, and finally, that the FAA will still issue the proposed AD, despite the lack of supporting data.

We disagree. We requested the public provide whatever data they thought appropriate concerning the proposed AD. After the meeting we reviewed all data we received, together with the manufacturer's data, and determined that an unsafe condition exists or is likely to develop in the engines noted in this AD. We concluded that the data supports the need for this AD.

Number of Affected Engines Is Not Correct

One commenter states that a total of 592 rotorcraft of various models registered in the United States, including the Bell UH–1, Bell AH–1, Bell 205, and Kaman K–1200, are affected by the AD, nearly twice what the FAA said would be affected.

Another commenter states that neither the NPRM nor the AD worksheet (DMS file No. FAA–2004–18038–2) provides factors considered nor the methodology by which the FAA determined the quantity of engines affected, as well as the cost estimate.

We agree with both commenters. Some Bell 204 helicopters originally powered by T5311 series engines have been re-engined with T5313 series engines with certain parts that have life limit reductions. Therefore, we added eight engines to the estimated number of affected engines in the U.S. and increased the number of affected engines in the cost of compliance paragraph to 600, based on information from the engine manufacturer and our records. We updated the cost section to reflect the additional engines.

Costs of Compliance Are Underestimated and Would Be an Economic Hardship

Eighteen commenters state that the cost of compliance with the proposed AD is underestimated. Three commenters state that compliance cost would be an economic hardship. We agree the total cost was inaccurate. After we published the NPRM, we received more accurate parts and labor cost data for a T53 engine repair. We changed our cost estimate in the AD. It now reads ''We estimate that 600 engines installed on helicopters of U.S. registry will be affected by this AD. We also estimate that the prorated labor and parts cost due to life limit reductions per engine is $97,000. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $58,000,000.'' We do not agree that the cost of compliance would impose an economic hardship, based on the small percentage increase in overall overhaul cost.

U.S. Army Safety-of-Flight Data Should Be Implemented

Two commenters state that the FAA should require implementation of the life limits established in U.S. Army safety of flight message UH–1–01–01.

We disagree. The U.S. Army UH–1–01–01 life limits are unique for the Army's mission profile. As a result we did not change the AD.

Lower Risk Factor of Fatalities

One commenter states that the worksheet directs this AD at restricted category rotorcraft that do not carry passengers under FAR Part 135, and that cannot fly over densely populated areas without an FAA waiver. With this combination, the commenter suggests that the risk of fatalities is lower than that of other rotorcraft passenger carrying operations. We disagree. We also consider the safety of the pilot and crew and the rate at which accidents are predicted to occur. As a result we did not change the AD.

An AD Should Be Issued for A One-time Inspection

One commenter states that to be fair to both sides on this issue, and to see how concerned the OEM is about the safety of these parts, more evaluation data should be obtained and the cost to obtain that data should be shared. The FAA should issue an AD that requires a one-time inspection be done on all the parts in service at this time. The OEM should pick up the cost of the non-destruct inspection and the operators should absorb the down-time cost and the cost to remove and reinstall the engines. This inspection should be done over a one-year period in which the operators could choose the down-time period. The commenter concludes that the data should be sent to the NTSB for evaluation and made public.

We disagree. We reviewed the technical data supporting the life limit reduction and concluded that an inspection AD is insufficient. The removal of these parts from service is necessary to eliminate the unsafe condition. As a result we did not change the AD.

Contact the Repair Stations

One commenter suggests that repair stations that have the experience on repair, overhaul, and maintenance of these engines, be contacted in order to gain their input on field service of the T53 and any related service difficulties they have experienced that relate to this NPRM. We agree. We investigated repair station inspection results, record keeping, and reasons for part removals and part retirements. We considered this input in this final rule.

Service Bulletins Not Readily Available

Two commenters state that the Service Bulletins are not readily available. As a result, the public cannot provide sufficient substantive comments on the compliance standards the proposed AD would impose. Until the Service Bulletins appear on the docket, the NPRM will remain deficient. We partially agree. Commenters may get the service bulletins from Honeywell at the address listed in the AD. Further, the Service Bulletins may be viewed at the National Archives and Records Administration when the AD is published.

Question on D979 Turbine Disks Used in T55 and ALF 502 Engines

Two commenters question why the life limited parts made of D979 material installed in Honeywell's other engines such as T55 and ALF502 series did not have a reduction in life limits.

Part dimensions, features, manufacturing process, material characteristics, stress and strain ranges, operating environment, and flight profile collectively affect a part's life limit. The use of D979 material in other applications is not affected by this action. As a result we did not change the AD.

Questions on Delay of AD Action

Four commenters suggest a safety concern does not exist, given the delay in AD action. We disagree. The safety concern did not require immediate action, so we used the NPRM process to allow for public comment, and to perform additional technical review in response to these comments.

Question on Draw-Down Schedules

One commenter questions the validity of the safety concern given the longer draw-down schedules for parts that have higher accumulated cycles. We disagree. The higher draw-down schedules for parts that have higher in-service cycles were developed by risk analysis, and help to minimize the economic impact to operators.

Changes Since Issuing the Proposed AD

Supersedure of AD 87–12–05

Since we issued the NPRM for this AD, we found that the corrective actions required by this AD address the safety concerns of AD 87–12–05, Amendment 39–5640 (52 FR 21497, June 8, 1987) as well. Therefore, AD 87–12–05 is redundant and is superseded by this AD action. Since we are relaxing a regulatory requirement by superseding the AD, we are using this Final Rule to satisfy the notice requirements to supersede AD 87–12–05, Amendment 39–5640 (52 FR 21497, June 8, 1987).

Addition of Helicopter Model to Applicability

Some Bell 204 helicopters were originally powered by T5311 series engines have been re-engined with T5313 series engines on which certain parts had life limit reductions. Therefore, we added the Bell 204 helicopter model to the applicability of this AD.

Addition of Instructions for Parts With Unknown Hours Or Cycles

During the public meeting and investigation into the concerns raised by commenters, we found aircraft were operated with engines with unknown total hours. This safety concern about those engines is now addressed by this AD. We added a requirement to remove from service engines with unknown accumulated hours or cycles within 250 cycles from the effective date of this AD. This requirement is consistent with language in Honeywell Service Bulletin No. T5313B/17–0020 (paragraph 1.D.(2)).

Compliance Time Clarified

Although the NPRM compliance time stated ''within 100 operating hours after the effective date of this AD'', the compliance time in this AD is clarified to state ''within 100 operating hours or 90 days after the effective date of this AD, whichever occurs first''.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will not increase the economic burden on operators nor increase the scope of the AD.

Costs of Compliance

There are about 4,500 Honeywell International Inc., (formerly AlliedSignal, Inc., formerly Textron Lycoming) T5309, T5311, T5313B, T5317A, T5317A–1, and T5317B series turboshaft engines, installed on, but not limited to, Bell 205 and Kaman K–1200 series helicopters, and T53–L–9, T53–L–11, T53–L–13B, T53–L–13BA, T53–L–13B S/SA, T53–L–13B S/SB, T53–L–13B/D, and T53–L–703 series turboshaft engines, installed on, but not limited to, Bell AH–1 and UH–1 helicopters, certified under § 21.25 or 21.27 of the Code of Federal Regulations (14 CFR 21.25 or 14 CFR 21.27), of the affected design in the worldwide fleet. We estimate that 600 engines installed on helicopters of U.S. registry will be affected by this AD.

We estimate that the prorated labor and parts costs due to life limit reductions per engine are approximately $97,000. Based on these figures, we estimate the total cost of this AD to U.S. operators to be approximately $58,000,000.

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 rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–5640 (52 FR 21497, June 8, 1987) and by adding a new airworthiness directive, Amendment 39–14444, to read as follows:

2006–01–05 Honeywell International Inc. (formerly AlliedSignal, Inc., formerly Textron Lycoming, formerly Avco Lycoming): Amendment 39–14444. Docket No. FAA–2004–18038; Directorate Identifier 2004–NE–01–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 16, 2006.

Affected ADs

(b) This AD supersedes AD 87–12–05, Amendment 39–5640.

Applicability

(c) This AD applies to Honeywell International Inc., (formerly AlliedSignal, Inc., formerly Textron Lycoming, formerly Avco Lycoming) T5309, T5311, T5313B, T5317A, T5317A–1, and T5317B series turboshaft engines, installed on Bell 204, Bell 205, and Kaman K–1200 series helicopters, and T53–L–9, T53–L–11, T53–L–13B, T53–L–13BA, T53–L–13B S/SA, T53–L–13B S/SB, T53–L–13B/D, and T53–L–703 series turboshaft engines, installed on Bell AH–1 and UH–1 helicopters, certified under § 21.25 or 21.27 of the Code of Federal Regulations (14 CFR 21.25 or 14 CFR 21.27).

Unsafe Condition

(d) This AD results from the manufacturer informing us of test and analysis showing lower calculated service life limits for certain parts, than originally determined. We are issuing this AD to prevent failure of certain compressor, gas producer, and power turbine rotating components, which could result in failure of the engine and possible damage to the helicopter.

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.

T5309, T5311, T53–L–9, and T53–L–11 Series Turboshaft Engines

(f) For T5309, T5311, T53–L–9, and T53–L–11 series turboshaft engines, within 100 operating hours or 90 days after the effective date of this AD, whichever occurs first, compute the total operating hours and cycles and replace rotating components before they exceed the new service life limits. Use 2.a. through 2.f. and Component Service Life Limits Table 1 of Accomplishment Instructions of Lycoming Service Bulletin (SB) No. 0002, Revision 2, dated March 6, 1989.

T5313B, T5317A, T5317A–1, and T5317B Turboshaft Engines

(g) For T5313B, T5317A, T5317A–1, and T5317B turboshaft engines, within 100 operating hours or 90 days after the effective date of this AD, whichever occurs first, compute the total operating hours and cycles and replace the rotating components before they exceed the new service life limits. Use 2.A. through 2.K. and Component Service Life Limits Table 1 of Accomplishment Instructions of Honeywell International Inc. SB No. T5313B/17–0020, Revision 7, dated November 21, 2002.

(h) For T5313B, T5317A, T5317A–1, and T5317B turboshaft engines that have one or more rotating components that exceed the limits specified in Component Service Life Limits Table 1 of Honeywell International Inc. SB No. T5313B/17–0020, Revision 7, dated November 21, 2002, replace the components using the applicable draw-down schedule in Table 1 of Honeywell International Inc. SB No. T5313B–0125, dated March 15, 2001 or Honeywell International Inc. SB No. T5317–0125, dated March 15, 2001.

T53–L–13B, T53–L–13BA, T53–L–13B S/SA, and T53–L–13B S/SB Turboshaft Engines

(i) For T53–L–13B, T53–L–13BA, T53–L–13B S/SA, and T53–L–13B S/SB turboshaft engines, within 100 operating hours or 90 days after the effective date of this AD, whichever occurs first, compute the total operating hours and cycles and replace the rotating components before they exceed the new service life limits. Use 2.A. through 2.J. and Component Service Life Limits Table 1 of Accomplishment Instructions of Honeywell International Inc. SB No. T53–L–13B–0020, Revision 3, dated October 25, 2001.

(j) For T53–L–13B, T53–L–13BA, T53–L–13B S/SA, and T53–L–13B S/SB turboshaft engines that have one or more rotating components that exceed the limits in Component Service Life Limits Table 1 of Honeywell SB No. T53–L–13B–0020, Revision 3, dated October 25, 2001, replace the components using the applicable draw-down schedule in Table 1 of Honeywell International Inc. SB No. T53–L–13B–0125, dated April 5, 2001.

T53–L–13B/D Turboshaft Engines

(k) For T53–L–13B/D turboshaft engines, within 100 operating hours or 90 days after the effective date of this AD, whichever occurs first, compute the total operating hours and cycles and replace the rotating components before they exceed the new service life limits. Use 2.A. through 2.J. and Component Service Life Limits Table 1 of Accomplishment Instructions of Honeywell International Inc. SB No. T53–L–13B/D–0020, Revision 2, dated November 25, 2002.

(l) For T53–L–13B/D turboshaft engines that have one or more rotating components that exceed the limits in Component Service Life Limits Table 1 of Honeywell International Inc. SB No. T53–L–13B/D–

0020, Revision 2, dated November 25, 2002, replace the components using the applicable draw-down schedule in Table 1 of Honeywell International Inc. SB No. T53–L–13B/D–0125, dated April 5, 2001.

T53–L–703 Turboshaft Engines

(m) For T53–L–703 turboshaft engines, within 100 operating hours or 90 days after the effective date of this AD, whichever occurs first, compute the total operating hours and cycles and replace the rotating components, before they exceed the new service life limits. Use 2.A. through 2.K. and Component Service Life Limits Table 1 of Accomplishment Instructions of Honeywell International Inc. SB No. T53–L–703–0020, Revision 2, dated November 25, 2002.

(n) For T53–L–703 turboshaft engines that have one or more rotating components that have exceeded the limits in Component Service Life Limits Table 1 of Honeywell International Inc. SB No. T53–L–703–0020, Revision 2, dated November 25, 2002, replace the components using the applicable draw-down schedule in Table 1 of Honeywell International Inc. SB No. T53–L–703–0125, dated April 5, 2001.

Action for Engines With Unknown Accumulated Hour or Cycle Information

(o) For any engines operating with parts affected by this AD for which accumulated operating hour or cycle information is unknown, those parts must be removed from service within 250 cycles after the effective date of this AD.

Computing Compliance Intervals

(p) For the purposes of this AD, use the effective date of this AD for computing compliance intervals whenever the SBs refer to the release date of the SB.

Prohibition of Removed Rotating Components

(q) Do not reinstall any rotating component that is replaced as specified in paragraphs (f) through (n) of this AD, into any engine.

Alternative Methods of Compliance

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

Related Information

(s) None.

Material Incorporated by Reference

(t) You must use the service information specified in Table 1 of this AD to perform the actions required by this AD. The Director of the **Federal Register** approved the incorporation by reference of Honeywell International Inc. Service Bulletin No. T53–L–13B–0020, Revision 3, dated October 25, 2001, listed in Table 1 of this AD as of June 13, 2002 (67 FR 31111, May 9, 2002). The Director of the Federal Register approved the incorporation by reference of the other documents listed in Table 1 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Honeywell International Inc., Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone: (602) 365–2493; fax: (602) 365–5577 for a copy of this service information. You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001, on the Internet at *http://dms.dot.gov*, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 1.—INCORPORATION BY REFERENCE

Service Bulletin No.	Page	Revision	Date
Textron Lycoming Service Bulletin (SB) No. 0002 Total Pages: 4	ALL	2	March 6, 1989.
Honeywell International Inc. SB No. T5313B/17–0020 Total Pages: 14	ALL	7	November 21, 2002.
Honeywell International Inc. SB No. T5313B–0125 Total Pages: 6	ALL	Original	March 15, 2001.
Honeywell International Inc. SB No. T5317–0125 Total Pages: 5	ALL	Original	March 15, 2001.
Honeywell International Inc. SB No. T53–L–13B–0020 Total Pages: 13	ALL	3	October 25, 2001.
Honeywell International Inc. SB No. T53–L–13B–0125 Total Pages: 6	ALL	Original	April 5, 2001.
Honeywell International Inc. SB No. T53–L–13B/D–0020 Total Pages: 13	ALL	2	November 25, 2002.
Honeywell International Inc. SB No. T53–L–13B/D–0125 Total Pages: 6	ALL	Original	April 5, 2001.
Honeywell International Inc. SB No. T53–L–703–0020 Total Pages: 13	ALL	2	November 25, 2002.
Honeywell International Inc. SB No. T53–L–703–0125 Total Pages: 6	ALL	Original	April 5, 2001.

Issued in Burlington, Massachusetts, on December 28, 2005.

Peter A. White,

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

[FR Doc. 06–63 Filed 1–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22511; Directorate Identifier 2005–NM–120–AD; Amendment 39–14440; AD 2006–01–01]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Gulfstream 100 Airplanes; and Model Astra SPX, and 1125 Westwind Astra 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 Gulfstream Aerospace LP Model Gulfstream 100 airplanes; and Model Astra SPX, and 1125 Westwind Astra airplanes. This AD requires a one-time inspection for discrepancies of the nose wheel steering assembly of the landing gear, installing a warning placard on each nose landing gear door, and corrective action if necessary. This AD results from reports of failure of the steering brackets of the nose wheel steering assembly, and in one incident, loss of steering control. We are issuing this AD to find and fix these discrepancies, which could result in loss of steering control and consequent reduced controllability of the airplane.

DATES: This AD becomes effective February 16, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of February 16, 2006.

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

Contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, Georgia 31402–2206, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Gulfstream Aerospace LP Model Gulfstream 100 airplanes; and Model Astra SPX, and 1125 Westwind Astra airplanes. That NPRM was published in the **Federal Register** on September 26, 2005 (70 FR 56143). That NPRM proposed to require a one-time inspection for discrepancies of the nose wheel steering assembly of the landing gear, installing a warning placard on each nose landing gear door, and corrective action if necessary.

Comments

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

Request To Withdraw AD

The commenter notes that, since release of the service bulletins referenced in the NPRM (100–32A–275 and 1125–11–181, both Revision 1, both dated December 24, 2003), Gulfstream has issued a new service bulletin (100–32–282) that provides instructions for removing the co-rotating shaft connecting the nose wheels, and replacing it with a tube that is inserted into the wheel axle. The new service bulletin also provides instructions for replacing the self-locking nut of the centering spring pivot axis with a castellated nut. The commenter adds that Gulfstream has since put that service bulletin on hold due to the fact that there was at least one airplane that experienced nose wheel shimmy (due to cracked nose wheel steering brackets), after incorporating the service bulletin. The commenter notes that Gulfstream has now developed an improved upper and lower bracket assembly; Revision 1 of service bulletin 100–32–282 will provide instructions for replacing those bracket assemblies, as well as replacing the self-locking nut of the centering spring pivot axis with a castellated nut. In addition, Revision 1 will provide instructions for removing and replacing the co-rotating shaft with a tube inserted into the wheel axle. The commenter adds that the expected release date for Revision 1 is during the fourth quarter of 2005. In light of these facts, the commenter asks that the NPRM be withdrawn. The commenter concludes that if the FAA does not withdraw the NPRM, accomplishing Gulfstream Service Bulletins 1125–11–181 and 100–32–282 should be included as terminating action.

We do not agree with the commenter's requests as follows:

We do not agree to withdraw the NPRM since we have determined that an unsafe condition exists, and that the actions required by this AD are necessary to ensure the continued safety of the affected fleet.

Regarding the request to refer to a terminating action, we note that the service bulletin revisions to which the commenter refers have not yet been released. Approving revisions of service bulletins that have not yet been released would violate the Office of the Federal Register's (OFR) regulations for approving materials that are incorporated by reference. In general terms, we are required by these OFR regulations either to publish the service document contents as part of the actual AD language, or to submit the service document to the OFR for approval as ''referenced'' material, in which case we may only refer to such material in the text of an AD. The AD may refer to the service document only if the OFR has approved it for ''incorporation by reference.'' Once the service bulletin revisions have been issued, and we have approved them, we may consider approving them as an alternative method of compliance (AMOC) with this AD. Operators may request approval of an AMOC for this AD under the provisions of paragraph (g) of this AD.

In addition, this AD requires a one-time non-destructive test inspection for discrepancies of the nose wheel steering assembly, installing a warning placard on each nose landing gear door, and doing any applicable corrective action. No further action is required by this AD, so it is not necessary to include an additional terminating action.

No change to the AD is needed in this regard.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

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

Conclusion

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

Costs of Compliance

This AD would affect about 106 airplanes of U.S. registry. The inspection would take about 8 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $55,120, or $520 per airplane.

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):

2006–01–01 Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Amendment 39–14440. Docket No. FAA–2005–22511; Directorate Identifier 2005–NM–120–AD.

Effective Date

(a) This AD becomes effective February 16, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Gulfstream Aerospace LP Model Gulfstream 100 airplanes; and Model Astra SPX, and 1125 Westwind Astra airplanes; certificated in any category; as identified in Gulfstream Alert Service Bulletin 100–32A–275 and Gulfstream Service Bulletin 1125–11–181, both Revision 1, both dated December 24, 2003.

Unsafe Condition

(d) This AD was prompted by reports of failure of the steering brackets of the nose wheel steering assembly of the landing gear, and in one incident, loss of steering control. We are issuing this AD to find and fix discrepancies of the nose wheel steering assembly which could result in loss of steering control and consequent reduced controllability of the airplane.

Compliance

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

One-Time Inspection/Corrective Action

(f) Within 50 flight hours or 25 landings after the effective date of this AD, whichever is first: Perform a one-time non-destructive test inspection for discrepancies of the nose wheel steering assembly, install a warning placard on each nose landing gear door, and do any applicable corrective action, by accomplishing all the actions specified in the Accomplishment Instructions of Gulfstream Alert Service Bulletin 100–32A–275 and Gulfstream Service Bulletin 1125–11–181, both Revision 1, both dated December 24, 2003. Any applicable corrective action must be accomplished before further flight in accordance with Alert Service Bulletin 100–32A–275. Although the service bulletins specify to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, International Branch, 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 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(h) Israeli airworthiness directives 32–03–10–05 R1, dated February 8, 2004, and 32–03–12–09, dated February 5, 2004, also address the subject of this AD.

Material Incorporated by Reference

(i) You must use Gulfstream Alert Service Bulletin 100–32A–275, Revision 1, dated December 24, 2003; and Gulfstream Service Bulletin 1125–11–181, Revision 1, dated December 24, 2003; 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 Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, Georgia 31402–2206, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records 1 Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on December 20, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–264 Filed 1–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23440; Directorate Identifier 2005–NM–256–AD; Amendment 39–14452; AD 2006–01–51]

RIN 2120–AA64

Airworthiness Directives; Frakes Aviation (Gulfstream American) Model G–73 (Mallard) Series Airplanes and Model G–73 Airplanes That Have Been Converted To Have Turbine Engines

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

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2006–01–51 that was sent previously by individual notices to all known U.S. owners and operators of Frakes Aviation (Gulfstream American) Model G–73 (Mallard) series airplanes and Model G–73 airplanes that have been converted to have turbine engines. This AD requires an inspection to detect repairs, cracking, or corrosion of the wings from wing station (WS) 77L to WS 77R, front spar to rear (main) spar; removal of repairs, if found; removal of sealant from the interior of the wet bays; and repair of any crack or corrosion. This AD results from a report indicating that the right wing of a Frakes Aviation (Gulfstream American) Model G–73 (Mallard) airplane separated from the fuselage on takeoff, which resulted in the airplane impacting the water near Miami Beach, Florida. We are issuing this AD to prevent structural failure of the wing and loss of control of the airplane.

DATES: This AD becomes effective January 17, 2006 to all persons except those persons to whom it was made immediately effective by emergency AD 2006–01–51, issued December 30, 2005, which contained the requirements of this amendment.

We must receive comments on this AD by March 13, 2006.

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.

Docket: The AD docket contains the emergency AD, comments, and any final disposition. You can 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 U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–23440; the directorate identifier for this docket is 2005–NM–256–AD.

FOR FURTHER INFORMATION CONTACT: Robert A. Romero, Aerospace Engineer, ACO, ASW–150, Rotorcraft Directorate, FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298; telephone (817) 222–5102; fax (817) 222–5960; or Hung V. Nguyen, Aerospace Engineer, ACO, ASW–150, Rotorcraft Directorate, FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298; telephone (817) 222–5155; fax (817) 222–5960.

SUPPLEMENTARY INFORMATION: On December 30, 2005, we issued emergency AD 2006–01–51, which applies to all Frakes Aviation (Gulfstream American) Model G–73 (Mallard) series airplanes and Model G–73 airplanes that have been converted to have turbine engines.

Background

On December 19, 2005, the right wing of a Frakes Aviation (Gulfstream American) Model G–73 (Mallard) airplane separated from the fuselage on takeoff, which resulted in the airplane impacting the water near Miami Beach, Florida. The wing separated between the fuselage attachment and the engine attachment.

This twin-engine airplane was manufactured in 1947. This particular airplane was operated in passenger service and in a salt-water environment. The airplane had accumulated over 31,000 total flight hours and over 39,000 total flight cycles. Although the cause of this accident has not yet been determined by the National Transportation Safety Board (NTSB), preliminary indications from the investigation reveal occurrences of fatigue cracking of a wing spar, skin cracking, and a broken z-stringer.

The loss of the lower skin capability, or the spar and stringer capability, will likely lead to wing failure. This condition, if not corrected, could result in structural failure of the wing and loss of control of the airplane.

FAA's Determination and Requirements of This AD

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, we issued emergency AD 2006–01–51 to prevent structural failure of the wing and loss of control of the airplane. The AD requires a detailed visual inspection to detect repairs, cracking, or corrosion of the wings from wing station (WS) 77L to WS 77R, front spar to rear (main) spar; removal of repairs, if found, to allow for inspection of the wing structure underneath the repairs; removal of sealant from the interior of the wet bays to allow for inspection of the skins, stringers, and both spars; and repair of any crack or corrosion. The inspection and repair are required to be done in accordance with a method approved by the FAA. The AD also requires sending the inspection results (both positive and negative) to the FAA.

We found that immediate corrective action was required; therefore, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on December 30, 2005, to all known U.S. owners and operators of Frakes Aviation (Gulfstream American) Model G–73 (Mallard) series airplanes and Model G–73 airplanes that have been converted to have turbine engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Additional Source of Service Information

Operators should note that Frakes Aviation may be contacted as a source of preliminary service information as follows: Frakes Aviation, Cleburne

Airport, Route 3, Box 229–B, Cleburne, TX 76031; telephone (817) 556–0700.

Interim Action

This AD is considered to be interim action. The inspection reports that are required by this AD will enable the FAA to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop final action to address the unsafe condition. Frakes Aviation may be contacted as a source of preliminary service information as follows: Frakes Aviation, Cleburne Airport, Route 3, Box 229–B, Cleburne, TX 76031; telephone (817) 556–0700.

Frakes Aviation has advised the FAA that it is developing special detailed (i.e., non-destructive testing) inspection procedures that are expected to be available within 45 days. You may choose to comply with the interim action required by this AD if you must fly before the special detailed inspection becomes available. Otherwise, you may wait for the service information that is being developed by Frakes Aviation. Once that service information is available and approved, we anticipate superseding this AD to require compliance with that information.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was 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 in the **ADDRESSES** section. Include ''Docket No. FAA–2005–23440; Directorate Identifier 2005–NM–256–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket 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 can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If this emergency regulation is later deemed significant under DOT Regulatory Policies and Procedures, we will prepare a final regulatory evaluation and place it in the AD Docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation, if filed.

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 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 airworthiness directive (AD):

2006–01–51 Frakes Aviation (Gulfstream American): Amendment 39–14452. Docket No. FAA–2005–23440; Directorate Identifier 2005–NM–256–AD.

Effective Date

(a) This AD becomes effective January 17, 2006, to all persons except those persons to whom it was made immediately effective by emergency AD 2006–01–51, issued on December 30, 2005, which contained the requirements of this amendment.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Frakes Aviation (Gulfstream American) Model G–73 (Mallard) series airplanes; and Model G–73 airplanes that have been converted to have turbine engines; certificated in any category.

Unsafe Condition

(d) This AD results from a report indicating that the right wing of a Frakes Aviation (Gulfstream American) Model G–73 (Mallard) airplane separated from the fuselage on takeoff, which resulted in the airplane impacting the water near Miami Beach, Florida. Although the cause of this accident has not yet been determined by the National Transportation Safety Board (NTSB), preliminary indications from the investigation reveal occurrences of fatigue cracking of a wing spar, skin cracking, and a broken z-stringer. This condition, if not corrected, could result in structural failure of the wing and loss of control 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.

Inspection

(f) Before further flight, perform a detailed visual inspection to detect repairs, cracking, or corrosion of the wings from wing station (WS) 77L to WS 77R, front spar to rear (main) spar; remove any repair that is found, to allow for inspection of the wing structure underneath the repairs; and remove the sealant from the interior of the wet bays to allow for inspection of the skins, stringers, and both spars. Perform the inspection in accordance with a method approved by the Manager, Airplane Certification Office (ACO), ASW–150, Rotorcraft Directorate, FAA.

Note 1: For the purposes of this AD, a detailed visual inspection is: ''An intensive examination of a specific item, installation,

or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Reporting

(g) Before further flight, submit a report of the findings (both positive and negative) of the inspection required by paragraph (f) of this AD to Robert A. Romero, Aerospace Engineer, ACO, ASW–150, Rotorcraft Directorate, FAA; 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298; fax (817) 222–5960. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of total flight cycles and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

Repair

(h) If any cracking or corrosion is found during the inspection required by paragraph (f) of this AD, repair before further flight, in accordance with a method approved by the Manager, ACO, ASW–150, Rotorcraft Directorate, FAA.

Special Flight Permit

(i) Special flight permits, as described in Section 21.197 (''Special flight permits'') and Section 21.199 (''Issue of special flight permits'') of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), may be issued to operate the airplane to a location where the requirements of this AD can be accomplished but concurrence by the Manager, ACO, ASW–150, Rotorcraft Directorate, FAA, is required prior to issuance of the special flight permit.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, ACO, ASW–150, Rotorcraft 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.

Material Incorporated by Reference

(k) None.

Issued in Renton, Washington, on January 5, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–259 Filed 1–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22791; Directorate Identifier 2005–NM–083–AD; Amendment 39–14448; AD 2006–01–09]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146–100A and –200A Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model BAe 146–100A and –200A series airplanes. This AD requires inspecting the nose landing gear (NLG) assembly to determine the part number of the NLG main fitting subassembly. For subject NLG main fitting subassemblies, this AD also requires determining the total number of accumulated landings on a subject NLG main fitting subassembly, and eventually replacing the NLG assembly. This AD results from a report indicating that the airplane maintenance manual contains incorrect safe-life limit information for certain NLG assemblies. We are issuing this AD to ensure that affected NLG fitting subassemblies are removed from service before they reach their approved safe-life limit. Operating with an NLG fitting subassembly that is beyond its approved safe-life limit could result in failure of the NLG and consequent loss of directional control on the ground and major structural damage to the airplane.

DATES: This AD becomes effective February 16, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 16, 2006.

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

Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all BAE Systems (Operations) Limited Model BAe 146–100A and –200A series airplanes. That NPRM was published in the **Federal Register** on October 27, 2005 (70 FR 61916). That NPRM proposed to require inspecting the nose landing gear (NLG) assembly to determine the part number of the NLG main fitting subassembly. For subject NLG main fitting subassemblies, that NPRM also proposed to require determining the total number of accumulated landings on a subject NLG main fitting subassembly, and eventually replacing the NLG assembly.

Comments

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

Conclusion

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

Costs of Compliance

This AD will affect about 18 airplanes of U.S. registry. The required inspection will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $1,170, or $65 per airplane.

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):

2006–01–09 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–14448. Docket No. FAA–2005–22791; Directorate Identifier 2005–NM–083–AD.

Effective Date

(a) This AD becomes effective February 16, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model BAe 146–100A and -200A series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report indicating that the airplane maintenance manual contains incorrect safe-life limit information for certain nose landing gear (NLG) assemblies. We are issuing this AD to ensure that affected NLG fitting subassemblies are removed from service before they reach their approved safe-life limit. Operating with an NLG fitting subassembly that is beyond its approved safe-life limit could result in failure of the NLG and consequent loss of directional control on the ground and major structural damage to the airplane.

Compliance

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

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of BAE Systems (Operations) Limited Model BAe 146 Modification Service Bulletin ISB.32–169, dated October 4, 2004.

(1) The service bulletin refers to Messier-Dowty Service Bulletin 146–32–155, dated July 16, 2004, as an additional source of service information for inspecting to determine the part number of the NLG main fitting subassembly, determining the number of accumulated landings on the NLG main fitting subassembly, and replacing the NLG assembly.

(2) Although the service bulletin specifies to submit certain information to the manufacturer and to return replaced NLG assemblies to the manufacturer or other overhaul facility, this AD does not require those actions.

Inspection To Determine Part Number

(g) Within 30 days after the effective date of this AD: Inspect the NLG assembly to determine the part number of the NLG main fitting subassembly, in accordance with the service bulletin. If the part number of the NLG main fitting subassembly is not listed in paragraph 1.A.(2) of the service bulletin, then this paragraph requires no further action. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the NLG main fitting subassembly can be conclusively determined from that review.

Replacement of NLG

(h) If the part number of the NLG main fitting subassembly is listed in paragraph 1.A.(2) of the service bulletin: Determine the total accumulated landings on the subassembly (since the subassembly was new or overhauled), and replace the NLG with a new, serviceable, or overhauled subassembly, in accordance with the service bulletin. (For the purposes of this AD, a serviceable NLG is one on which the NLG main fitting subassembly has been identified, the number of landings has been determined, and the number of landings does not exceed the limits specified in paragraphs (h), (h)(1) or (h)(2) of this AD, as applicable.) Do the actions specified in this paragraph at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, or within 500 landings after the effective date of this AD, whichever is later. A review of airplane maintenance records is acceptable in lieu of this inspection if the total accumulated landings on the subassembly (since the subassembly was new or overhauled) can be conclusively determined from that review.

(1) If the NLG has not been overhauled previously: Prior to the accumulation of 35,000 total landings on the NLG.

(2) If the NLG has been overhauled previously: Within 8,000 landings since the most recent overhaul.

Parts Installation

(i) After the effective date of this AD, no person may install an NLG that is equipped with a main fitting subassembly having a part number identified in paragraph 1.A.(2) of the service bulletin, unless all of the applicable actions in paragraphs (g) and (h) of this AD have been done.

Alternative Methods of Compliance (AMOCs)

(j)(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 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(k) British airworthiness directive G–2005–0001, dated January 12, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use BAE Systems (Operations) Limited Model BAe 146 Modification Service Bulletin ISB.32–169, dated October 4, 2004, 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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation,

400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 30, 2005.

Linda Navarro,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–184 Filed 1–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21275; Directorate Identifier 2005–CE–28–AD; Amendment 39–14450; AD 2006–01–11]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all The Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes. This AD requires you to install the pilot assist handle (part number (P/N) SK208–146–2) (or FAA-approved equivalent part number) and deicing boots on the cargo pod and landing gear fairings (part number (P/N) AK208–6C) (or FAA-approved equivalent part number); and make changes to the Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM). This AD results from reports of several accidents involving the affected airplanes during operations in flight and in ground icing conditions. We are issuing this AD to provide a safe method to detect ice, snow, frost, or slush adhering to the upper wing (a critical surface) prior to takeoff; and to reduce drag in-flight by shedding ice on the cargo pod and landing gear fairings. Ice adhering to the upper wing surface, cargo pod, or landing gear fairings could result in a reduction in airplane performance with the consequences that the airplane cannot perform a safe takeoff or climb.

DATES: This AD becomes effective on February 22, 2006.

As of February 22, 2006, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact The Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277–7706; telephone: (316) 517–5800; facsimile: (316) 942–9006.

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 is FAA–2005–21275; Directorate Identifier 2005–CE–28–AD.

FOR FURTHER INFORMATION CONTACT: Paul Pellicano, Aerospace Engineer (Icing), FAA, Small Airplane Directorate, c/o Atlanta Aircraft Certification Office (ACO), One Crown Center, 1985 Phoenix Boulevard, Suite 450, Atlanta, GA 30349; telephone: (770) 703–6064; facsimile: (770) 703–6097; or Robert P. Busto, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4157; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received several reports of accidents and incidents concerning problems with Cessna Models 208 and 208B airplanes during operations in icing conditions. This includes a total of six accidents in the previous two icing seasons and nine other incidents. One-third of the Model 208 icing-related accidents occurred as a result of loss of control after takeoff in ground icing conditions. One-third is suspected to have occurred in supercooled large droplets, icing conditions outside the 14 CFR part 25 Appendix C certification envelope. The Cessna Models 208 and 208B are certificated to 14 CFR part 23, but 14 CFR part 23 references 14 CFR part 25 Appendix C for icing certification.

Findings from the accidents conclude that there was a reduction in airplane performance due to drag from airframe ice accretion. The airplanes could not perform a safe takeoff, climb, or maintain altitude.

What is the potential impact if FAA took no action? Ice adhering to critical surfaces could result in a reduction in airplane performance with the consequence that the airplane cannot climb or maintain altitude.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (FAR) (14 CFR part 39) to include an AD that would apply to all The Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 21, 2005 (70 FR 35565). The NPRM proposed to require you to install a pilot assist handle, Cessna part number SK208–146–2, for all affected airplanes, install deicing boots on landing gear struts and cargo pod, Cessna part number AK208–6C, for all affected airplanes, and make changes to the Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM), and to the POH and AFM Supplement S1 for all affected airplanes.

Comments

Was the public invited to comment? 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:

Comment Issue No. 1: Allow Installation of Replacements Parts Approved Under 14 CFR 21.303

What is the commenter's concern? The commenter, the Modification and Replacement Parts Association (MARPA), states that the Parts Manufacturer Approval (PMA), 14 CFR 21.303, provides an alternative mechanism for the design, production, sale, and installation of aeronautical items other than those specified by the original equipment manufacturer (OEM). While no alternative PMA parts are currently known to exist, alternative PMA parts may be created in the future and the AD action should take into account that possibility.

The MARPA requests that the AD language state that installation of replacements parts approved under 14 CFR 21.303 is permitted.

What is FAA's response to the concern? We agree with the MARPA. The FAA will add the phrase ''or FAA-approved equivalent part number'', and add language to cover the PMA replacement parts.

Comment Issue No. 2: Withdraw the Requirement for the Pilot Assist Handle

What is the commenter's concern? Three commenters, two owners/operators and the Regional Air Cargo Carriers Association (RACCA), request the withdrawal of the requirement for the pilot assist handle.

The commenters justify the request for withdrawal of the proposed requirement for the pilot assist handle reasoning that it is more cost effective and the results will be better to continue the course of crewmember training and education. Further, a handle will not allow the pilot to make better decisions. Lastly, the affected airplanes' ability to operate in and out of smaller airports, which typically do not have ground de-ice facilities or capabilities, require the flight crew to be especially diligent in pre-takeoff examination, assessment, and judgment.

The RACCA also notes these reasons to withdraw the requirement for the pilot assist handle:

—The operator may employ alternative methods of gaining access to upper wing surface, and these methods may provide better access to a variety of locations along the wingspan.

—It may be extremely dangerous and result in personal injury (from a fall) to do the tactile inspection while attempting to stand on the doorsill and hang from the pilot assist handle after the application of deicing/anti-icing fluid may be extremely dangerous and result in personal injury from a fall.

—It may be challenging or impossible for some pilots to reach the intended tactile inspection area, and this could easily be challenged under the Americans with Disabilities Act.

What is FAA's response to the concern? The FAA acknowledges the points made by the commenters to this issue. Rather than mandating installation of a pilot assist handle for all affected airplanes, FAA will mandate a revision to the Required Equipment List in the Limitations section of the basic AFM. This revision will require installation of the pilot assist handle in ground icing conditions currently defined in the AFM Limitations section. This AD does not mandate where on the wingspan a pre-takeoff tactile inspection is done and does not preclude an owner/operator from inspecting the upper wing with a ladder. It provides the type design one safe method to do the tactile check on the upper wing surface, particularly the pretakeoff contamination check required in part 135 operations during ground icing conditions.

We have revised the final rule to reflect this change.

Comment Issue No. 3: Withdraw the Proposed Requirement To Install Deicing Boots on the Cargo Pod and Landing Gear

What is the commenter's concern? Two commenters seek the withdrawal of the proposed requirement to install deicing boots on the cargo pod and landing gear. The first commenter wants FAA to also show the statistical probable cause and result of each known icing accident involving Cessna Models 208 and 208B airplanes. Further, the commenter wants FAA to prove that the proposed additional equipment would have prevented a substantial number of these accidents.

The second commenter, an airline transport pilot, in a personal anecdote describes ice adhering to critical surfaces of the Cessna Model 208B airplane that he was piloting despite the airplane being equipped with deicing boots on the landing gear struts and cargo pod. The commenter describes loss of control at high airspeed under icing conditions.

The second commenter expresses concern that the installation of deicing boots on the landing gear struts and cargo pod on Cessna Models 208 and 208B airplanes will give pilots and operators of these airplanes a false sense of security that the problem of ice handling ability of the airplane has been resolved. This commenter indicates that poor performance of the existing deicing boots is a factor in loss of control accidents and that redesign of the existing systems is needed.

We conclude that the second commenter wants FAA to withdraw the proposed requirement to install deicing boots on the cargo pod and landing gear.

What is FAA's response to the concern? Loss of control after takeoff caused one-third of the fatal accidents involving the affected airplanes, and the other two-thirds occurred in-flight. Approximately 50-percent of the airplanes involved in in-flight icing related accidents were not equipped with deicing boots on the landing gear and on the cargo pod if equipped with a cargo pod. Approximately 80-percent of the airplanes involved in in-flight accidents suspected to be in supercooled large drops were not equipped with these boots. Our drag analysis shows that the service ceiling in icing is decreased by more than 1,000 feet in critical icing conditions without this equipment. Cessna flight-testing of artificial ice shapes validated this analysis. Regarding the loss of control at high airspeed, FAA and the manufacturer evaluated longitudinal control with artificial ice shapes and have found no problems.

As for performance of the deicing boots, FAA has conducted icing tunnel tests on a similar general aviation airfoil and deicing boots. The results will be reported in 2006. The results of these tests are reflected in revisions to the Airplane Flight Manual Known Icing Supplement Limitations and Procedures during 2005.

We have revised the AD to modify the estimated costs of compliance.

Comment Issue No. 4: Require Cargo Pod and Landing Gear Deicing Boots on Only Those Airplanes Equipped With Pneumatic Deicing Boots and Approved for Flight in Icing Conditions

What is the commenter's concern? Two commenters, one the U.S. Parachute Association (USPA), write that many operators operate their Models 208 and 208B airplanes in visual meteorological conditions (VMC) and have no intention on flying into known icing conditions or instrument meteorological conditions (IMC).

Comments from the USPA note that some jump-configured Cessna Models 208 and 208B airplanes are equipped with pneumatic deicing boots. The USPA letter also indicates that on some airplanes the boots have been deactivated. In other cases, the boots are operational, but the operator indicates that the aircraft does not have the added equipment that would permit flight into known icing conditions; is not flown in instrument meteorological conditions; or is not flown in known icing conditions. The requirement for deicing boots on the cargo pod and landing gear might result in some operators removing or deactivating the deicing boots to avoid the requirements of the AD.

In light of the above, the USPA proposes that instead of installing the deicing boots, allow the owners/operators of jump airplanes to install a placard (within the pilot's clear view) that restricts the airplane from flight into known icing conditions.

What is FAA's response to the concern? The FAA recognizes that some owners/operators of the affected aircraft do not operate in known icing conditions. Our intent in the proposed rule was not to mandate the cargo pod and landing gear deicing boots on airplanes unapproved for flight in icing or for airplanes owners to remove or deactivate the deicing boots.

For the final rule, we added an option for airplanes discussed in the previous paragraph to require installing a placard that prohibits flight in icing conditions instead of installing the cargo pod and landing gear fairing deicing boots.

Comment Issue No. 5: Delay the Proposed Requirement To Install the Cargo Pod and Landing Gear Deicing Boots Until Cessna Flight Tests Are Completed

What is the commenter's concern? Two commenters, Cessna and the

RACCA, forwarded correspondence to FAA that suggests delaying the proposed requirement to install the deicing boots on the cargo pod and landing gear.

In a recent letter to RACCA, Cessna's Director of Airworthiness and Product Safety stated the following:

''Cessna does not believe that an unsafe condition exists in the design of aircraft equipped with pneumatic deice boots for flight into known icing and not equipped with cargo pod and main landing gear deice boots.'' He continued by indicating that Cessna is planning to conduct additional flight tests to determine if the rate of climb performance is significantly improved in icing conditions and that mandatory action (presumably the AD) ''should be delayed until completion of analysis of this testing.''

We conclude that in light of the letter from Cessna, the RACCA wants FAA to delay requiring owners/operators of the affected aircraft to install the cargo pod and landing gear deicing boots until Cessna's flight tests are completed.

What is FAA's response to the concern? The FAA reviewed the results of Cessna artificial ice shape testing and determined the results validate the FAA drag analysis. We have retained the requirement to install deicing boots on the cargo pod and landing gear.

Comment Issue No. 6: Withdraw the Proposed Rule, Conduct Public Hearings, and as a Result of the Public Hearings, Issue a New NPRM

What is the commenter's concern? The Alaska Air Carriers Association (AACA) requested that FAA withdraw the proposed rule, conduct at least two public hearings on the proposed changes; and based upon the comments received under this docket and from the public hearings, issue another document on this proposed rule. The AACA reasoning for the comment issue included the following points.

—The proposed rule is extremely burdensome, especially in light of the requirements of the Regulatory Flexibility Analysis. The AACA estimated that the cost of outfitting each Cessna 208/208B with the required items and making the proposed changes to the POH/AFM is $13,041, not $9,653 as FAA estimated the cost impact.

—The proposed rule would expand requirements without any evidence that it would enhance safety.

—The proposed rule does not address necessary training for owners/operators of the affected aircraft.

What is FAA's response to the concern? The FAA does not agree with the reasoning of the AACA for this comment issue. The FAA has determined that the requirements regarding a Regulatory Flexibility Analysis have been met and that, since an unsafe condition exists, we should issue the AD. Further, the impact on continued operational safety outweighs the cost to comply. The FAA does not believe that there is a need for any public meetings.

We are not making changes to the final rule based on this comment except we have modified the estimated cost of compliance. Also, owners and operators always have the option to apply for a FAA-approved alternative method to the pilot assist handle that will allow the inspection required in the AFM Limitations section. An example is a ladder that allows inspection of the upper wing extending out to two feet behind the deicing boot and is properly secured inside the airplane when not in use. Such an alternative would not be considered for part 135 operators that are approved to operate in ground icing conditions. The pilot assist handle is required to safely and quickly conduct a pretakeoff contamination check within five minutes of takeoff.

Comment Issue No. 7: Prohibit Flights Into Forecast and Known Icing Conditions, Make a Special Airworthiness Review of the Aircraft Certification for Operations in Icing Conditions, and Evaluate Alternative Airframe Ice Protection Technologies

What is the commenter's concern? The commenter states that the row of vortex generators on top of the horizontal stabilizer just forward of the elevator, which enhance nose down elevator and trim authority, may lose effectiveness in icing conditions. Additionally, the commenter states that the pilot assist handle will not permit (without use of a ladder) adequate inspection of all the upper tailplane surfaces including the vortex generators. Therefore, the commenter recommends that FAA prohibit flights of Cessna Model 208 and 208B aircraft into forecast and known icing conditions until a Special Airworthiness Review of the Aircraft Certification for operations in icing conditions (with focus on the tailplane icing issue) is done, including review and evaluation of alternative airframe ice protection technologies.

What is FAA's response to the concern? The FAA does not concur. The tailplane vortex generators were installed to improve trim authority not as a result of ice contaminated tailplane stall (ICTS). The critical tail surface is the underside of the tail, and the critical wing surface is the upper surface. We note that sandpaper ice, which has been shown to be just as critical as ice shapes for ICTS susceptibility, has been evaluated on the Cessna Model 208. As mentioned in our above responses to other commenters, Cessna is conducting flight tests that will include intercycle ice with horn shapes associated with glaze ice along the entire span of the horizontal stabilizer and on the elevator horns. The flight tests will also evaluate longitudinal control and trim at critical center of gravity. Before deciding on any further rulemaking action, FAA will review the test results and the potential for ice to accrete on the vortex generators and the resulting effect.

The FAA is not making changes to the final rule based on this comment.

Conclusion

What is FAA's final determination on this issue? 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 discussed above 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 was already proposed in the NPRM.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains information relating to this subject in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov.*

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 743 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to do the installation of the pilot assist handle (P/N SK208–146–2) for all Cessna Models 208 and 208B airplanes:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
5 work hours × $65 = $325	$858	$1,183	721 × $1,183 = $852,943.

We estimate the following costs to do the installation of the cargo pod and landing gear deicing boots (P/N AK208–6C) for all Cessna Models 208 and 208B airplanes:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
37 work hours × $65 = $2,405	$10,151	$12,556	343 × $12,556 = $4,306,708.

We estimate the following costs to do the installation of a placard for all Cessna Models 208 and 208B airplanes:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. Operators
2 work hours × $65 = $130	$500	$630	29 × $630 = $18,270.

We estimate the following costs to do the changes to the Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM):

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 work hours × $65 = $130	Not Applicable	$65	752 × $130 = $97,760.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? 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

Will this AD impact various entities? 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.

Will this AD involve a significant rule or regulatory action? 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–2005–21275; Directorate Identifier 2005–CE–28–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. FAA amends § 39.13 by adding a new AD to read as follows:

2006–01–11 The Cessna Aircraft Company: Amendment 39–14450; Docket No. FAA–2005–21275; Directorate Identifier 2005–CE–28–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on February 22, 2006.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

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

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of several accidents involving the affected airplanes during operations in-flight and in ground icing conditions. We are issuing this AD to provide a safe method to detect ice, snow, frost, or slush adhering to the upper wing (a critical surface) prior to takeoff; and to reduce drag in-flight by shedding ice on the cargo pod and landing gear fairings. Ice adhering to the upper wing surface, cargo pod, or landing gear fairings could result in a reduction in airplane performance with the consequences that the airplane cannot perform a safe takeoff or climb or maintain altitude.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Install the pilot assist handle SK208–146–2 subkit (part number (P/N) SK208–146–2((or FAA-approved equivalent part number if the airplane will be operated in the ground icing conditions defined under 'Visual/Tactile Check' in the LIMITATIONS section of the AFM after the compliance time).	Within the next 125 days after February 22, 2006 (the effective date of this AD), unless already done.	Install the pilot assist handle SK208–146–2 subkit (part number (P/N) SK208–146–2 (or FAA-approved equivalent part number) following step 4 of the Accomplishment Instructions of Cessna Caravan Service Kit No. SK208–146, dated October 4, 2004.
(2) 14 CFR 21.303 allows for replacement parts through parts manufacturer approval (PMA). The phrase "or FAA-approved equivalent part number" in this AD is intended to signify those parts that are PMA parts approved through identicality to the design of the part under the type certificate and parts to correct the unsafe condition under PMA (other than identicality). Equivalent replacement parts to correct the unsafe condition under PMA (other than identicality) may also be installed provided they meet current airworthiness standards, which include those actions cited in this AD.	Not Applicable	Not Applicable.
(3) Insert the text in Appendix 1 of this AD after the "OTHER LIMITATIONS" in the LIMITATIONS section of the Cessna Models 208 or 208B Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM).	Before further flight after compliance to paragraph (e)(1) 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 insert the information into the POH as specified in paragraph (e)(3) of this AD. You may insert a copy of this AD into the appropriate sections of the POH to comply with this action. 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).
(4) For Cessna Model 208B with Pratt & Whitney of Canada Ltd., PT6A–114 Turbo Prop engine installed (600 SHP) or equivalent, and equipped with pneumatic deicing boots, do one of the following:. (i) Install Cessna Accessory Kit AK208–6C per Cessna Service Bulletin CAB95–19; or. (ii) Install a placard in view of the pilot which states "This airplane is prohibited from flight in known or forecast icing".	Within the next 125 days after February 22, 2006 (the effective date of this AD), unless already done.	Install the cargo pod and landing gear fairing deice kit (part number (P/N) AK208–6C2) (or FAA-approved equivalent part number) following the Installation Instructions of Cessna Caravan Service Bulletin No. CAB95–19, dated October 13, 1995, and Cessna Caravan Accessory Kit No. AK208–6C, Revision C, dated August 27, 1993. 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 install the placard as specified in paragraph (e)(4) of this AD. You may insert a copy of this AD into the appropriate sections of the POH to comply with this action. 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).
(5) For all Cessna Model 208 and 208B airplanes equipped with pneumatic deicing boots and not included in paragraph (e)(4) of this AD, do one of the following:. (i) Install Cessna Accessory Kit AK208–6C per Cessna Service Bulletin CAB93–20 Revision 1; or. (ii) Install a placard in view of the pilot with the following words: "This airplane is prohibited from flight in known or forecast icing".	Within the next 125 days after February 22, 2006 (the effective date of this AD), unless already done.	Do the installation following the Installation Instructions of Cessna Caravan Service Bulletin No. CAB93–20, Revision 1, dated October 13, 1995, and Cessna Caravan Accessory Kit No. AK208–6C, Revision C, issued August 27, 1993. 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 install the placard as specified in paragraph (e)(5)(ii) of this AD. 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).

Actions	Compliance	Procedures
(6) Insert the text in Appendix 2 of this AD in the ''KINDS OF OPERATION LIMITS'' in the LIMITATIONS section of the Cessna Models 208 or 208B Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM).	Before further flight after compliance to paragraph (e)(4)(i) or (e)(5)(i) 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 insert the information into the POH as specified in paragraph (e)(3) of this AD. You may insert a copy of this AD into the appropriate sections of the POH to comply with this action. 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).
(7) Delete the text in Appendix 3 of this AD from the ''REQUIRED EQUIPMENT'' in the LIMITATIONS section of the Cessna Models 208 or 208B Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM) Supplement S1 ''Known Icing Equipment''.	Before further flight after compliance to paragraph (e)(4)(i) or (e)(5)(i) 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 insert the information into the POH as specified in paragraph (e)(3) of this AD. You may insert a copy of this AD into the appropriate sections of the POH to comply with this action. 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).

Note: Cessna Caravan Service Bulletin No. CAB04–9, dated October 4, 2004, also addresses the installation of the pilot assist handle.

May I Request an Alternative Method of Compliance?

(f) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve alternative methods of compliance for this AD, if requested using the procedures found in 14 CFR 39.19. For information on any already approved alternative methods of compliance, contact Paul Pellicano, Aerospace Engineer (Icing), FAA, Small Airplane Directorate, c/o Atlanta ACO, One Crown Center, 1985 Phoenix Boulevard, Suite 450, Atlanta, GA 30349; telephone: (770) 703–6064; facsimile: (770) 703–6097; or Robert P. Busto, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4157; facsimile: (316) 946–4107.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Cessna Caravan Service Kit No. SK208–146, dated October 4, 2004 and Cessna Caravan Accessory Kit No. AK208–6C, Revision C, dated August 27, 1993. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact The Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277–7706; telephone: (316) 517–5800; facsimile: (316) 942–9006. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. 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 is FAA–2005–21275; Directorate Identifier 2005–CE–28–AD.

Appendix 1 to AD 2006–01–11

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

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

Insert the following text after the ''OTHER LIMITATIONS'' in the LIMITATIONS section of the Cessna Models 208 or 208B Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM):

COLD WEATHER OPERATIONS

The airplane must be equipped with the following equipment when operating at an airport in the ground icing conditions defined under 'Visual/Tactile Check' in the LIMITATIONS section:

1. Pilot assist handle, Cessna P/N SK208–146–2 (or FAA-approved equivalent part number)

Appendix 2 to AD 2006–01–11

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

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

Add the following to the equipment listed under ''FLIGHT INTO KNOWN ICING'' in the ''KINDS OF OPERATION LIMITS'' in the LIMITATIONS section of the FAA approved Airplane Flight Manual:

Lower main landing gear leading edge deice boots

Cargo pod nosecap deice boot

Appendix 3 to AD 2006–01–11

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

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

Remove the paragraph under ''REQUIRED EQUIPMENT'' in the Limitations section of the FAA Approved Flight Manual Supplement S1 ''Known Icing Equipment'', that currently reads as follows:

The following additional equipment is not required for flight into icing conditions as defined by FAR 25, but may be installed on early serial airplanes by using optional accessory Kit AK208–6. On later serial airplanes, this equipment may be included with the flight into known icing package. If installed, this equipment must be fully operational:

Issued in Kansas City, Missouri, on January 5, 2006.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–225 Filed 1–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22289; Directorate Identifier 2005–NM–101–AD; Amendment 39–14446; AD 2006–01–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–400F, 747SR, and 747SP Series 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 Boeing Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–400F, 747SR, and 747SP series airplanes, without a stretched upper deck or stretched upper deck modification. This AD requires detailed and high-frequency eddy current inspections for cracks of each affected tension tie and of the surrounding structure, and related investigative and corrective actions if necessary. This AD results from a report of a crack in the tension tie at the body station 820 frame connection, and cracks found on the Boeing 747SR fatigue-test airplane in both the tension ties and frames at the tension tie to frame connections at body stations 800, 820, and 840. We are issuing this AD to find and fix cracks in the tension ties, which could lead to cracks in the skin and body frame and result in rapid in-flight depressurization of the airplane.

DATES: This AD becomes effective February 16, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 16, 2006.

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

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–400F, 747SR, and 747SP series airplanes, without a stretched upper deck or stretched upper deck modification. That NPRM was published in the **Federal Register** on September 6, 2005 (70 FR 52945). That NPRM proposed to require detailed and high-frequency eddy current inspections for cracks at the outboard ends of each affected tension tie and of the surrounding structure, and related investigative and corrective actions if necessary.

Comments

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

Request to Remove References to ''Outboard Ends''

The commenter, the airplane manufacturer, requests that we remove the phrase ''at the outboard ends'' when referring to the tension ties and their surrounding structure. The commenter states that making this change would clarify that the inspection of the affected tension ties is from end to end. The commenter states that this change is consistent with Boeing Special Attention Service Bulletin 747–53–2502, dated April 21, 2005, which specifies inspections from end to end of each applicable tension tie. The commenter requests that we remove the reference ''at the outboard ends'' from the title of the NPRM, the ''Summary'' section, the ''Relevant Service Information'' section, and paragraph (f).

We agree with the commenter. It is our intention that operators inspect the affected tension ties and their surrounding structure in accordance with the special attention service bulletin. We carried over the phrase ''at the outboard ends'' from the ''Action'' and ''Description'' paragraphs of the special attention service bulletin. To avoid confusion, we have removed all appearances of this phrase from the final rule. We have changed paragraph (f) and the ''Summary'' section. We have not changed the ''Relevant Service Information'' section since that section of the preamble does not reappear in the final rule. We have also not changed the title of the NPRM because we do not give titles to NPRMs. We have retained the reference to the outboard ends in the ''Discussion'' section of the final rule because that section quotes the NPRM as it appeared originally in the **Federal Register**.

Request to Correct Paragraph Citations

The same commenter notes that there are two typographical errors in paragraph (g) of the NPRM, the Alternative Methods of Compliance (AMOCs)'' paragraph. The commenter points out that the references to paragraphs (g)(1)(i) and (g)(2)(ii) should refer to paragraphs (g)(3)(i) and (g)(3)(ii).

We agree with the commenter. As noted below under ''Clarification of AMOC Paragraph,'' we have also clarified paragraph (g) of the final rule to add a new paragraph (g)(2). Therefore, we have corrected the references in the final rule as requested, but the new references are to paragraphs (g)(4)(i) and (g)(4)(ii).

Clarification of 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.

Conclusion

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

Interim Action

We consider this proposed AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

Costs of Compliance

There are about 458 airplanes of the affected design in the worldwide fleet. This AD affects about 141 airplanes of

U.S. registry. The inspections take about 8 work hours per tension tie location. There are between 8 and 12 tension tie locations on each airplane, depending on the airplane's configuration. The average labor rate is $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is between $586,560 and $879,840, or between $4,160 and $6,240 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–01–07 Boeing: Amendment 39–14446. Docket No. FAA–2005–22289; Directorate Identifier 2005–NM–101–AD.

Effective Date

(a) This AD becomes effective February 16, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–400F, 747SR, and 747SP series airplanes, certificated in any category; without a stretched upper deck or stretched upper deck modification; as identified in Boeing Special Attention Service Bulletin 747–53–2502, dated April 21, 2005.

Unsafe Condition

(d) This AD results from a report of a crack in the tension tie at the body station 820 frame connection, and cracks found on the Boeing 747SR fatigue-test airplane in both the tension ties and frames at the tension tie to frame connections at body stations 800, 820, and 840. We are issuing this AD to find and fix cracks in the tension ties, which could lead to cracks in the skin and body frame and result in rapid in-flight depressurization 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 time in paragraph (f)(1) or (f)(2) of this AD: Do detailed and high-frequency eddy current inspections for cracking of each affected tension tie and of the surrounding structure. If any cracking is found: Before further flight, do all applicable corrective and related investigative actions. Do all actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2502, dated April 21, 2005. Where the special attention service bulletin specifies to contact Boeing for repair instructions: Before further flight, repair the area using a method approved in accordance with paragraph (g) of this AD.

(1) For airplanes identified in the special attention service bulletin as Groups 1, 3, and 6 airplanes: Do the first inspections before the accumulation of 20,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later; and repeat the inspections thereafter at intervals not to exceed 4,000 flight cycles.

(2) For airplanes identified in the special attention service bulletin as Group 2, 4, and 5 airplanes: Do the first inspections before the accumulation of 17,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later; and repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles.

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

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

(4) Certain actions required by paragraph (f) of this AD are AMOCs for certain requirements in the ADs identified in paragraphs (g)(4)(i), (g)(4)(ii), and (g)(4)(iii) of this AD. All provisions of the referenced ADs, including applicable post-modification inspection thresholds, remain fully applicable and must be complied with.

(i) Repairs of the aft tension tie channels done in accordance with this AD are AMOCs for the repair requirements of paragraph A. of AD 84–19–01, amendment 39–4913, and paragraphs (a)(2) and (b)(2) of AD 94–13–06, amendment 39–8946.

(ii) The inspection requirements of this AD are AMOCs for the post-modification inspection requirements of paragraph B. of AD 84–19–01, and paragraph (b) of AD 94–13–06.

(iii) The inspection requirements of this AD are AMOCs for the inspections of structural significant item (SSI) F–19A of Boeing Supplemental Structural Inspection Document D6–35022, Revision G, dated December 2000, as required by paragraphs (c) and (d) of AD 2004–07–22, amendment 39–13566.

Material Incorporated by Reference

(h) You must use Boeing Special Attention Service Bulletin 747–53–2502, dated April 21, 2005, 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 Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 30, 2005.

Linda Navarro,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–183 Filed 1–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22053; Directorate Identifier 2004–NM–74–AD; Amendment 39–14449; AD 2006–01–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes); and Airbus Model A310 Series 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 Airbus airplanes, listed above. This AD requires installing two-stage relays in the electronics rack (90VU), and performing related corrective and investigative actions. This AD results from reports of inadvertent rudder trim activation when the autopilot is on. We are issuing this AD to prevent inadvertent trim activation when the autopilot is on and the slats are extended, which could result in rudder activation when the autopilot is turned off.

DATES: This AD becomes effective February 16, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of February 16, 2006.

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

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes); and Airbus Model A310 series airplanes. That NPRM was published in the **Federal Register** on August 10, 2005 (70 FR 46437). That NPRM proposed to require installing two-stage relays in the electronics rack (90VU), and performing related corrective and investigative actions.

Comments

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

Support for the Proposed Rule

Several commenters support the intent of the proposed AD.

Request To Change Applicability

One commenter, the airplane manufacturer, requests that we revise the applicability of the proposed AD to exclude airplanes on which Airbus Modification 11442 has been accomplished.

We agree with the commenter. The requested change would clarify the applicability for operators and be in line with the applicability of the parallel French airworthiness directive. We have revised paragraph (c) of the AD to exclude these airplanes.

Request To Identify Certain Part Numbers

One commenter requests that the parts to be installed be identified in the proposed AD by manufacturer or part number. The commenter assumes that specific part numbers are identified in the referenced service information; however, since such information is not generally available to the public, it is not possible for the commenter to determine precisely which relays are to be installed.

The same commenter also requests that the proposed AD provide for the possible existence of approved PMA parts by appending the phrase ''or FAA-approved equivalent part number'' to the part number of the part required to be installed. The commenter states that because it cannot determine which relays are to be installed, it is unable to identify if any possible alternatives approved under section 21.303 of the Federal Aviation Regulations (14 CFR 21.303) exist. The commenter notes that airframe manufacturers, particularly foreign-based manufacturers, do not consider the impact of 14 CFR 21.303 in the creation of their service bulletins. Therefore, service documents can, and often do, create conditions that ''seek to contravene existing law'' by mandating the installation of a certain part-numbered part to the exclusion of all other parts that may now or in the future exist as FAA-approved alternatives.

We do not concur with the commenter's requests. Accomplishing the requirements of this AD involves installing two-stage relays in the electronics rack (90VU). Part numbers associated with accomplishing the installation are listed in the service bulletins referenced in this AD as the appropriate sources of service information. We find that it is impractical for us to list these numerous part numbers in the AD.

However, the commenter's remarks are timely in that the Transport Airplane Directorate currently is in the process of reviewing the issue of addressing PMA parts in ADs as that issue applies to transport category airplanes. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our policy needs to be revised. We consider that to delay this AD action would be inappropriate, since we have determined that an

unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change has been made to the AD in this regard.

Request To Reference Earlier and Later Service Bulletins

One commenter requests that we permit the use of future revisions of the service bulletins specified in the proposed AD and in all FAA ADs in general. The commenter states that subsequent revisions of the service bulletin that are not specifically referenced in a rule may not appreciably affect the work accomplished. The commenter gives the example that a revision to annotate the bulletin as ''mandatory'' would be an administrative change not affecting the scope of work. The commenter states that the cognizant FAA engineering authority should have sufficient information to determine the applicable service bulletin revisions that would accomplish the necessary corrective action, and that the final rule should provide operators with comprehensive information regarding all available data subject to the rule.

In addition, the commenter also points out that when a service bulletin states in the preamble, ''no additional work required by this latest revision for any aircraft modified by any previous issue,'' the AD should approve of work accomplished up to the revision level available at the time of the proposed rule.

We do not agree with the commenter's request. Approving revisions of service bulletins that have not yet been released would violate the Office of the Federal Register's (OFR) regulations for approving materials that are incorporated by reference. In general terms, we are required by these OFR regulations either to publish the service document contents as part of the actual AD language, or to submit the service document to the OFR for approval as ''referenced'' material, in which case we may only refer to such material in the text of an AD. The AD may refer to the service document only if the OFR has approved it for ''incorporation by reference.'' To allow operators to use later revisions of a referenced document, we must either revise the AD to reference the specific later revisions, or operators may request approval to use later revisions as an alternative method of compliance (AMOC) with this AD. Operators may request approval of an AMOC for this AD under the provisions of paragraph (h) of this AD.

For similar reasons, we cannot use the phrase ''or any prior revision,'' to allow operators to use previous revisions of a service bulletin. However, we list the approved earlier revisions in the AD, which allows us to specify which revisions are approved for compliance with certain or all requirements of the AD. In this particular AD, the approved earlier revisions are identified in paragraph (g), Table 2, of the AD. These approved earlier revisions include, among others, Airbus Service Bulletin A300–27–6031, Revision 01, dated September 3, 1997, and Revision 02, dated December 4, 1998, but not the original revision, dated February 14, 1997. No change to the AD is needed in this regard.

Clarification of AMOCs 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.

Conclusion

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

Costs of Compliance

This AD affects about 115 airplanes of U.S. registry. The actions take between 3 and 14 work hours per airplane, depending on the airplane's configuration, at an average labor rate of $65 per work hour. Required parts cost between $520 and $1,330 per airplane, depending on the airplane's configuration. Based on these figures, the estimated cost of the proposed AD for U.S. operators is between $82,225 and $257,600, or between $715 and $2,240 per airplane.

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):

2006–01–10 Airbus: Amendment 39–14449. Docket No. FAA–2005–22053; Directorate Identifier 2004–NM–74–AD.

Effective Date

(a) This AD becomes effective February 16, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Airbus airplanes identified in Table 1 of this AD, certificated in any category, except for airplanes on which Airbus Modification 11442 has been accomplished.

TABLE 1.—AIRBUS AIRPLANES AFFECTED BY THIS AD

Affected models—	As identified in paragraph 1.A.(2)(a), ''Effectivity by MSN,'' of Airbus Service Bulletin—
Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes).	A300–27–6031, Revision 03, dated February 9, 2001.
Model A310 series airplanes	A310–27–2077, Revision 03, dated February 9, 2001.

Unsafe Condition

(d) This AD results from reports of inadvertent rudder trim activation when the autopilot is on. We are issuing this AD to prevent inadvertent trim activation when the autopilot is on and the slats are extended, which could result in rudder activation when the autopilot is turned off.

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.

Installation

(f) Within 16 months after the effective date of this AD: Install two-stage relays in the electronics rack 90VU between switch 4CG and relays 12CG and 13CG; and do any applicable related corrective and investigative actions before further flight. Do all the actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–27–6031, Revision 03, dated February 9, 2001 (for Model A300–600 series airplanes); or Airbus Service Bulletin A310–27–2077, Revision 03, dated February 9, 2001 (for Model A310 series airplanes).

Modification According to Previous Issues of Service Bulletins

(g) Installations are also acceptable for compliance with the requirements of paragraph (f) of this AD if done before the effective date of this AD in accordance with one of the service bulletins identified in Table 2 of this AD.

TABLE 2.—PREVIOUS ISSUES OF SERVICE BULLETINS

Airbus Service Bulletin	Revision	Date
A300–27–6031	01	September 3, 1997.
A300–27–6031	02	December 4, 1998.
A310–27–2077	01	September 3, 1997.
A310–27–2077	02	December 4, 1998.

Alternative Methods of Compliance (AMOCs)

(h)(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

(i) French airworthiness directive 98–175–249(B), dated April 22, 1998, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Airbus Service Bulletin A300–27–6031, Revision 03, dated February 9, 2001; or Airbus Service Bulletin A310–27–2077, Revision 03, dated February 9, 2001; 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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 30, 2005.

Linda Navarro,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–182 Filed 1–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22792; Directorate Identifier 2005–NM–084–AD; Amendment 39–14447; AD 2006–01–08]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model Avro 146–RJ Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model Avro 146-RJ airplanes. This AD requires reviewing the airplane's maintenance records to determine if certain tasks of the BAE Systems (Operations) Limited BAe146/Avro RJ Maintenance Planning Document issued May 15, 2004, have been accomplished. This AD also requires doing repetitive detailed inspections of the external fuselage skin adjacent to the longeron at rib 0 from frame 29 to frame 31, and repairing any

damage. This AD results from issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. We are issuing this AD to detect and correct cracking of the fuselage skin, which could result in structural failure of the fuselage.

DATES: This AD becomes effective February 16, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 16, 2006.

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

Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all BAE Systems (Operations) Limited Model Avro 146-RJ airplanes. That NPRM was published in the **Federal Register** on October 27, 2005 (70 FR 61918). That NPRM proposed to require reviewing the airplane's maintenance records to determine if certain tasks of the BAE Systems (Operations) Limited BAe146/Avro RJ Maintenance Planning Document issued May 15, 2004, have been accomplished. That NPRM also proposed to require doing repetitive detailed inspections of the external fuselage skin adjacent to the longeron at rib 0 from frame 29 to frame 31, and repairing any damage.

Comments

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

Conclusion

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

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
Records Examination	1	$65	None	$65	36	$2,340.
Repetitive Detailed Inspection	4	65	None	260	36	$9,360, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–01–08 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–14447. Docket No. FAA–2005–22792; Directorate Identifier 2005–NM–084–AD.

Effective Date

(a) This AD becomes effective February 16, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. We are issuing this AD to detect and correct cracking of the fuselage skin, which could result in structural failure of the fuselage.

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.

Maintenance Records Review

(f) Within 30 days after the effective date of this AD, review the airplane's maintenance records to determine if Tasks 532038–DVI–10000–1 and –2 of the BAE Systems (Operations) Limited BAe146/Avro RJ Maintenance Planning Document issued May 15, 2004, have been accomplished before the effective date of this AD. If review of the airplane's maintenance records cannot conclusively determine that Tasks 532038–DVI–10000–1 and –2 have been accomplished, do the detailed inspection specified in paragraph (g) of this AD at the applicable compliance time specified in paragraph (g)(1) or (g)(2) of this AD. If review of the airplane's maintenance records can conclusively determine that Tasks 532038–DVI–10000–1 and –2 have been accomplished, do the detailed inspection specified in paragraph (g) of this AD at the compliance time specified in paragraph (g)(3) of this AD.

Detailed Inspection and Corrective Action

(g) At the applicable compliance time specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD, do a detailed inspection of the external fuselage skin adjacent to the longeron at rib 0 from frame 29 to frame 31, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–177, dated June 29, 2004. If any damage is found during any inspection required by this AD, before further flight, repair in accordance with the service bulletin; except where the service bulletin specifies to repair with an approved BAE Systems (Operations) Limited repair scheme, before further flight, repair the damage according to a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (or its delegated agent).

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

Note 2: BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–177, dated June 29, 2004, refers to Supplemental Structural Inspection 53–20–138 of the BAE Systems (Operations) Limited BAe 146/Avro 146–RJ Maintenance Review Board Report, Revision 10, dated May 2004, as an additional source of service information for inspecting the external fuselage skin. The service bulletin also refers to the BAE Systems (Operations) Limited structural repair manual (SRM) as an additional source of service information for repairing certain damage.

(1) For airplanes on which Tasks 532038–DVI–10000–1 and –2 of the BAE Systems (Operations) Limited BAe146/Avro RJ Maintenance Planning Document issued May 15, 2004, have not been accomplished but that have accumulated 22,000 total flight cycles or less as of the effective date of this AD: Inspect before accumulating 22,000 total flight cycles or within 6 months after the effective date of this AD, whichever is later. Thereafter repeat the detailed inspection at intervals not to exceed 12,000 flight cycles.

(2) For airplanes on which Tasks 532038–DVI–10000–1 and –2 of the BAE Systems (Operations) Limited BAe146/Avro RJ Maintenance Planning Document issued May 15, 2004, have not been accomplished but that have accumulated more than 22,000 total flight cycles as of the effective date of this AD: Inspect before accumulating 24,000 total flight cycles or within 6 months after the effective date of this AD, whichever is first. Thereafter repeat the detailed inspection at intervals not to exceed 12,000 flight cycles.

(3) For airplanes on which Tasks 532038–DVI–10000–1 and –2 of the BAE Systems (Operations) Limited BAe146/Avro RJ Maintenance Planning Document issued May 15, 2004, have been accomplished before the effective date of this AD: Inspect within 12,000 flight cycles after the most recent inspection. Thereafter repeat the detailed inspection at intervals not to exceed 12,000 flight cycles.

No Reporting Requirement

(h) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(i)(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 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(j) British airworthiness directive G–2005–0009, dated March 9, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–177, dated June 29, 2004, 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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_ of _federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 30, 2005.

Linda Navarro,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–181 Filed 1–11–06; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 36, 37, 38, 39 and 40

RIN 3038–AC23

Technical and Clarifying Amendments to Rules for Exempt Markets, Derivatives Transaction Execution Facilities and Designated Contract Markets, and Procedural Changes for Derivatives Clearing Organization Registration Applications

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: On August 10, 2001, the Commodity Futures Trading Commission (''Commission'') published final rules implementing the provisions of the Commodity Futures Modernization Act of 2000 (''CFMA'') relating to trading facilities.[1] These amendments are intended to clarify and codify acceptable practices under the rules for trading facilities, based on the Commission's experience over the intervening four years in applying those rules, including the adoption of several amendments to the original rules over the same period. The amendments also include various technical corrections and conforming amendments to the rules.

[1] 66 FR 42256, August 10, 2001.

In addition, these amendments revise the application and review process for registration as a derivatives clearing organization (''DCO'') by eliminating the presumption of automatic fast-track review of applications and replacing it with the presumption that all applications will be reviewed pursuant to the 180-day timeframe and procedures specified in Section 6(a) of the Commodity Exchange Act (''CEA'' or ''Act''). In lieu of the current 60-day automatic fast-track review, the Commission will permit applicants to request expedited review and to be registered as a DCO by affirmative Commission action not later than 90 days after the Commission receives the application.

DATES: *Effective Date:* February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Donald Heitman, Senior Special Counsel (telephone 202–418–5041, e-mail *dheitman@cftc.gov*), Division of Market Oversight, or Lois Gregory, Special Counsel (telephone 202–418–5521, e-mail *lgregory@cftc.gov*), Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

The CFMA amended the Commodity Exchange Act to profoundly alter Federal regulation of commodity futures and option markets. The new statutory framework created by the CFMA established two categories of markets subject to Commission regulatory oversight, designated contract markets (''DCMs'') and registered derivatives transaction execution facilities (''DTEFs''), and two categories of exempt markets, exempt boards of trade (''EBOTs'') and exempt commercial markets (''ECMs''). The original rules applicable to these trading facilities [2] established administrative procedures necessary to implement the CFMA, interpreted certain of the CFMA's provisions, and provided guidance on compliance with various of the CFMA's requirements. In addition, the Commission, under the general exemptive authority of Section 4(c) of the Act, in a limited number of instances provided relief from, or greater flexibility than, the CFMA's provisions.

In addition, over the four years during which these new rules for trading facilities have been in effect, they have been amended several times.[3] These amendments are intended to clarify and codify acceptable practices under the Commission's rules for trading facilities, as amended, based on the Commission's experience in applying those rules over the last four years. The amendments also include a number of technical and clarifying corrections and conforming amendments to enhance the consistency and clarity of the rules.

It should also be noted that the Commission has provided information that may be helpful to those subject to the rules for trading facilities on its Web site at *http://www.cftc.gov.* In particular, the Web site includes charts setting out information that may be helpful in: (1) Complying with the registration criteria as a DTEF (see Appendix A to Part 37); (2) complying with the designation criteria as a DCM (see Appendix A to Part 38); and (3) complying with the requirements for designation of physical delivery futures contracts (see Appendix A to Part 40—Guideline No. 1). While these charts are not intended to be used as mandatory checklists, they may provide helpful guidance to those subject to the regulations governing trading facilities.

In addition, these amendments revise the application and review procedures for registration as a DCO. Specifically, the amendments eliminate the presumption of automatic fast-track review of applications and replace it with the presumption that all applications will be reviewed pursuant to the 180-day timeframe and procedures specified in Section 6(a) of the Act. In lieu of the automatic fast-track review (under which applicants were deemed to be registered as DCOs 60 days after receipt of an application), the amendments permit applicants to request expedited review and to be registered as a DCO by the Commission not later than 90 days after the date of receipt of the application. The amendments also provide that review under the expedited review procedures may be terminated if it appears that the application is materially incomplete, raises novel or complex issues that require additional time for review, or has undergone substantive amendment or supplementation during the review period. The amendments are based upon the Commission's experience in processing applications, including administrative practices that have been implemented since the rules were first adopted. These amendments establish procedures substantially similar, where appropriate, to those recently amended in Parts 37 and 38 for processing applications for registration of derivatives transaction execution facilities and contract market designation, respectively.[4]

II. The Comments

The Commission received a total of five comments, all from entities that are designated contract markets and/or derivatives clearing organizations, including the U.S. Futures Exchange, L.L.C.—Eurex U.S. (''Eurex''), the Minneapolis Grain Exchange (''MGEX''), the Chicago Mercantile Exchange (''CME''), the New York Mercantile Exchange (''NYMEX'') and the Chicago Board of Trade (''CBOT''). All of the commenters supported the Commission's efforts to clarify and update the Part 36–40 rules. However, the comments included various questions and suggestions regarding the interpretation and application of certain of the proposed amendments. In view of the limited number of comments, as well as the overlapping nature of some of the comments, and for the convenience of the reader, all of the comments and the Commission's responses will be discussed below in this section of the preamble.

NYMEX expressed concern about the proposed amendment to rule 38.2 to make clear that the references therein to the reserved provisions of the regulations applicable to DCMs ''also include related definitions and cross-referenced sections cited in those reserved provisions.'' NYMEX suggests that the provision could ''have the unintended effect of bringing back into force overly prescriptive regulations of the kind the CFMA was appropriately intended to eliminate.'' In particular, NYMEX notes that applying the definitions in § 1.63(a) to reserved § 1.63(c) would include the definition of ''disciplinary offense.'' That definition specifies that violations of SRO reporting or recordkeeping rules that result in fines aggregating more than $5,000 in any calendar year will be included among the disciplinary offenses that would disqualify a person from service on SRO governing boards, disciplinary committees and arbitration

[2] *Id.*

[3] See, for example: Regulation To Restrict Dual Trading in Security Futures Products, 67 FR 11223 (March 15, 2002); Changes in Divisional Structure and Delegations of Authority, 67 FR 62350 (October 7, 2002); Amendments to New Regulatory Framework for Trading Facilities and Clearing Organizations, 67 FR 62873 (October 9, 2002); Exempt Commercial Markets, 69 FR 43285 (July 20, 2004); Confidential Information and Commission Records and Information, 69 FR 67503 (November 18, 2004); and Application Procedures for Registration as a Derivatives Transaction Execution Facility or Designation as a Contract Market, 69 FR 67811 (November 22, 2004).

[4] 69 FR 67811, November 22, 2004.

or oversight panels. NYMEX points out that in January 2002, it submitted a self-certified rule, which the Commission did not disapprove, deleting a provision modeled after the $5,000 threshold approach set forth in § 1.63(a) and replacing it with a policy of reviewing potential disqualifications based on reporting/recordkeeping fines or settlements on a case-by-case basis. On July 12, 2005, NYMEX self-certified further amendments ''codifying the procedure by which reporting and recordkeeping violations resulting in cumulative fines of over $5,000 in a calendar year would be considered with regard to Board and disciplinary committee service.''

NYMEX contends that its procedures satisfy Core Principle 14, which requires DCMs to establish and enforce appropriate fitness standards for directors and disciplinary committee members. NYMEX argues that reimposing the $5,000 limit would deprive DCMs of the self-regulatory flexibility intended by the CFMA, affect NYMEX (which has ''greater representation from the floor community than some other DCMs'' on its board) unequally, and have a chilling effect on DCMs setting sanction levels high enough to promote compliance for fear of triggering consequences that would disrupt exchange governance. If the Commission does reimpose the $5,000 standard, NYMEX asks that it be applied only prospectively.

The Commission believes that the $5,000 limit in § 1.63(a) continues appropriately to reflect conduct that ''demonstrates a lack of respect for SRO rules sufficient to warrant [a] bar from service on SRO committees.'' [5] Therefore, the amendment to § 38.2 will be implemented as proposed. The Commission acknowledges, however, that it did not object to NYMEX's adoption of rules implementing a case-by-case review of reporting/recordkeeping disciplinary actions in lieu of the fine schedule in § 1.63(a). The Commission agrees that applying the § 1.63(a) fine schedule could be unfair to persons who, in agreeing to settle exchange disciplinary actions, acted in reliance on exchange rules that were at variance with that schedule. Therefore, the Commission will not bring action for violating § 1.63(a) against any NYMEX board, committee or arbitration panel member elected while a rule at variance with § 1.63(a) was in effect, in reliance on such rule, during the remainder of that person's current term of office, *provided* that the § 1.63(a) fine schedule will apply prospectively to all such individuals.

Two of the commenters expressed concern over proposed new § 38.5(c), which would delegate to staff the Commission's authority under revised § 38.5(b) to request additional information from a DCM demonstrating that it is in compliance with one or more designation criteria or core principles or that is requested by the Commission to satisfy its obligations under the Act. Eurex contends that regulation 38.5(b) and its permitting of compliance demonstration requests is patterned after former Commission regulation 1.50 and would be ''anything but a routine request.'' [6] Eurex suggests that responding to such a request ''is likely to place a very heavy (and costly) burden on an exchange.'' Thus, this authority should be reserved to the Commission. MGEX expressed concern that the proposed amendment indicates that exchanges ''can expect more frequent requests for information outside the routine [rule enforcement] review process,'' which could become an ''unnecessary regulatory burden.''

The amendments to §§ 38.5(b) and (c) are not intended to impose regulatory burdens on the exchanges, but rather to relieve administrative burdens on the Commission. The matters described in § 38.5(b) potentially cover a wide variety of possible written requests, from a routine request for details concerning a new exchange policy to a comprehensive inquiry regarding a potential exchange violation of designation criteria or core principles. In the case of the former, such routine requests are appropriately delegated to staff. In the case of the latter more significant requests, it should be noted that new § 38.5(c) both allows the Director of DMO to submit any matter delegated thereunder to the Commission and allows the Commission to exercise the authority directly. Accordingly, the Commission has determined to implement the amendments to §§ 38.5(b) and (c) as proposed.

In response to a comment by Eurex, the Commission wishes to make clear that in amending Appendix B to Part 38, Core Principle 2, to make clear that trade practice surveillance programs may be carried out by contracting-out to a third party (subject to appropriate supervision by the DCM), the Commission does not intend to preclude out-sourcing in other contexts, such as IT services, or even a trade matching platform. Of course, the DCM remains ultimately liable for compliance with the Act and Commission regulations. Thus, as noted above, it must retain appropriate supervisory authority in all such cases.

With respect to the proposed amendment to Appendix B, Part 38, Core Principle 7, regarding availability of general information to the public, CBOT states that it generally supports posting important information on its Web site promptly. However, CBOT expresses concern that the proposed requirement that the rulebook posted on the Web site must be current to within one day of implementation of a new or amended rule does not allow for staffing or system issues that could delay posting of a new rule. The CBOT suggests that, provided substantive rule changes are posted on the Web site within one day of implementation, through a press release, newsletter or notice, the Commission should allow five days for rule changes (including non-substantive, housekeeping changes) to be incorporated into the exchange's online rulebook. The Commission agrees with this point and has revised the relevant provision accordingly.

Three of the five commenters express opinions concerning the amendments to Part 39. CME and CBOT both support the revisions. CME states it believes the revisions will positively impact the futures markets by ensuring that the Commission and interested parties not only have access to all relevant information, but an ample opportunity to consider the implications of complex or novel issues. CBOT supports treating the time frames for review of DCO applications consistent with the time frames for review of DCM and DTEF applications.

Eurex expresses its concern that the amendments will result in unnecessary barriers to entry and adversely affect competition and innovation. Specifically, Eurex is concerned that a new entrant will lose flexibility if required to provide executed or executable contracts as part of its application. The language of the rule, which requires the submission of contracts entered or to be entered into, does not mean that contracts must be in force such that contract costs are being incurred before DCO registration or before the service for which the costs are incurred is supplied. Nevertheless, in light of this comment, the Commission has further clarified what is required in the language of the rule itself. The amended rule requires an applicant to submit agreements entered into or to be entered into between or

[5] 55 FR 7884 at 7885 (March 6, 1990).

[6] Regulation 1.50, ''Demonstration of continued compliance with the requirements for contract market designation,'' was used only in cases of significant issues of exchange compliance and the authority to invoke it was never delegated to the staff.

among the applicant, its operator/service provider or its participants that identify the services that will be provided that will enable the applicant to comply or demonstrate the applicant's ability to comply with the core principles specified in Section 5b(c)(2) of the Act. When the arrangement submitted is not final and executed, the rule also requires evidence that provides reasonable assurance that the agreed upon services will be provided when the operations that require the services begin. This may include evidence that the service provider is prepared to provide the services when they are needed and, to the extent not otherwise obvious, that the applicant has the financial resources to pay the fees required under the agreement.

Eurex also contends that procedural fairness requires a mechanism to hold staff accountable for a decision to terminate expedited review. The Commission notes that the Act does not establish any timeframe for review of DCO applicants. However, under Part 39, the Commission voluntarily committed itself to the timeframe under Section 6(a) and pursuant to § 39.3(g)(3), the Commission retains supervisory authority over staff decisions in this area.

NYMEX suggests that the definition of ''emergency'' in § 40.1 should be amended to make clear that the authority to declare an emergency is vested not only in a DCM's governing board, but also in ''a subcommittee or exchange official that is duly authorized under a DCM's rules to act with the governing board's authority in such circumstances.'' While the existing language may possibly be read to permit such an interpretation, the Commission believes that such an amendment may have merit in avoiding uncertainty. However, because nothing in the original Part 36–40 notice of proposed rulemaking provided notice that such an amendment was contemplated, the public was not given the opportunity to comment on it. Therefore, it would not be appropriate to include such an amendment in these final rules. However, the Commission may consider including such an amendment in a future rulemaking proposal.

Several exchanges commented on §§ 40.2(b), 40.3(a)(9) and 40.6(a)(4), all of which would make clear that registered entities shall provide, if requested by Commission staff, additional evidence, information or data relating to whether new products, rules or rule amendments meet the requirements of the Act or Commission regulations or policies thereunder. The preamble to the proposed rules noted that such evidence may be beneficial to the Commission in conducting due diligence assessments of such products and rules.

Eurex suggests that requests to demonstrate compliance with the Act should be more formally treated, pursuant to Rule 38.5, than requests for information related to routine due diligence reviews. Eurex notes that, ''the authority to request information, if misused, can constitute a significant burden on registered entities.'' MGEX expresses concern that staff requests for additional evidence, information or data under §§ 40.2(b) or 40.6(a) might have a ''chilling effect'' on the self-certification process. However, rather than oppose the amendments, the exchange urges the Commission staff to use this authority ''reasonably and judiciously.'' CBOT likewise expresses concern that routine requests for ''sometimes voluminous supporting data'' regarding self-certified contracts could have a ''chilling effect'' on listing products immediately after certification because an exchange may be hesitant to begin trading until it knows the Commission has requested any additional data and completed its review. CBOT asks the Commission to make clear that any requests for additional information under §§ 40.2(b) or 40.6(a), and any due diligence assessment by the Commission, ''is not intended implicitly or explicitly to operate as a stay'' with respect to listing self-certified products or implementing self-certified rules.

All of these comments reflect the need to balance the flexibility the CFMA gives a DCM in being able to self-certify new products and rules quickly against the obligations of both the DCM and the Commission to assure themselves that the certification is accurate—*i.e.*, that the product or rule does indeed comply with applicable designation criteria and core principles. It is certainly not the intention of the Commission or its staff to inject a chilling effect into the self-certification process or to conduct the required due diligence oversight of that process in anything less than a reasonable and judicious manner. Nor are such information requests intended to operate as a stay with regard to immediately listing new products or implementing new rules. The listing of a new product or implementation of a new rule may be stayed only during the pendency of a Commission proceeding for filing a false certification or to alter or supplement the contract terms or the rule under Section 8a(7) of the Act. Further, pursuant to §§ 40.2(c) and 40.6(b), respectively, the decision to impose such a stay rests with the Commission alone and cannot be delegated to the staff.

However, the fact remains that under the Act DCMs are responsible in the first instance, and the Commission is ultimately responsible in its oversight role, for assuring that DCM products and rules comply with applicable designation criteria and core principles. When a DCM self-certifies a product or rule it is, in effect, pledging that the product or rule does meet those standards. Assuming the DCM is acting in good faith, it must have some reasonable basis for making that pledge. Therefore, when reasonable questions arise, it should not be burdensome for the DCM to share information regarding the reasonable basis underlying the new product or rule with the Commission or its staff. Therefore, §§ 40.2(b), 40.3(a)(9) and 40.6(a)(4) will be implemented as proposed.

CBOT expressed concern about the proposed amendment to conform the review periods in § 40.3 (voluntary submission of new products for Commission review and approval) and § 40.5 (voluntary submission of rules for Commission review and approval). Both sections establish an initial review period of 45 days, with a possible additional extension. The proposed amendments provide for an extension of 45 days under § 40.5 (as opposed to the 30-day extension allowed under the current rules) to conform it to the 45-day extension period under § 40.3. CBOT points out that, when the proposed Part 40 rules were published in 2001, the Commission initially proposed a 45-day extension under § 40.5. In the final rules, however, the Commission lowered the period to the current 30 days after the CBOT commented that a 45-day extension period for rule reviews would have resulted in a potentially longer review process than that allowed under the pre-CFMA fast-track rule review procedure. CBOT argues that the reasons it expressed in favor of a 30-day extension period in 2001, and the reasons the Commission relied on in adopting such period, remain valid and recommends that the current 30-day extension period in § 40.5 should not be amended.

The Commission notes that new products generally include accompanying rule amendments. These new rules can raise questions just as complex, and requiring just as much additional review, as the new products to which they apply. Therefore, the review periods for both products and rules should be identical. It should also be noted that, based on actual experience, the effect of equalizing the review periods for products and rules

should be negligible since the extended review period is rarely invoked (only six times since the regulations were adopted in 2001). Therefore, the Commission has determined to implement the amendment to § 40.5 as proposed.

III. The Amendments

A. Part 36—Exempt Markets

Sections 36.2(b) and 36.3(a) are amended by deleting the reference to ''hard copy'' in the provisions requiring trading facilities operating as EBOTs and ECMs, respectively, to notify the Commission. In order to simplify and modernize the notification process, the amended rules require that such notifications be filed electronically. Similar amendments are made in other sections requiring notifications or filings with the Commission, so that under the amended rules, all formal filings from ECMs, EBOTs, DTEFs, DCMs and DCOs must be filed electronically.

Section 36.2(c)(2), relating to market data dissemination for EBOTs, is revised to implement price discovery/price dissemination rules for EBOTs that closely parallel those currently applicable to ECMs. The wording of the Act's price discovery/price dissemination provision for EBOTs is substantially similar to the provision applicable to ECMs and both provisions are identical in their ultimate purpose. Also, parallel provisions will be easier for the industry to apply, since the price discovery/price dissemination rules will be essentially identical for both types of exempt markets.

The amendments also add new §§ 36.2(c)(3) and 36.3(c)(4) requiring EBOTs and ECMs, respectively, to annually file a notice with the Commission, no later than the end of each calendar year. The notice must include a statement that the entity continues to operate under the exemption and a certification that the information in its original notification of operation is still correct. Annual notification of operation by the facility will allow the Commission to track whether facilities that notified the Commission of their intent to operate actually commenced operations and will allow the Commission to eliminate inactive facilities from any listing of active EBOTs or ECMs maintained on its Web site.

B. Part 37—Derivatives Transaction Execution Facilities

Section 37.1(a) is amended to make clear that the provisions of Part 37 apply not only to boards of trade operating as registered DTEFs, but also to applicants for registration as DTEFs.

Section 37.2 is revised to identify certain reserved provisions of the Commission's regulations that specifically and comprehensively reference DTEFs separately from other reserved provisions that do not. The revisions also make clear that all the references in § 37.2 to reserved provisions of the regulations applicable to DTEFs also include related definitions and cross-referenced sections cited in those reserved provisions. Finally, § 1.60 is added to the list of reserved provisions of the regulations applicable to DTEFs under § 37.2 to make clear that DTEFs need to notify the Commission of any material legal proceeding to which the DTEF is a party or to which its property or assets are subject.

In § 37.3, subparagraph (a)(5) is renumbered as subparagraph (b) and the remaining subparagraphs are renumbered accordingly.

Section 37.6, Compliance with Core Principles, is revised to harmonize DTEF core principle compliance with the previously noted new application procedures for DCMs and DTEFs.[7]

New § 37.6(c)(2) is added delegating to the Division of Market Oversight (the ''Division'') the authority under § 37.6(c)(1) to request additional information in reviewing a DTEF's continued compliance with one or more core principles, or to enable the Commission to satisfy its obligations under the Act. The delegation provides that the Commission, at its election, may exercise the delegated authority directly. A similar delegation is made in new § 38.5(c) to allow the Division to request additional information in reviewing a DCM's continued compliance with designation criteria and core principles, or to enable the Commission to satisfy its obligations under the Act. The foregoing delegated authority also extends to other requests by Commission staff to DTEFs or DCMs for additional information: (1) Under new § 40.2(b), regarding compliance with respect to new products listed by certification; (2) under § 40.3(a)(9), regarding voluntary submission of new products for Commission review and approval; and (3) under new § 40.6(a)(4), regarding compliance with respect to self-certified rules. This delegated authority will aid the staff in reviewing DTEF and DCM compliance with the requirements of the Act or Commission regulations or policies thereunder without involving the Commission in day-to-day oversight of trading facilities.

[7] 69 FR 67811 (November 22, 2004).

In addition, the guidance in current § 37.6(d) is deleted as duplicative of ''Appendix B to Part 37—Guidance on Compliance with Core Principles'' and replaced with a reference to Appendix B.

Section 37.8(b), regarding special calls for information, is amended to make clear that the section applies not only to futures commission merchants, but to foreign brokers (as defined in § 15.00) as well.

The title of Appendix A to Part 37 is reworded to read, ''Appendix A to Part 37—Guidance on Compliance with Registration Criteria,'' to be consistent with the wording of the titles of the other appendices to Parts 37 and 38. The introductory paragraph of the appendix also is revised to make clear that registration criteria guidance applies both to new registrants that register by application and to DTEFs operated by DCMs, which do not need to file an application, but can become registered by notification/certification. The revised language also is consistent with the requirement that the registration criteria must be met initially and on an ongoing basis, rather than just upon application.

In Appendix B to Part 37, subsection 1 of the appendix is revised to make clear that the guidance therein applies to all registered DTEFs, whether they come in by notification under § 37.5(a) or by application. Subsection 3 of the appendix is revised to make clear that, consistent with § 37.6(b)(2), the guidance therein applies to applicants for registration, rather than registered DTEFs.

Core Principle 5 of Appendix B to Part 37, ''Daily Publication of Trading Information,'' is revised in a manner consistent with the price discovery/price dissemination provisions applicable to EBOTs and ECMs, which are not as comprehensive as those applicable to DCMs. This reflects the fact that DTEFs are subject to a different informational standard than DCMs. DCMs are subject to a blanket requirement, under Core Principle 8 of Appendix B to Part 38, to publish daily trading information for all actively traded contracts. DTEFs, however, are subject to Core Principle 5 (Section 5a(d)(5) of the Act), which includes language similar to that applicable to EBOTs and ECMs (under Sections 5d(d) and 2(h)(4)(D) of the Act, respectively) requiring DTEFs to make public certain daily trading information only if the Commission determines that contracts traded on the facility perform a significant price discovery function for transactions in the cash market for the commodity underlying the contracts.

Thus, the revised core principle explanatory language applies to DTEFs the same standards that apply to EBOTs and ECMs (see §§ 36.2(b)(2) and 36.3(c)(2), respectively) whereby a DTEF performs a significant price discovery function if: (1) cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the market on a more than occasional basis; or (2) the market's prices are routinely disseminated in a widely distributed industry publication and are routinely consulted by industry participants in pricing cash market transactions. If the Commission has reason to believe that a DTEF may meet either of these standards, or if the facility holds itself out to the public as performing a price discovery function, the Commission will notify the DTEF and provide it with an opportunity for a hearing through the submission of written data, views and arguments. If, after considering all relevant matters, the Commission finds that the DTEF meets the price discovery standards, it will direct the DTEF to publish daily trading information in accordance with the core principle. The information could be published by providing it to a financial information service or by placing it on the facility's Web site. The information should be made available to the public without charge no later than the business day following the day to which the information pertains.

C. Part 38—Designated Contract Markets

In § 38.1, language is added to make clear that the provisions of Part 38 apply to applicants for designation as well as to already designated contract markets, and redundant and inapplicable references are deleted.

In § 38.2, language is added to make clear that the references therein to reserved provisions of the regulations applicable to DCMs also include related definitions and cross-referenced sections cited in those reserved provisions. Similar clarifying amendments, reserving the applicability of related definitions and cross-referenced sections, appear in other sections of these final rules. Also, § 1.60 is added to the list of reserved provisions of the regulations applicable to DCMs under § 38.2 to make clear that DCMs need to notify the Commission of any material legal proceeding to which the DCM is a party or to which its property or assets are subject.

In § 38.5, subparagraph (b) is amended to make clear that DCMs are required to comply with the designation criteria and the core principles both initially and on an ongoing basis, and to conform its language to § 37.6(c)(1). As noted in the discussion of new § 37.6(c)(2) above, new § 38.5(c) is added, delegating to the Division of Market Oversight the authority under § 38.5(b) to request additional information in reviewing a DCM's continued compliance with designation criteria or core principles, or to enable the Commission to satisfy its obligations under the Act.

The title of Appendix A to Part 38 is revised to refer to ''Guidance on Compliance with Designation Criteria,'' and the introductory paragraph of the appendix is revised in conformity with the revisions to the introductory paragraph of Appendix A to Part 37, to make clear that the obligation to comply with the designation criteria applies not just to applicants, but is ongoing.

Designation Criterion 7 under Appendix A to Part 38 is updated to provide, consistent with the wording of other provisions regarding designation criteria and core principles, that a DCM ''should'' (rather than ''may'') provide information to the public by placing the information on its Web site.

In Appendix B to Part 38, language is added in subparagraph (1) to harmonize Part 38, Appendices A and B, with Part 37, Appendices A and B, consistent with the idea that the obligation to comply with the core principles applies both initially and on an ongoing basis. In subparagraph (2), a reference to ''selected'' requirements of the core principles is added to make clear that the enumerated acceptable practices under each core principle are neither the complete nor the exclusive requirements for meeting that core principle. With respect to the completeness issue, the selected requirements in the acceptable practices section of a particular core principle may not address all the requirements necessary for compliance with the core principle. With respect to the exclusivity issue, the acceptable practices that are listed for a particular core principle requirement are for illustrative purposes only and do not state the only means of satisfying the particular requirement they address. There may be other ways of complying with that requirement of the core principle that would also be acceptable.

Under Core Principle 2 of Appendix B to Part 38, a reference is added in subparagraph (a)(1) to clarify that a DCM may carry out trade practice surveillance programs through delegation or ''contracting out.'' A delegation confers upon the delegee/third party contractor the authority to act on behalf of the delegating authority. A third party contractor would not act in the DCM's name, but the DCM will be required to maintain sufficient control over the contractor because it remains the DCM's responsibility to assure that its obligations under the Act are met.[8]

Under Core Principle 6 of Appendix B, ''Emergency Authority,'' the language now appearing under subparagraph (b), ''Acceptable Practices,'' is moved to subparagraph (a), ''Application Guidance.'' This amendment reflects that the language moved to subparagraph (a) more accurately describes guidance on establishing rules to exercise emergency authority in the first instance, rather than acceptable practices in implementing such rules.

Under Core Principle 7 of Appendix B, guidance is added in subparagraph (b) as to what constitutes ''timely placement'' of information on a DCM's Web site. In noting that the DCM's rulebook should be ''available to the public,'' the intent of the subparagraph is that the rulebook should be freely accessible to anyone who visits the Web site without the need to register, log in, provide a user name or obtain a password.

Core Principle 8 of Appendix B requires that a DCM shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts. New language is added to subparagraph (b), Acceptable Practices, whereby compliance with § 16.01 of the Commission's regulations, which is mandatory since § 16.01 is one of the sections reserved under § 38.2, constitutes an acceptable practice under Core Principle 8. All currently designated DCMs are in compliance with § 16.01.

Under Core Principle 16 of Appendix B, paragraph (a) is revised to refer to a contract market's board (rather than the contract market as a whole) in conformity with the language of the core principle.

D. Part 39—Derivatives Clearing Organizations

The Commission adopted the application procedures specified in Commission Regulation 39.3[9] for entities applying to be registered as DCOs in 2001 when it first implemented the CFMA.[10] The Commission is modifying the application procedures in a number of respects. Most of these

[8] See the discussion in 66 FR 42256, at 42266 (August 10, 2001).

[9] 17 CFR 39.3 (2001).

[10] See 66 FR 45604 (August 29, 2001). The CFMA, Appendix E of Pub. L. 106–554, 114 Stat. 2763, substantially revised the Commodity Exchange Act (Act or CEA), 7 U.S.C. 1 *et seq.*

modifications mirror changes recently made to Parts 37 and 38 regarding, among other things, the review and processing of applications for registration of DTEFs and DCMs.[11] With respect to the review period for applications generally, it is establishing, as it has under Parts 37 and 38, the presumption that all applications are submitted for review under the 180-day timeframe specified in Section 6(a) of the Act for DCMs and DTEFs.[12] An expedited 90-day review can be requested by the applicant, in which case the Commission will register the applicant as a DCO during or by the end of the 90-day period unless the Commission, or staff under delegated authority, terminates the expedited review for certain specifically identified reasons. In comparison to the former rules, the Commission is lengthening the expedited review period for DCO applications by 30 days. The Commission believes, based upon its experience in processing DCO applications and in light of certain administrative practices that have developed since these rules were first adopted, that this potentially longer review period is necessary to ensure a comprehensive review of applications and to meet other public policy objectives.

The Commission has reviewed nine DCO applications since passage of the CFMA. The applications were large and complex and contained technical documents describing operations and operational outsourcing agreements. The applications frequently generated a series of requests for information by Commission staff responsible for reviewing the applications. In addition, a new Commission policy to promote transparency in Commission operations, implemented in August of 2003, provides for the posting of all such applications on the Commission's Web site for a period of at least 15 days for public review and comment.[13] This lengthens the review process. The 90-day review period is intended to provide the Commission with sufficient time to review these substantial applications, to consider any public comments, and to take informed action. The Commission notes that the new 90-day ''fast-track'' review period, while longer than the former fast-track review period, would continue to be substantially shorter than the 180-day review period set forth in Section 6(a) for DCMs and DTEFs.

The Commission also is modifying its internal processing procedures under which an applicant would be registered as a DCO. An applicant shall no longer be deemed to be registered based upon the passage of time. If an applicant requests expedited review, the Commission will take affirmative action to register or designate the applicant as a DCO, subject to conditions if appropriate, not later than 90 days after receipt of the application, unless the Commission (or staff under delegated authority) terminates the expedited review. Thus, registration as a DCO will involve affirmative action by the Commission, which will normally be in the form of issuance of a Commission order. It should be noted that it remains possible, under the procedures, for applicants who submit applications that are complete and not amended or supplemented during the review period to be designated as a DCO in less than 90 days.

The expedited review period will be terminated if: (1) The application is materially incomplete; (ii) the application's form or substance fails to meet the requirements of Part 39; or (iii) the application undergoes major amendment or supplementation. The Commission also is providing for termination of expedited review if an application raises novel or complex issues that require additional time for review. This is responsive to the public interest that the Commission has witnessed to date with respect to the DCO applications and is substantially the same as it now is for DCMs and DTEFs. Fast-track review also may be terminated upon written instruction of the applicant during the review period.

With respect to the additional information that would be required to be submitted as part of the application, the rule requires that applicants demonstrate how they are able to satisfy each of the core principles specified in Section 5b of the Act. As amended, the rule eliminates the proviso, ''to the extent it is not self-evident from the applicant's rules.'' Based upon experience in reviewing DCO applications, the Commission recognizes that this additional information is necessary for Commission review of the application when determining whether the applicant satisfies the core principles. The amended rule eliminates the requirement that the applicant support requests for confidential treatment of information included in the application with reasonable justification. The Commission believes that the procedures provided in Commission Regulation 145.9, ''Petition for confidential treatment of information submitted to the Commission,'' should be followed by all applicants.

The Commission continues to encourage applicants to consult with Commission staff prior to formally submitting an application for DCO registration to help ensure that an application, once submitted, will be able to be reviewed in a timely manner.

E. Part 40—Provisions Common to Contract Markets, Derivatives Transaction Execution Facilities and Derivatives Clearing Organizations

In § 40.1, the definitions therein are redesignated as numbered subparagraphs, beginning with subparagraph (a). In redesignated subparagraphs 40.1(b)–(e), the definitions of dormant contract/product, dormant contract market, dormant derivatives clearing organization and dormant derivatives transaction execution facility, respectively, the length of time during which no trading (or clearing) has occurred before dormancy can be declared is extended from six to twelve calendar months. Also, in § 40.1(b), in the proviso granting a 36-month grace period after initial certification or Commission approval before a contract/product can be considered dormant, language is added to make clear that, if the DCM or DTEF itself becomes dormant prior to the running of the 36-month period, the contract/product will likewise be considered dormant. Finally, language is added to § 40.1(b) to allow a board of trade to self-declare a contract/product to be dormant at any time after initial certification or Commission approval.

Under new § 40.1(f), a definition of ''dormant rule'' is added whereby a new rule or rule amendment that is not made effective and implemented within twelve months of initial certification or Commission approval will be considered dormant and will have to be resubmitted, either by certification or for approval, before it may be implemented.

Sections 40.2, 40.3, 40.5 and 40.6 are revised for internal consistency between sections. In addition, in § 40.2, relating to listing new products for trading by certification, new subparagraph 40.2(b) makes clear that a registered entity shall provide, if requested by Commission staff, additional evidence, information

[11] 69 FR 67811 (November 22, 2004).

[12] Under the former rules, DCO applications were routinely reviewed under the fast-track procedures unless the applicant were to instruct the Commission in writing at the time of the submission of the application or during the review period to review the application pursuant to the time provisions of and procedures under Section 6 of the Act.

[13] The Commission has proposed revisions to Commission Regulation 40.8 to specify which portions of an application for registration as a DTEF or designation as a DCO will be made public. See 69 FR 44981 (July 28, 2004).

or data relating to whether the contract meets, initially or on a continuing basis, any of the requirements of the Act or Commission regulations or policies thereunder. Such evidence may be beneficial to the Commission in conducting a due diligence assessment of the product and the registered entity's compliance with these requirements, including the obligation that the registered entity must have reason to believe the certification is proper. This language is consistent with the Commission's obligation to assure that the Act and Commission regulations and policies thereunder are not being violated. Similar language is added in § 40.3(a)(9) with respect to voluntary submission of new products for approval, and in § 40.6(a)(4) with respect to self-certification of rules by DCMs and DTEFs. DCMs and DTEFs should be aware that, in conducting routine due diligence reviews of self-certified new product listings and new rules or rule amendments under § 40.2(b) and § 40.6(a)(4), respectively, the staff gives special consideration to particular requirements. For DTEFs, the key requirements are: § 5a(b)(2) of the Act (requirements for underlying commodities); Core Principle 3 (monitoring trading to assure an orderly market); and Core Principle 4 (disclosure of general information). For DCMs, the key requirements are: Core Principle 3 (listing contracts that are not readily susceptible to manipulation); Core Principle 4 (monitoring trading to prevent manipulation, price distortion or disruptions of the delivery or cash-settlement process); and Core Principle 5 (adopting position limits or position accountability rules to reduce the threat of market manipulation or distortion, especially in the delivery month). To the extent that a DCM or DTEF includes with its initial submission, data, research reports, trade interview reports, exchange or third party analyses, or other background information demonstrating compliance with these requirements, a DTEF or DCM can minimize the prospect of requests for additional information under § 40.2(b) or § 40.6(a)(4), respectively.

The revisions to § 40.3 set forth with greater particularity the information Commission staff needs to make a determination on whether to approve a new product voluntarily submitted for Commission review and approval.

Section 5c(c)(2)(B) of the Act and § 40.4 of the regulations require prior Commission approval of DCM rule amendments that, for a delivery month having open interest, would materially change a term or condition of a contract for future delivery of an enumerated agricultural commodity, or an option on such a contract or commodity.[14] These amendments add new subsection 40.4(b)(8) to include fees or fee changes that are $1.00 or more per contract and are established by an independent third party or are unrelated to delivery, trading, clearing or dispute resolution to the types of rule changes for which a materiality determination is not required. The amendments also make clear that the non-material changes described in § 40.4(b), subparagraphs (1)–(8), fall within the provisions of revised § 40.6(c) and will be subject to the weekly notification procedures set out therein. Also, in § 40.4(b)(9) under subparagraph (i), the deadline for Commission review of ''non-material agricultural rule changes'' is changed from 10 calendar days to 10 business days to provide for a consistent review period for all submissions and to allow for more time for review. Under subparagraph (ii), the DCM will be required to provide an explanation of why the DCM believes the proposed rule change is non-material. Similarly, in § 40.5(c)(1), the review period for rules that are voluntarily submitted by DCMs or DTEFs for approval is extended from 30 days to 45 days, to be consistent with § 40.3.

Under § 40.6, current § 40.6(a) sets out the conditions under which a DCM or DCO may implement new rules by certifying them to the Commission. Subparagraph 40.6(a)(1) provides that the certification procedure does not apply to rules of a DCM that materially change a term or condition of a futures or option contract on an enumerated agricultural commodity in a delivery month with open interest. Subparagraphs 40.6(a)(2) and (3) set out the filing requirements for rule certifications and the information to be provided in such certifications. Section 40.6(c) establishes an exception to the rule certification requirements of §§ 40.6 (a)(2) and (3) whereby DCMs and DCOs may place certain rules and rule amendments into effect without certification, provided that certain conditions are met. The conditions are that: (1) The DCM or DCO provide to the Commission a weekly summary of rule changes made effective pursuant to this paragraph; and (2) the rule change governs such routine matters as nonmaterial revisions, changes to delivery standards made by third parties that do not affect deliverable supplies or the pricing basis for the product, changes in the composition of an index (other than a stock index) that do not affect the pricing basis of the index, routine changes to option contract terms, and certain fee changes established by independent third parties. These amendments add a reference to § 40.6(a)(1) to the exception established in § 40.6(c). The effect is to make clear that, while material rule changes involving contract months with open interest in enumerated agricultural commodities may not be certified to the Commission, the type of routine changes described in § 40.6(c)(2), as well as the partially overlapping list of non-material changes in §§ 40.4(b)(1)–(8), do not constitute material changes within the meaning of the Act or Commission regulations. Therefore, DCMs may inform the Commission of such rule changes on a weekly basis under the provisions of § 40.6(c). Also, new § 40.6(c)(2)(vi) adds to the list of items that may be reported weekly under § 40.6(c)(1), changes in survey lists of banks, brokers or dealers that provide market information to an independent third party and that are incorporated by reference as product terms. Finally, new § 40.6(c)(3)(ii)(F) adds minor changes to security indexes to the list of information the Commission does not require to be certified or reported weekly by a DCM or DCO.

Under § 40.7, Delegations, new § 40.7(a)(3) delegates to the Division, with the concurrence of the Office of the General Counsel, the authority to determine whether a rule change submitted by a DCM for a materiality determination under § 40.4(b)(9) is not material (in which case it may be reported pursuant to the provisions of § 40.6(c)), or is material and, therefore, must be submitted for Commission prior approval. Finally, new § 40.7(b)(3) will increase the Division of Market Oversight's delegated authority to allow it, with the concurrence of the Office of the General Counsel, to approve rules regarding speculative limits or position accountability.

IV. Cost-Benefit Analysis

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

Section 15(a) further specifies that the costs and benefits of the proposed rule

[14] The ''enumerated commodities'' are those agricultural commodities listed in § 1a(4) of the Act.

or order shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule or order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

These amendments are intended to clarify and codify acceptable practices under the rules for trading facilities, based on the Commission's experience over the past four years in applying those rules, including the adoption of several amendments to the original rules over the same period. The amendments also make various technical corrections and conforming amendments to the rules.

In addition, the amendments revise the application and review process for registration as a DCO by eliminating the presumption of automatic fast-track review of applications and replacing it with the presumption that all applications will be reviewed pursuant to the 180-day timeframe and procedures specified in Section 6(a) of the Act. In lieu of the current 60-day automatic fast-track review, the amendments permit applicants to request expedited review and to be registered as a DCO not later than 90 days after the Commission receives the application.

The Commission's proposal contained an analysis of its consideration of theses costs and benefits and solicited public comment thereon. 70 FR at 39678. The Commission specifically invited commenters to submit any data that they had quantifying the costs and benefits of the proposed amendments with their comment letters. *Id.* The Commission has considered all the comment letters received, some of which contained narrative discussion of the costs and benefits of specific provisions of the proposed amendments, but none of which set forth any data that quantified such costs and benefits.

The Commission has considered the costs and benefits of these amendments in light of the specific areas of concern identified in § 15. The Commission has endeavored in these amendments to impose the minimum requirements necessary to enable the Commission to perform its oversight functions, to carry out its mandate of assuring the continued existence of competitive and efficient markets and to protect the public interest in markets free of fraud and abuse. After considering their costs and benefits, the Commission has decided to adopt these amendments as discussed above.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The rule amendments adopted herein will affect exempt commercial markets, exempt boards of trade, derivatives transaction execution facilities, designated contract markets and designated clearing organizations. The Commission has previously determined that the foregoing entities are not small entities for purposes of the RFA.[15] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act of 1995

This rulemaking contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission submitted a copy of this section to the Office of Management and Budget (OMB) for its review. No comments were received in response to the Commission's invitation in the notice of proposed rulemaking to comment on any potential paperwork burden associated with these rules.

List of Subjects

17 CFR Part 36

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 37

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 38

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 39

Commodity futures, Consumer Protection.

17 CFR Part 40

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, and pursuant to the authority in the Commodity Exchange Act and, in particular, Sections 1a, 2, 3, 4, 4c, 4i, 5, 5a, 5b, 5c, 5d, 6 and 8a of the Act, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 36—EXEMPT MARKETS

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c and 12a, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

■ 2. Section 36.2 is amended by revising paragraphs (b) and (c) to read as follows:

§ 36.2 Exempt boards of trade.

* * * * *

(b) *Notification.* Boards of trade operating under Section 5d of the Act as exempt boards of trade shall so notify the Commission. This notification shall be filed with the Secretary of the Commission at its Washington, DC headquarters, in electronic form, shall be labeled as ''Notification of Operation as an Exempt Board of Trade,'' and shall include:

(1) The name and address of the exempt board of trade; and

(2) The name and telephone number of a contact person.

(c) *Additional requirements.* (1) *Prohibited representation.* A board of trade notifying the Commission that it meets the criteria of Section 5d of the Act and elects to operate as an exempt board of trade shall not represent to any person that it is registered with, designated, recognized, licensed or approved by the Commission.

(2) *Market data dissemination.* (i) *Criteria for price discovery determination.* An exempt board of trade operating a market in reliance on the exemption in Section 5d of the Act performs a significant price discovery function for transactions in the cash market for a commodity underlying any agreement, contract, or transaction executed or traded on the facility when:

(A) Cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the market on a more than occasional basis; or

(B) The market's prices are routinely disseminated in a widely distributed industry publication and are routinely consulted by industry participants in pricing cash market transactions.

[15] 47 FR 18618, 18619 (April 30, 1982) discussing contract markets; 66 FR 42256, 42268 (August 10, 2001) discussing exempt boards of trade, exempt commercial markets and derivatives transaction execution facilities; 66 FR 45605, 45609 (August 29, 2001) discussing derivatives clearing organizations.

(ii) *Notification.* An exempt board of trade operating a market in reliance on the exemption in Section 5d of the Act shall notify the Commission when:

(A) It has reason to believe that cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the market on a more than occasional basis;

(B) It has reason to believe that the market's prices are routinely disseminated in a widely distributed industry publication and are routinely consulted by industry participants in pricing cash market transactions; or

(C) The exempt board of trade holds out the market to the public as performing a price discovery function for the cash market for the commodity.

(iii) *Price discovery determination.* Following receipt of a notice under paragraph (c)(2)(ii) of this section, or on its own initiative, the Commission may notify an exempt board of trade operating a market in reliance on the exemption in Section 5d of the Act that the facility appears to meet the criteria for performing a significant price discovery function under paragraph (c)(2)(i)(A) or (B) of this section. Before making a final price discovery determination under this paragraph, the Commission shall provide the exempt board of trade with an opportunity for a hearing through the submission of written data, views and arguments. Any such written data, views and arguments shall be filed with the Secretary of the Commission in the form and manner and within the time specified by the Commission. After consideration of all relevant matters, the Commission shall issue an order containing its determination whether the facility performs a significant price discovery function under the criteria of paragraph (c)(2)(i)(A) or (B) of this section.

(iv) *Price dissemination.* (A) An exempt board of trade that the Commission has determined performs a significant price discovery function under paragraph (c)(2)(iii) of this section shall disseminate publicly, and on a daily basis, all of the following information with respect to transactions executed in reliance on the exemption in Section 5d of the Act:

(*1*) Contract terms and conditions, or a product description, and trading conventions, mechanisms and practices;

(*2*) Trading volume by commodity and, if available, open interest; and

(*3*) The opening and closing prices or price ranges, the daily high and low prices, a volume-weighted average price that is representative of trading on the board of trade, or such other daily price information as proposed by the board of trade and approved by the Commission.

(B) The exempt board of trade shall make such information readily available to the news media and the general public without charge no later than the business day following the day to which the information pertains.

(v) *Modification of price discovery determination.* An exempt board of trade that the Commission has determined performs a significant price discovery function under paragraph (c)(2)(iii) of this section may petition the Commission at any time to modify or vacate that determination. The petition shall contain an appropriate justification for the request. The Commission, after notice and opportunity for a hearing through the submission of written data, views and arguments, shall by order grant, grant subject to conditions, or deny such request.

(3) *Annual Certification.* A board of trade operating under Section 5d of the Act as an exempt board of trade shall file with the Commission annually, no later than the end of each calendar year, a notice that includes: (i) A statement that it continues to operate under the exemption; and (ii) a certification that the information contained in the previous Notification of Operation as an Exempt Board of Trade is still correct.

■ 3. Section 36.3 is amended by revising paragraph (a) revising paragraph (c)(2)(ii), and adding a new paragraph (c)(4) to read as follows:

§ 36.3 Exempt commercial markets.

(a) *Notification.* An electronic trading facility relying upon the exemption in Section 2(h)(3) of the Act shall notify the Commission of its intention to do so. This notification, and subsequent notification of any material changes in the information initially provided, shall be filed with the Secretary of the Commission at its Washington, DC headquarters, in electronic form, shall be labeled as ''Notification of Operation as an Exempt Commercial Market,'' and shall include the information and certifications specified in Section 2(h)(5)(A) of the Act.

* * * * *

(c) *Additional requirements.* * * *

(2) *Market data dissemination.* * * *

(ii) *Notification.* An electronic trading facility operating in reliance on Section 2(h)(3) of the Act shall notify the Commission when:

(A) It has reason to believe that cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the market on a more than occasional basis;

(B) It has reason to believe that the market's prices are routinely disseminated in a widely distributed industry publication and are routinely consulted by industry participants in pricing cash market transactions; or

(C) The market holds itself out to the public as performing a price discovery function for the cash market for the commodity.

* * * * *

(4) *Annual Certification.* An electronic trading facility operating in reliance upon the exemption in Section 2(h)(3) of the Act shall file with the Commission annually, no later than the end of each calendar year, a notice that includes: (i) A statement that it continues to operate under the exemption; and (ii) a certification that the information contained in the previous Notification of Operation as an Exempt Commercial Market is still correct.

PART 37—DERIVATIVES TRANSACTION EXECUTION FACILITIES

■ 4. The authority citation for Part 37 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 6(c), 7a and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

■ 5. Section 37.1 is amended by revising paragraph (a) to read as follows:

§ 37.1 Scope and definition.

(a) *Scope.* The provisions of this part apply to any board of trade operating as or applying to become registered as a derivatives transaction execution facility under Sections 5a and 6 of the Act.

* * * * *

■ 6. Section 37.2 is revised to read as follows:

§ 37.2 Exemption.

Contracts, agreements or transactions traded on a derivatives transaction execution facility registered as such with the Commission under Section 5a of the Act, the facility and the facility's operator are exempt from all Commission regulations for such activity, except for the requirements of this Part 37 and:

(a) Section 15.05, Part 40 and Part 41 of this chapter, including any related definitions and cross-referenced sections; and

(b) Sections 1.3, 1.31, 1.59(d), 1.60, 1.63(c), 33.10, and Part 190 of this chapter and, as applicable to the market, §§ 15.00 to 15.04 and Parts 16 through 21 of this chapter, including any related definitions and cross-referenced

sections, which are applicable as though they were set forth in this Part 37 and included specific reference to derivatives transaction execution facilities.

§ 37.3 [Amended]

■ 7. Section 37.3 is amended as follows:
■ a. By redesignating paragraphs (b) and (c) as paragraphs (d) and (e);
■ b. By redesignating paragraph (a)(5) as paragraph (b);
■ c. By redesignating paragraph (a)(6) introductory text as paragraph (c);
■ d. By redesignating paragraphs (a)(6)(i) and (ii) as paragraphs (c)(1) and (2); and
■ e. By redesignating paragraphs (a)(6)(ii)(A) through (H) as paragraphs (c)(2)(i) through (viii).
■ 8. Section 37.6 is revised to read as follows:

§ 37.6 Compliance with core principles.

(a) *In general.* To maintain registration as a derivatives transaction execution facility upon commencing operations by listing products for trading or otherwise, or for a dormant derivatives transaction execution facility as defined in § 40.1 of this chapter that has been reinstated under § 37.5(d) upon recommencing operations by relisting products for trading or otherwise, and on a continuing basis thereafter, the derivatives transaction execution facility must have the capacity to be, and be, in compliance with the core principles of Section 5a(d) of the Act.

(b) *New and reinstated derivatives transaction execution facilities*—(1) *Certification of compliance.* Unless an applicant for registration or for reinstatement of registration has chosen to make a voluntary demonstration under paragraph (b)(2) of this section, a newly registered derivatives transaction execution facility at the time it commences operations, or a dormant derivatives transaction execution facility as defined in § 40.1 of this chapter at the time that it recommences operations, must certify to the Commission that it has the capacity to, and will, operate in compliance with the core principles under Section 5a(d) of the Act.

(2) *Voluntary demonstration of compliance.* An applicant for registration or for reinstatement of registration may choose to make a voluntary demonstration of its capacity to operate in compliance with the core principles. Such demonstration may be included in an application submitted pursuant to § 37.5 of this part.

(i) The demonstration would include the following:

(A) The label, ''Demonstration of Compliance with Core Principles for Operation'';

(B) A document that describes the manner in which the applicant will comply with each core principle (such as a regulatory chart), which could cite to documents previously submitted including documents submitted pursuant to § 37.5(b)(1)(ii)(A)–(E); and

(C) To the extent that any of the items in § 37.5(b)(1)(ii)(A)–(E) raise issues that are novel, or for which compliance with a core principle is not self-evident, an explanation as to how that item and the application satisfy the core principle.

(ii) If it appears that the applicant has failed to make the requisite showing, the Commission will so notify the applicant at the end of that period. Upon commencement or recommencement of operations by the derivatives transaction execution facility, such a notice may be considered by the Commission in a determination to issue a notice of violation of core principles under Section 5c(d) of the Act.

(c) *Existing derivatives transaction execution facilities*—(1) *In general.* Upon request by the Commission, a registered derivatives transaction execution facility shall file with the Commission such data, documents and other information as the Commission may specify in its request that demonstrates that the registered derivatives transaction execution facility is in compliance with one or more core principles as specified in the request or that is requested by the Commission to enable the Commission to satisfy its obligations under the Act.

(2) *Delegation of authority.* The Commission hereby delegates, until it orders otherwise, the authority set forth in paragraph (c)(1) of this section to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time. The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(3) *Change of owners.* Upon a change of ownership of an existing registered derivatives transaction execution facility, the new owner shall file electronically with the Secretary of the Commission at its Washington, DC, headquarters, a certification that the derivatives transaction execution facility meets the requirements for trading and the criteria for registration of Sections 5a(b) and 5a(c) of the Act, respectively.

(d) *Guidance regarding compliance with core principles.* Appendix B to this part provides guidance to registered derivatives transaction execution facilities on compliance with the core principles under Section 5a(d) of the Act.

■ 9. Section 37.7 is amended by revising paragraph (b) to read as follows:

§ 37.7 Additional requirements.

* * * * *

(b) *Material modifications.* Notwithstanding the provisions of Section 5c(c) of the Act, registered derivatives transaction execution facilities need not certify rules or rule amendments under § 40.6 of this chapter, and must only notify the Commission prior to placing into effect or amending such a rule, (as defined in § 40.1 of this chapter):

(1) By electronic notification to the Commission of the rule to be placed into effect or to be changed, in a format approved by the Secretary of the Commission, at the time traders or participants in the market are notified, but (unless taken as an emergency action) in no event later than the close of business on the business day preceding implementation. The submission notification shall be labeled ''DTEF Rule Notices'' and shall include the text of the rule or rule amendment (with deletions and additions indicated). *Provided, however*, the derivatives transaction execution facility need not notify the Commission of rules or rule amendments for which no certification is required under § 40.6(c) of this chapter.

(2) The derivatives transaction execution facility must maintain documentation regarding all changes to rules, terms and conditions or trading protocols.

* * * * *

■ 10. Section 37.8 is amended by revising paragraph (b) to read as follows:

§ 37.8 Information relating to transactions on derivatives transaction execution facilities.

* * * * *

(b) *Special calls for information from futures commission merchants or foreign brokers.* Upon special call by the Commission, each person registered as a futures commission merchant or a foreign broker (as defined in § 15.00 of this title) that carries or has carried an account for a customer on a derivatives transaction execution facility shall provide information to the Commission concerning such accounts or related positions carried for the customer on that or other facilities or markets, in the form and manner and within the time

specified by the Commission in the special call.

* * * * *

■ 11. Appendix A to Part 37 is amended by revising the heading of the appendix and the first paragraph of the appendix to read as follows:

Appendix A to Part 37—Guidance on Compliance With Registration Criteria

This appendix provides guidance on meeting the criteria for registration under Sections 5a(c) and 6 of the Act and this part, both initially and on an ongoing basis. The guidance following each registration criterion is illustrative only of the types of matters an applicant may address, as applicable, and is not intended to be used as a mandatory checklist. Addressing the issues and questions set forth in this appendix would help the Commission in its consideration of whether the application has met the criteria for registration. To the extent that compliance with, or satisfaction of, a criterion for registration is not self-explanatory from the face of the derivatives transaction execution facility's rules, (as defined in § 40.1 of this chapter), the application should include an explanation or other form of documentation demonstrating that the applicant meets the registration criteria of Section 5a(c) of the Act and § 37.5.

* * * * *

■ 12. Appendix B to Part 37 is amended by revising paragraphs 1. and 3. of the appendix to read as follows:

Appendix B to Part 37—Guidance on Compliance With Core Principles

1. This appendix provides guidance on complying with the core principles in order to maintain registration under Section 5a(d) of the Act and this part. This guidance is illustrative only and is not intended to be used as a mandatory checklist.

* * * * *

3. Alternatively, if an applicant for registration or for reinstatement of registration under § 37.6(b)(2) chooses to provide the Commission with a demonstration of its compliance with core principles, addressing the issues set forth in this appendix would help the Commission in its consideration of such compliance. To the extent that compliance with, or satisfaction of, the core principles is not self-explanatory from the face of the derivatives transaction execution facility's rules, (as defined in § 40.1 of this chapter) a submission under § 37.6(b)(2) should include an explanation or other form of documentation demonstrating that the derivatives transaction execution facility complies with the core principles.

* * * * *

■ 13. Appendix B to Part 37 is further amended by revising the second paragraph of Core Principle 5 to read as follows:

Appendix B to Part 37—Guidance on Compliance With Core Principles

* * * * *

Core Principle 5 of Section 5a(d)(5) of the Act: *DAILY PUBLICATION OF TRADING INFORMATION* * * *

* * * * *

A board of trade operating as a registered derivatives transaction execution facility should provide to the public information regarding settlement prices, price range, trading volume, open interest and other related market information for all applicable contracts, as determined by the Commission. In making such determination, the Commission will consider whether a contract performs a significant price discovery function for transactions in the cash market for the commodity underlying the contract. The Commission will apply the same standards applicable to exempt boards of trade and exempt commercial markets (see §§ 36.2(b)(2) and 36.3(c)(2), respectively) whereby a market performs a significant price discovery function for transactions in the cash market for an underlying commodity if: (1) Cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the market on a more than occasional basis; or (2) the market's prices are routinely disseminated in a widely distributed industry publication and are routinely consulted by industry participants in pricing cash market transactions. In the event the Commission has reason to believe that a derivatives transaction execution facility may meet either of the foregoing standards, or if the facility holds itself out to the public as performing a price discovery function for the cash market for the underlying commodity, the Commission shall notify the facility that it appears to meet the criteria for performing a significant price discovery function under Core Principle 5. Before making a final price discovery determination under this core principle, the Commission shall provide the facility with an opportunity for a hearing through the submission of written data, views and arguments. After consideration of all relevant matters, the Commission shall issue an order containing its determination whether the requirement of the core principle on publication of trading information under Section 5a(d)(5) of the Act applies to a particular contract traded on a facility. Provision of information for any applicable contract could be through such means as providing the information to a financial information service or by placing the information on a facility's Web site. Such information shall be made available to the public without charge no later than the business day following the day to which the information pertains.

* * * * *

PART 38—DESIGNATED CONTRACT MARKETS

■ 14. The authority citation for Part 38 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 7 and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

■ 15. Section 38.1 is revised to read as follows:

§ 38.1 Scope.

The provisions of this Part 38 shall apply to every board of trade that has been designated or is applying to become designated as a contract market under Sections 5 and 6 of the Act. *Provided, however,* nothing in this provision affects the eligibility of designated contract markets to operate under the provisions of Parts 36 or 37 of this chapter.

■ 16. Section 38.2 is revised to read as follows:

§ 38.2 Exemption.

Agreements, contracts, or transactions traded on a designated contract market under Section 5 of the Act, the contract market and the contract market's operator are exempt from all Commission regulations for such activity, except for the requirements of this Part 38 and §§ 1.3, 1.12(e), 1.31, 1.37(c)–(d), 1.38, 1.52, 1.59(d), 1.60, 1.63(c), 1.67, 33.10, Part 9, Parts 15 through 21, Part 40, Part 41 and Part 190 of this chapter, including any related definitions and cross-referenced sections.

■ 17. Section 38.5 is amended by revising paragraph (b), redesignating paragraph (c) as paragraph (d), and adding new paragraph (c) as follows:

§ 38.5 Information relating to contract market compliance.

* * * * *

(b) Upon request by the Commission, a designated contract market shall file with the Commission a written demonstration, containing such supporting data, information and

documents, in the form and manner and within such time as the Commission may specify, that the designated contract market is in compliance with one or more designation criteria or core principles as specified in the request, or that is requested by the Commission to enable the Commission to satisfy its obligations under the Act.

(c) *Delegation of authority.* The Commission hereby delegates, until it orders otherwise, the authority set forth in paragraph (b) to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time. The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

* * * * *

■ 18. Appendix A to Part 38 is amended by revising the heading of the appendix and the first paragraph of the appendix to read as follows:

Appendix A to Part 38—Guidance on Compliance With Designation Criteria

This appendix provides guidance on meeting the criteria for designation under Sections 5(b) and 6 of the Act and this part, both initially and on an ongoing basis. The guidance following each designation criterion is illustrative only of the types of matters an applicant may address, as applicable, and is not intended to be used as a mandatory checklist. Addressing the issues and questions set forth in this appendix would help the Commission in its consideration of whether the application has met the criteria for designation. To the extent that compliance with, or satisfaction of, a criterion for designation is not self-explanatory from the face of the contract market's rules (as defined in § 40.1 of this chapter), the application should include an explanation or other form of documentation demonstrating that the applicant meets the designation criteria of Section 5(b) of the Act.

* * * * *

■ 19. Appendix A to Part 38 is further amended by revising the second paragraph of Designation Criterion 7 to read as follows:

Appendix A to Part 38—Guidance on Compliance with Designation Criteria

* * * * *

Designation Criterion 7 of Section 5(b) of the Act: *PUBLIC ACCESS* * * *

* * * * *

A designated contract market should provide information to the public by placing the information on its Web site.

* * * * *

■ 20. Appendix B to Part 38 is amended by revising paragraphs 1. and 2. to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

1. This appendix provides guidance on complying with the core principles, both initially and on an ongoing basis, to maintain designation under Section 5(d) of the Act and this part. The guidance is provided in paragraph (a) following each core principle and it can be used to demonstrate to the Commission core principle compliance, under §§ 38.3(a) and 38.5. The guidance for each core principle is illustrative only of the types of matters a board of trade may address, as applicable, and is not intended to be used as a mandatory checklist. Addressing the issues and questions set forth in this appendix would help the Commission in its consideration of whether the board of trade is in compliance with the core principles. To the extent that compliance with, or satisfaction of, a core principle is not self-explanatory from the face of the board of trade's rules (as defined in § 40.1 of this chapter), an application pursuant to § 38.3, or a submission pursuant to § 38.5 should include an explanation or other form of documentation demonstrating that the board of trade complies with the core principles.

2. Acceptable practices meeting selected requirements of the core principles are set forth in paragraph (b) following each core principle. Boards of trade that follow the specific practices outlined under paragraph (b) for any core principle in this appendix will meet the selected requirements of the applicable core principle. Paragraph (b) is for illustrative purposes only, and does not state the exclusive means for satisfying a core principle.

* * * * *

■ 21. Appendix B to Part 38 is further amended by revising paragraph (a)(1) of Core Principle 2 to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 2 of Section 5(d) of the Act: *COMPLIANCE WITH RULES* * * *

(a) *Application guidance.* (1) A designated contract market should have arrangements and resources for effective trade practice surveillance programs, with the authority to collect information and documents on both a routine and non-routine basis, including the examination of books and records kept by the contract market's members and by non-intermediated market participants. The arrangements and resources should facilitate the direct supervision of the market and the analysis of data collected. Trade practice surveillance programs may be carried out by the contract market itself or through delegation or contracting-out to a third party. If the contract market delegates or contracts-out the trade practice surveillance responsibility to a third party, such third party should have the capacity and authority to carry out such program, and the contract market should retain appropriate supervisory authority over the third party.

* * * * *

■ 22. Appendix B to Part 38 is further amended by revising paragraphs (a) and (b) of Core Principle 6 to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 6 of Section 5(d) of the Act: *EMERGENCY AUTHORITY* * * *

(a) *Application guidance.* A designated contract market should have clear procedures and guidelines for contract market decision-making regarding emergency intervention in the market, including procedures and guidelines to avoid conflicts of interest while carrying out such decision-making. A contract market should also have the authority to intervene as necessary to maintain markets with fair and orderly trading as well as procedures for carrying out the intervention. Procedures and guidelines should include notifying the Commission of the exercise of a contract market's regulatory emergency authority, explaining how conflicts of interest are minimized, and documenting the contract market's decision-making process and the reasons for using its emergency action authority. Information on steps taken under such procedures should be included in a submission of a certified rule and any related submissions for rule approval pursuant to Part 40, when carried out pursuant to a contract market's emergency authority. To address perceived market threats, the contract market, among other things, should be able to impose position limits in the delivery month, impose or modify price limits, modify circuit breakers,

call for additional margin either from customers or clearing members, order the liquidation or transfer of open positions, order the fixing of a settlement price, order a reduction in positions, extend or shorten the expiration date or the trading hours, suspend or curtail trading on the market, order the transfer of customer contracts and the margin for such contracts from one member including non-intermediated market participants of the contract market to another, or alter the delivery terms or conditions, or, if applicable, should provide for such actions through its agreements with its third-party provider of clearing services.

(b) *Acceptable practices.* [Reserved]

* * * * *

■ 23. Appendix B to Part 38 is further amended by adding paragraph (b) of Core Principle 7 to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 7 of Section 5(d) of the Act: *AVAILABILITY OF GENERAL INFORMATION* * * *

* * * * *

(b) *Acceptable practices.* In making information available to market participants and the public, on its Web site, a designated contract market should place information on the Web site no later than the day a new product is listed, the day a new or amended rule is implemented or the day previously disclosed information is changed. For example, the timely provision of this information on a contract market's Web site could be done through press releases, newsletters or notices to members. Additionally, a contract market should ensure that the rulebook posted on its Web site is available to the public (*i.e.*, can be accessed by visitors to the Web site without the need to register, log in, provide a user name or obtain a password) and is kept current. A rulebook will be considered current if: (1) Notice of any substantive new or amended rule is provided within one day of implementation, either by press release, newsletter, notice to members or actual posting of the change in the rulebook; and (2) all new rules, both substantive and non-substantive, are posted in the rulebook within five days of implementation.

* * * * *

■ 24. Appendix B to Part 38 is further amended by adding paragraph (b) of Core Principle 8 to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 8 of Section 5(d) of the Act: *DAILY PUBLICATION OF TRADING INFORMATION* * * *

* * * * *

(b) *Acceptable Practices.* The mandatory compliance with Section 16.01, ''Trading volume, open contracts, prices and critical dates,'' required under the regulations, would constitute an acceptable practice under Core Principle 8.

* * * * *

■ 25. Appendix B to Part 38 is further amended by revising paragraph (a) of Core Principle 16 to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 16 of Section 5(d) of the Act: *COMPOSITION OF BOARDS OF MUTUALLY OWNED CONTRACT MARKETS* * * *

(a) *Application guidance.* The composition of a mutually-owned contract market's governing board should fairly represent the diversity of interests of the contract market's market participants.

* * * * *

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

■ 26. The authority citation for Part 39 continues to read as follows:

Authority: 7 U.S.C. 7b, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

■ 27. Section 39.3 is revised to read as follows:

§ 39.3 Procedures for registration.

(a) *Application Procedures. (1) 180-day review procedures.* An organization desiring to be registered as a derivatives clearing organization shall file electronically an application for registration with the Secretary of the Commission at its Washington, DC, headquarters. Except as provided under the 90-day review procedures described in paragraph (a)(3) of this section, the Commission will review the application for registration as a derivatives clearing organization pursuant to the 180-day timeframe and procedures specified in section 6(a) of the Act. The Commission may approve or deny the application or, if deemed appropriate, register the applicant as a derivatives clearing organization subject to conditions.

(2) The following must be included:

(i) The application is labeled as being submitted pursuant to this Part 39;

(ii) The applicant represents that it will operate in accordance with the definition of derivatives clearing organization contained in section 1a(9) of the Act;

(iii) The application includes a copy of the applicant's rules;

(iv) The application demonstrates how the applicant is able to satisfy each of the core principles specified in section 5b(c)(2) of the Act;

(v) The applicant submits agreements entered into or to be entered into between or among the applicant, its operator/service provider or its participants, that will enable the applicant to comply, or demonstrate the applicant's ability to comply, with the core principles specified in section 5b(c)(2) of the Act. The agreements must identify the services that will be provided. If a submitted agreement is not final and executed, the application must include evidence which constitutes reasonable assurances that such services will be provided as soon as operations require;

(vi) The applicant submits descriptions of system test procedures, tests conducted or test results, that will enable the applicant to comply, or demonstrate the applicant's ability to comply, with the core principles specified in section 5b(c)(2) of the Act; and

(vii) The applicant identifies with particularity information in the application that will be subject to a request for confidential treatment and supports that request for confidential treatment.

(3) *Ninety-day review procedures.* An organization desiring to be registered as a derivatives clearing organization may request that its application be reviewed on a 90-day basis and that the applicant be registered as a derivatives clearing organization 90 days after the date of receipt of the application for registration by the Secretary of the Commission. The 90-day period shall begin on the first business day (during the business hours defined in § 40.1 of this chapter) that the Commission is in receipt of the application. Unless the Commission notifies the applicant during the 90-day period that the expedited review has been terminated pursuant to § 39.3(b), the Commission will register the applicant as a derivatives clearing organization during the 90-day period. If deemed appropriate by the Commission, the registration may be subject to such conditions as the Commission may stipulate.

(i) The application must include the items described in §§ 39.3(a)(2)(i) through (vi); and

(ii) The applicant must not amend or supplement the application except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period.

(b) *Termination of 90-day review.* (1) During the 90-day period for review pursuant to paragraph (a)(3) of this section, the Commission shall notify the applicant seeking registration that the Commission is terminating review under this section and will review the proposal under the 180-day time period and procedures of Section 6(a) of the Act, if it appears to the Commission that the application:

(i) Is materially incomplete;

(ii) Fails in form or substance to meet the requirements of this part;

(iii) Raises novel or complex issues that require additional time for review; or

(iv) Is amended or supplemented in a manner that is inconsistent with § 39.3(a)(3)(ii).

(2) This termination notification shall identify the deficiencies in the application that render it incomplete, the manner in which the application fails to meet the requirements of this part, or the novel or complex issues that require additional time for review. The Commission shall also terminate review under this section if requested in writing to do so by the applicant.

(c) *Withdrawal of application for registration.* An applicant for registration may withdraw its application submitted pursuant to paragraphs (a)(1) through (2) or (a)(3) of this section by filing with the Commission such a request. Withdrawal of an application for registration shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the application for registration was pending with the Commission.

(d) *Guidance for applicants and registrants.* Appendix A to this part provides guidance to applicants and registrants on how the core principles specified in Section 5b(c)(2) of the Act may be satisfied.

(e) *Reinstatement of dormant registration.* Before listing or relisting contracts for clearing, a dormant registered derivatives clearing organization as defined in § 40.1 of this chapter must reinstate its registration under the procedures of paragraph (a)(1) through (2) or (a)(3) of this section; *provided, however,* that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

(f) *Request for vacation of registration.* A registered derivatives clearing organization may vacate its registration under Section 7 of the Act by filing electronically such a request with the Commission at its Washington, DC headquarters. Vacation of registration shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the facility was designated by the Commission.

(g) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight or the Director's delegates, with the concurrence of the General Counsel or the General Counsel's delegates, the authority to notify an applicant seeking designation under Section 6(a) of the Act that the application is materially incomplete and the running of the 180-day period is stayed or that the 90-day review under paragraph (a)(3) of this section is terminated.

(2) The Director of the Division of Clearing and Intermediary Oversight may submit to the Commission for its consideration any matter which has been delegated in this paragraph.

(3) Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (g)(1) of this section.

PART 40—PROVISIONS COMMON TO CONTRACT MARKETS, DERIVATIVES TRANSACTION EXECUTION FACILITIES AND DERIVATIVES CLEARING ORGANIZATIONS

■ 28. The authority citation for Part 40 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a, 8 and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

■ 29. Section 40.1 is revised to read as follows:

§ 40.1 Definitions.

As used in this part:

(a) *Business hours* means the hours between 8:15 a.m. and 4:45 p.m., eastern standard time or eastern daylight savings time, whichever is currently in effect in Washington, DC, all days except Saturdays, Sundays and legal public holidays.

(b) *Dormant contract or dormant product* means any commodity futures or option contract or other agreement, contract, transaction or instrument in which no trading has occurred in any future or option expiration for a period of twelve complete calendar months and in which there is no open interest; *provided, however,* no contract or instrument shall be considered to be dormant until the end of 36 complete calendar months following initial exchange certification or Commission approval, or until the designated contract market or derivatives transaction execution facility on which it is traded becomes dormant. Notwithstanding the above, a board of trade may, by certifying to the Commission, self-declare a contract to be dormant at any time following initial exchange certification or Commission approval.

(c) *Dormant contract market* means any designated contract market on which no trading has occurred for a period of twelve complete calendar months; *provided, however,* no contract market shall be considered to be dormant until the end of 36 complete calendar months following the day that the initial order of designation was issued.

(d) *Dormant derivatives clearing organization* means any derivatives clearing organization that has not accepted for clearing any agreement, contract or transaction that is required or permitted to be cleared by a derivatives clearing organization under Sections 5b(a) and 5b(b) of the Act, respectively, for a period of twelve complete calendar months; *provided, however,* no derivatives clearing organization shall be considered to be dormant until the end of 36 complete calendar months following the day that the initial order of registration was issued.

(e) *Dormant derivatives transaction execution facility* means any derivatives transaction execution facility on which no trading has occurred for a period of twelve complete calendar months; *provided, however,* no derivatives transaction execution facility shall be considered to be dormant until the end of 36 complete calendar months following the day that the initial order of registration was issued.

(f) *Dormant rule* means any new rule or rule amendment which the designated contract market, derivatives transaction execution facility or derivatives clearing organization has not made effective and implemented; *provided, however,* no new rule or rule amendment shall be considered to be dormant until the end of twelve complete calendar months following initial certification or Commission approval. Prior to implementing a dormant rule, it should be resubmitted to the Commission, either by certification or for approval.

(g) *Emergency* means any occurrence or circumstance which, in the opinion of the governing board of the contract market, derivatives transaction execution facility or derivatives clearing organization, requires immediate action and threatens or may threaten such things as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any agreements, contracts or transactions on such a trading facility, including: Any manipulative or attempted manipulative activity; any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions; any circumstances which may materially affect the performance of agreements, contracts or transactions traded on the trading facility, including failure of the payment system or the bankruptcy or insolvency of any participant; any action taken by any governmental body, or any other board of trade, market or facility which may have a direct impact on trading on the trading facility; and any other circumstance which may have a severe, adverse effect upon the functioning of a designated contract market or derivatives transaction execution facility.

(h) *Rule* means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, term and condition, trading protocol, agreement or instrument corresponding thereto, in whatever form adopted, and any amendment or addition thereto or repeal thereof, made or issued by a contract market, derivatives transaction execution facility or derivatives clearing organization or by the governing board thereof or any committee thereof, except those provisions relating to the setting of levels of margin for commodities other than those subject to the provisions of Section 2(a)(1)(C)(v) of the Act and security futures as defined in Section 1a(31) of the Act.

(i) *Terms and conditions* mean any definition of the trading unit or the specific commodity underlying a contract for the future delivery of a commodity or commodity option contract, specification of cash settlement or delivery standards and procedures, and establishment of buyers' and sellers' rights and obligations under the contract. Terms and conditions include provisions relating to the following:

(1) Quality and other standards that define the commodity or instrument underlying the contract;

(2) Quantity standards or other provisions related to contract size;

(3) Any applicable premiums or discounts for delivery of nonpar products;

(4) Trading hours, trading months and the listing of contracts;

(5) The pricing basis and minimum price fluctuations;

(6) Any price limits, trading halts, or circuit breaker provisions, and procedures for the establishment of daily settlement prices;

(7) Position limits, position accountability standards, and position reporting requirements;

(8) Delivery points and locational price differentials;

(9) Delivery standards and procedures, including fees related to delivery or the delivery process, alternatives to delivery and applicable penalties or sanctions for failure to perform;

(10) If cash settled; all provisions related to the definition, composition, calculation and revision of the cash settlement price or index; and

(11) Payment or collection of commodity option premiums or margins.

■ 30. Section 40.2 is revised to read as follows:

§ 40.2 Listing products for trading by certification.

(a) A registered entity may list a new product for trading, list a product for trading that has become dormant, or accept for clearing a product that is not traded on a designated contract market or a registered derivatives transaction execution facility, if the following conditions have been met:

(1) The registered entity has filed its submission electronically with the Secretary of the Commission and at the regional office having local jurisdiction over the registered entity, in a format specified by the Secretary of the Commission;

(2) The Commission has received the submission at its headquarters by close of business on the business day preceding the product's listing or acceptance for clearing, and:

(3) The submission includes:

(i) A copy of the submission cover sheet in accordance with the instructions in Appendix D to this part;

(ii) A copy of the product's rules, including all rules related to its terms and conditions, or the rules establishing the terms and conditions of the listed product that make it acceptable for clearing;

(iii) The intended listing date; and

(iv) A certification by the registered entity that the product to be listed complies with the Act and regulations thereunder.

(b) A registered entity shall provide, if requested by Commission staff, additional evidence, information or data relating to whether the contract meets, initially or on a continuing basis, any of the requirements of the Act or Commission regulations or policies thereunder which may be beneficial to the Commission in conducting a due diligence assessment of the product and the entity's compliance with these requirements.

(c) *Stay.* The Commission may stay the listing of a contract pursuant to paragraph (a) of this section during the pendency of Commission proceedings for filing a false certification or to alter or amend the contract terms and conditions pursuant to Section 8a(7) of the Act. The decision to stay the listing of a contract in such circumstances shall not be delegable to any employee of the Commission.

■ 31. Section 40.3 is amended by revising paragraphs (a), (c), and (e)(2) to read as follows:

§ 40.3 Voluntary submission of new products for Commission review and approval.

(a) *Request for approval.* A designated contract market or registered derivatives transaction execution facility may request under Section 5c(c)(2) of the Act that the Commission approve new products. A submission requesting approval shall:

(1) Be filed electronically with the Secretary of the Commission and at the regional office of the Commission having local jurisdiction over the submitting registered entity in a format specified by the Secretary of the Commission;

(2) Include a copy of the submission cover sheet in accordance with the instructions in Appendix D to this part;

(3) Include a copy of the rules that set forth the contract's terms and conditions;

(4) Comply with the requirements of Appendix A to this part—Guideline No. 1. To demonstrate compliance, the submission shall include:

(i) An explanation, if not self-evident from the rules, as to how the specific terms and conditions satisfy the acceptable practices set forth in Guideline No. 1, Appendix A to Part 40. This information may be provided in narrative form or by completion of the applicable chart.

(ii) For physical delivery contracts, an explanation as to how the terms and conditions as a whole will result in a deliverable supply such that the contract will not be conducive to price manipulation or distortion and that the deliverable supply reasonably can be

expected to be available to short traders and salable by long traders at its market value in normal cash marketing channels.

(iii) For cash settled contracts, an explanation as to how the cash settlement of the contract is at a price reflecting the underlying cash market, will not be subject to manipulation or distortion, and is based on a cash price series that is reliable, acceptable, publicly available and timely.

(iv)(A) A brief description of the cash market for the commodity, instrument, index or interest that underlies the contract. The description may include materials prepared by the designated contract market or registered derivatives transaction execution facility, existing studies by industry trade groups, academics, governmental bodies or other entities, reports of consultants, or other materials, which provide a description of the underlying cash market.

(B) The cash market description may, however, be confined only to those aspects relevant to particular term(s) or condition(s) that differ from an existing contract, where a contract based on the same, or a closely related, commodity is already listed for trading and is not dormant.

(5) Describe any agreements or contracts entered into with other parties that enable the designated contract market or derivatives transaction execution facility to carry out its responsibilities.

(6) Include the certifications required in § 41.22 for product approval of a commodity that is a security future or a security futures product as defined in Sections 1a(31) or 1a(32) of the Act, respectively;

(7) Identify with particularity information in the submission (except for the product's terms and conditions which are made publicly available at the time of submission) that will be subject to a request for confidential treatment and support that request for confidential treatment with reasonable justification;

(8) Include the filing fee required under Appendix B to this part; and

(9) Include, if requested by Commission staff, additional evidence, information or data relating to whether the contract meets, initially or on a continuing basis, any of the specific requirements of the Act, or any other requirement for designation under the Act or Commission regulations or policies thereunder.

* * * * *

(c) *Extension of time.* The Commission may extend the forty-five day review period in paragraph (b) of this section for:

(1) An additional forty-five days, if the product raises novel or complex issues that require additional time for review or is of major economic significance, in which case, the Commission would notify the submitting registered entity within the initial forty-five day review period and would briefly describe the nature of the specific issues for which additional time for review would be required; or

(2) Such extended period as the submitting registered entity so instructs the Commission in writing.

* * * * *

(e) *Effect of non-approval.*

(1) * * *

(2) Notification to a submitting registered entity under paragraph (d) of this section of the Commission's refusal to approve a product shall be presumptive evidence that the entity may not truthfully certify under § 40.2 that the same, or substantially the same, product does not violate the Act or regulations thereunder.

■ 32. Section 40.4 is revised to read as follows:

§ 40.4 Amendments to terms or conditions of enumerated agricultural contracts.

(a) Designated contract markets must submit for Commission approval under the procedures of § 40.5, prior to its implementation, any rule or rule amendment that, for a delivery month having open interest, would materially change a term or condition as defined in § 40.1(i), of a contract for future delivery in an agricultural commodity enumerated in Section 1a(4) of the Act, or of an option on such a contract or commodity.

(b) The following rules or rule amendments are not material changes and, except as provided in paragraph (b)(9) of this section, may be reported to the Commission pursuant to the provisions of § 40.6(c):

(1) Changes in trading hours;

(2) Changes in lists of approved delivery facilities pursuant to previously set standards or criteria;

(3) Changes to terms and conditions of options on futures other than those relating to last trading day, expiration date, option strike price delistings, and speculative position limits;

(4) Reductions in the minimum price fluctuation (or ''tick'');

(5) Changes required to comply with a binding order of a court of competent jurisdiction, or of a rule, regulation or order of the Commission or of another federal regulatory authority;

(6) Corrections of typographical errors, renumbering, periodic routine updates to identifying information about approved entities and other such nonsubstantive revisions of a product's terms and conditions that have no effect on the economic characteristics of the product;

(7) Fees or fee changes of less than $1.00 per contract;

(8) Fees or fee changes that are $1.00 or more per contract and are established by an independent third party or are unrelated to delivery, trading, clearing or dispute resolution; and

(9) Any other rule:

(i) The text of which has been submitted for review to the Secretary of the Commission electronically in a format specified by the Secretary of the Commission, at least ten business days prior to its implementation and that has been labeled ''Non-Material Agricultural Rule Change;''

(ii) For which the registered entity has provided an explanation as to why it considers the rule ''non-material,'' and any other information that may be beneficial to the Commission in analyzing the merits of the entity's claim of non-materiality; and

(iii) With respect to which the Commission has not notified the contract market during the review period that the rule appears to require or does require prior approval under this section.

■ 33. Section 40.5 is amended by revising paragraph (a), revising paragraph (c)(1) and revising paragraph (e)(2) to read as follows:

§ 40.5 Voluntary submission of rules for Commission review and approval.

(a) *Request for approval of rules.* A registered entity may request pursuant to Section 5c(c) of the Act that the Commission approve any proposed rule or rule amendment. A submission requesting approval shall:

(1) Be filed electronically with the Secretary of the Commission and at the regional office of the Commission having local jurisdiction over the registered entity in a format specified by the Secretary of the Commission.

(2) Include a copy of the submission cover sheet in accordance with the instructions in Appendix D to this part;

(3) Set forth the text of the proposed rule or rule amendment (in the case of a rule amendment, deletions and additions must be indicated);

(4) Describe the proposed effective date of a proposed rule and any action taken or anticipated to be taken to adopt the proposed rule by the registered entity or by its governing board or by any committee thereof, and cite the rules of the entity that authorize the adoption of the proposed rule;

(5) Explain the operation, purpose, and effect of the proposed rule,

including, as applicable, a description of the anticipated benefits to market participants or others, any potential anticompetitive effects on market participants or others, how the rule fits into the registered entity's framework of self-regulation, a demonstration that the submission complies with the requirements of Appendix A to this part—Guideline No. 1, and any other information which may be beneficial to the Commission in analyzing the proposed rule. If a proposed rule affects, directly or indirectly, the application of any other rule of the submitting registered entity, set forth the pertinent text of any such rule and describe the anticipated effect;

(6) Briefly describe any substantive opposing views expressed to the registered entity by governing board or committee members, members of the entity or market participants with respect to the proposed rule that were not incorporated into the proposed rule;

(7) Identify any Commission regulation that the Commission may need to amend, or sections of the Act or Commission regulations that the Commission may need to interpret, in order to approve the proposed rule. To the extent that such an amendment or interpretation is necessary to accommodate a proposed rule, the submission should include a reasoned analysis supporting the amendment to the Commission regulation or the interpretation;

(8) Identify with particularity information in the submission (except for a product's terms and conditions, which are made publicly available at the time of submission) that will be subject to a request for confidential treatment and support that request for confidential treatment with reasonable justification; and

(9) Include a copy of the submission cover sheet in accordance with the instructions in Appendix D to this part.

* * * * *

(c) *Extensions of time.* * * *

(1) An additional forty-five days, if the proposed rule raises novel or complex issues that require additional time for review or is of major economic significance, in which case, the Commission would notify the submitting registered entity within the initial forty-five day review period and would briefly describe the nature of the specific issues for which additional time for review would be required; or

* * * * *

(e) *Effect of non-approval.* * * *

(2) Notification to a registered entity under paragraph (d) of this section of the Commission's refusal to approve a proposed rule or rule amendment of a registered entity shall be presumptive evidence that the entity may not truthfully certify that the same, or substantially the same, proposed rule or rule amendment does not violate the Act or regulations thereunder.

* * * * *

■ 34. Section 40.6 is amended by revising paragraph (a) introductory text, paragraphs (a)(2) and (3), paragraph (c) introductory text, and paragraphs (c)(1), (c)(2)(iii) and (c)(2)(v), and by adding new paragraphs (a)(4), (c)(2)(vi) and (c)(3)(ii)(F) to read as follows:

§ 40.6 Self-certification of rules by designated contract markets and registered derivatives clearing organizations.

(a) *Required certification.* A designated contract market or a registered derivatives clearing organization may implement any new rule or rule amendment (other than a rule or rule amendment approved or deemed approved by the Commission under § 40.5) if the following conditions have been met:

* * * * *

(2) The designated contract market or registered derivatives clearing organization has filed a submission electronically for the rule or rule amendment with the Secretary of the Commission and at the regional office having local jurisdiction over the submitting registered entity in a format specified by the Secretary of the Commission, and the Commission has received the submission at its headquarters by close of business on the business day preceding implementation of the rule; *provided, however,* rules or rule amendments implemented under procedures of the governing board to respond to an emergency as defined in § 40.1, shall, if practicable, be filed with the Commission prior to the implementation or, if not practicable, be filed with the Commission at the earliest possible time after implementation, but in no event more than 24 hours after implementation; and

(3) The rule submission includes:

(i) A copy of the submission cover sheet in accordance with the instructions in Appendix D to this part (in the case of a rule or rule amendment that responds to an emergency, ''Emergency Rule Certification'' should be noted in the Description section of the submission coversheet);

(ii) The text of the rule (in the case of a rule amendment, deletions and additions must be indicated);

(iii) The date of implementation;

(iv) A brief explanation of any substantive opposing views expressed to the registered entity by governing board or committee members, members of the entity or market participants, that were not incorporated into the rule; and

(v) A certification by the registered entity that the rule complies with the Act and regulations thereunder.

(4) The registered entity shall provide, if requested by Commission staff, additional evidence, information or data that may be beneficial to the Commission in conducting a due diligence assessment of the certification filing and the entity's compliance with any of the requirements of the Act or Commission regulations or policies thereunder.

* * * * *

(c) *Notification of rule amendments.* Notwithstanding the rule certification requirement of Section 5c(c)(1) of the Act, and paragraphs (a)(1), (a)(2) and (a)(3) of this section, a designated contract market or a registered derivatives clearing organization may place the following rules or rule amendments into effect without certification to the Commission if the following conditions are met:

(1) The designated contract market or registered derivatives clearing organization provides to the Commission at least weekly a summary notice of all rule changes made effective pursuant to this paragraph during the preceding week. Such notice must be labeled ''Weekly Notification of Rule Changes'' and need not be filed for weeks during which no such actions have been taken. One copy of each such submission shall be furnished electronically in a format specified by the Secretary of the Commission; and

(2) * * *

(iii) *Index products.* Routine changes in the composition, computation, or method of selection of component entities of an index (other than a stock index) referenced and defined in the product's terms, that do not affect the pricing basis of the index, which are made by an independent third party whose business relates to the collection or dissemination of price information and which was not formed solely for the purpose of compiling an index for use in connection with a futures or option product;

* * * * *

(v) *Fees.* Fees or fee changes that are $1.00 or more per contract and are established by an independent third party or are unrelated to delivery, trading, clearing or dispute resolution.

(vi) *Survey lists.* Changes to lists of banks, brokers, dealers, or other entities that provide price or cash market information to an independent third

party and that are incorporated by reference as product terms.

(3) * * *

(ii) * * *

(F) *Securities Indexes.* Routine changes to the composition, computation or method of security selection of an index that is referenced and defined in the product's rules, and which are made by an independent third party.

■ 35. Section 40.7 is amended by adding paragraphs (a)(3) and (b)(3) to read as follows:

§ 40.7 Delegations.

(a) *Procedural matters* * * *

(3) The Commission hereby delegates to the Director of the Division of Market Oversight or to the Director's delegate, with the concurrence of the General Counsel or the General Counsel's delegate, the authority to determine whether a rule change submitted by a DCM for a materiality determination under § 40.4(b)(9) is not material (in which case it may be reported pursuant to the provisions of § 40.6(c)), or is material, in which case he or she shall notify the DCM that the rule change must be submitted for the Commission's prior approval.

(b) *Approval authority.* * * *

(3) Establish or amend speculative limits or position accountability provisions that are in compliance with the requirements of the Act and Commission regulations;

* * * * *

■ 36. Section 40.8 is amended by revising paragraph (b) to read as follows:

§ 40.8 Availability of public information.

* * * * *

(b) Any information required to be made publicly available by a registered entity under Sections 5(d)(7), 5a(d)(4) and 5b(c)(2)(L) of the Act, respectively, will be treated as public information by the Commission at the time an order of designation or registration is issued by the Commission, a registered entity is deemed to be designated or registered, or a rule or rule amendment of the registered entity is approved or deemed to be approved by the Commission or can first be made effective the day following its certification by the registered entity.

■ 37. Appendix D to Part 40 is amended by revising the first paragraph to read as follows:

Appendix D to Part 40—Submission Cover Sheet and Instructions

A properly completed submission cover sheet must accompany all rule submissions submitted electronically by a designated contract market, registered derivatives transaction execution facility, or registered derivatives clearing organization to the Secretary of the Commodity Futures Trading Commission, at *submissions@cftc.gov* in a format specified by the Secretary of the Commission. Each submission should include the following:

* * * * *

Issued in Washington, DC, this 5th day of January, 2006, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 06–242 Filed 1–11–06; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9234]

RIN 1545–AU98

Obligations of States and Political Subdivisions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document corrects final regulations (TD 9234) that was published in the **Federal Register** on Monday, December 19, 2005 (70 FR 75028). The final regulations relates to the definition of private activity bond applicable to tax-exempt bonds issued by State and local governments.

DATES: This correction is effective February 17, 2006.

FOR FURTHER INFORMATION CONTACT: Johanna Som de Cerff, (202) 622–3980 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9234) that is the subject of this correction is under section 141 of the Internal Revenue Code.

Need for Correction

As published, TD 9234 contains error that may prove to be misleading and is in need of clarification.

Correction of Publication

■ Accordingly, the publication of the final regulations (TD 9234), that was the subject of FR Doc. 05–23944, is corrected as follows:

§ 1.141–15 [Corrected]

■ On page 75035, column 2, § 1.141–15(j), lines 7 and 8, the language, ''on or after February 17, 2006 and that are subject to the 1997 regulations.'' is corrected to read ''on or after February 17, 2006, and that are subject to the 1997 regulations (defined in paragraph (b)(1) of this section).''.

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 06–250 Filed 1–11–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 501

Economic Sanctions Enforcement Procedures for Banking Institutions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Office of Foreign Assets Control (''OFAC'') of the U.S. Department of the Treasury is issuing this interim final rule, ''Economic Sanctions Enforcement Procedures for Banking Institutions,'' along with a request for comments. This interim final rule supercedes OFAC's proposed rule of January 29, 2003,[1] to the extent that the proposed rule applies to ''banking institutions,'' as defined below. These administrative procedures are published as an appendix to the Reporting, Procedures and Penalties Regulations, 31 CFR Part 501.

DATES: The interim final rule is effective for enforcement cases involving banking institutions commencing on or after February 13, 2006. Written comments may be submitted on or before March 13, 2006.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.treas.gov/offices/enforcement/ofac/comment.html*.
- Fax: Assistant Director of Records, (202) 622–1657.
- Mail: Assistant Director of Records, ATTN: Request for Comments (Enforcement Procedures), Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

[1] 68 FR 4422–4429 (2003).

Instructions: All submissions received must include the agency name and the FR Doc. number that appears at the end of this document. Comments received will be posted without change to *http://www.treas.gov/ofac*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Assistant Director of Records, (202) 622–2500 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Procedural Requirements

Because this interim final rule imposes no obligations on any person, but instead simply explains OFAC's enforcement practices based on existing substantive and procedural rules, prior notice and public procedure are not required pursuant to 5 U.S.C. 553(b)(A). Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Finally, this interim final rule is not a significant regulatory action for purposes of Executive Order 12866.

Although a prior notice of proposed rulemaking is not required, OFAC is soliciting comments on this interim final rule in order to consider how it might make improvements in its enforcement procedures in the future. Comments must be submitted in writing. The addresses and deadline for submitting comments appear near the beginning of this notice. OFAC will not accept comments accompanied by a request that all or part of the submission be treated confidentially because of its business proprietary nature or for any other reason. All comments received by the deadline will be a matter of public record and will be made available on OFAC's Web site: *http://www.treas.gov/offices/enforcement/ofac/index.html*.

Background

On January 29, 2003, OFAC published, as a proposed rule, Economic Sanctions Enforcement Guidelines. Though this proposed rule has not been finalized, OFAC has used the Guidelines as a general framework for its enforcement actions. OFAC has decided that the enforcement procedures with respect to banking institutions should be modified and is publishing enforcement procedures for these entities as an interim final rule. OFAC is also requesting comments on this interim final rule.

In conjunction with issuing this interim final rule, OFAC is withdrawing the January 29, 2003 proposed rule to the extent it applies to banking institutions, as defined herein. For purposes of this interim rule, ''banking institutions'' means depository institutions regulated or supervised by one of the regulators that belongs to the Federal Financial Institutions Examination Council (''FFIEC''), *i.e.*, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision. Please note that a depository institution may be a ''banking institution,'' as that term is defined in OFAC regulations, *see, e.g.*, 31 CFR 500.314, 515.314, but not a ''banking institution'' for purposes of these enforcement procedures. Because this interim final rule only applies to enforcement procedures for banking institutions, as defined herein, OFAC plans to issue guidance on its enforcement procedures for other types of institutions and other sectors in the future.

OFAC is publishing enforcement procedures for banking institutions because of their unique role in the implementation of OFAC sanctions programs and the nature of the transactions in which such institutions engage. The new enforcement procedures take into account that each banking institution's situation is different and that its compliance program should be tailored to its unique circumstances. This includes an analysis of its size, business volume, customer base, and product lines.

In order to implement this new approach, OFAC has been working and will continue to work in partnership with the federal banking regulators. OFAC worked with FFIEC members to develop standards to evaluate compliance programs at banking institutions. In June 2005, the FFIEC released its *Bank Secrecy Act Anti-Money Laundering Examination Manual*. Portions of this manual relate to compliance with various OFAC sanctions programs. In addition, working with FFIEC members, OFAC has developed risk matrices, which may be used by depository institutions as ''best practices.'' [2] The matrices provide a guide for evaluating a banking institution's risk of encountering accounts or transactions subject to OFAC regulations and for determining the quality of an institution's compliance program. As indicated in the FFIEC examination manual, the banking regulators evaluate a banking institution's overall OFAC compliance program using a similar methodology.

Also, in administering its enforcement authority with respect to various sanctions statutes, Executive orders, and regulations, OFAC will provide the federal banking regulators with information related to apparent violations or compliance concerns as it becomes aware of them. In turn, OFAC will receive information from the banking regulators, including, for those institutions with apparent violations, evaluations of the sufficiency of each such institution's implementation of policies, procedures, and systems for ensuring OFAC compliance.

Prior to taking enforcement actions, OFAC generally will review apparent violations by a particular institution over a period of time, rather than evaluating each apparent violation independently. However, in regard to what appears to be a particularly egregious violation, OFAC may evaluate the situation as it presents itself and take prompt enforcement action.

Under the revised procedures, OFAC will periodically evaluate a banking institution's apparent OFAC-related violations in the context of the institution's overall OFAC compliance program and specific OFAC compliance record. OFAC will not conduct such a review if there are no apparent violations. The information reviewed will include but not necessarily be limited to: the evaluation of the banking institution's OFAC compliance program by its primary federal banking regulator; the institution's history of OFAC compliance; the circumstances surrounding any apparent violation, including what appear to be patterns or weaknesses in an institution's compliance program and whether they indicate negligence or a fundamental flaw in the compliance effort or system and whether they were voluntarily disclosed; enforcement information provided by the institution to OFAC; the number of transactions or accounts that the institution handled improperly during the period under review and its responses to any administrative subpoenas that OFAC sent with regard to those transactions or accounts; the number of transactions successfully blocked or rejected by the banking institution during the period; the actions taken by the banking institution to correct any violations and to ensure

[2] These matrices can be found in Annex A to the interim final rule and can be accessed online at *http://www.treas.gov/offices/enforcement/ofac/faq/matrix.pdf.*

that similar violations do not happen again; and other relevant information available to OFAC at the time of the evaluation.

After a review of apparent violations, OFAC will contact the banking institution, either by phone, in-person, or in writing, regarding OFAC's preliminary assessment of the appropriate action with respect to the institution. OFAC's staff will discuss the results of its review with the institution, including any patterns or weaknesses in an institution's compliance program. With respect to particular transactions, the discussion will cover the actions taken by the banking institution to ensure that similar transactions do not take place in the future and the adequacy of responses to any administrative subpoenas OFAC has sent with regard to the transactions. OFAC will indicate the intended administrative action to be taken for each transaction or set of related transactions that appear to constitute violations of OFAC-administered sanctions programs.

Once OFAC has reached a decision, it will notify the institution in writing as to its proposed action with regard to each apparent violation during the period under review. OFAC will provide a copy of this letter to the institution's primary federal banking regulator. In the event that OFAC has notified the institution of its intent to pursue a civil penalty with regard to any or all of the apparent violations, existing civil penalty procedures under OFAC regulations will be followed. These include the opportunity for informal settlement prior to formal initiation of penalty action through the issuance of a prepenalty notice.

In subsequent periodic reviews relating to the institution's apparent violations, all prior actions and decisions taken by OFAC, including cases in which the decision is to take no action, will be considered in deciding what action to take.

In addition to detailing these new procedures, the interim final rule clarifies that, for a banking institution, a voluntary disclosure, a factor that OFAC considers in its enforcement decisions, does not include a disclosure when another party is required to file a report concerning the same transaction. This is the case whether or not the other party actually files a report. However, OFAC considers reporting of violations important for its compliance and enforcement programs and will consider such reports by a banking institution a mitigating factor in its enforcement decisions even if they do not meet the definition of ''voluntary disclosure'' contained in these enforcement procedures. While reports that are not voluntary disclosures will generally not be accorded the same importance as voluntary disclosures, OFAC will give such cooperation due consideration.

Though this interim final rule becomes effective in 30 days, OFAC is soliciting comments for a 60-day period with a view to improving its enforcement procedures.

In particular, commenters are invited to address how much significance, separately or collectively, OFAC should attribute in its enforcement decisions to such factors as a banking regulator's assessments of a banking institution's compliance program, a banking institution's historical OFAC compliance record, and a comparison of that record to similarly situated banking institutions.

Also, this interim final rule does not apply to entities regulated by the Securities and Exchange Commission (''SEC'') and the Commodity Futures Trading Commission (''CFTC''), such as broker-dealers, mutual funds, investment advisers, hedge fund advisers, futures commission merchants, commodity trading advisers, and commodity pool operators, even if such legal entities are affiliated with a banking institution. OFAC plans to issue separate enforcement procedures for SEC- and CFTC-regulated entities in recognition that the regulatory regimes administered by the SEC and the CFTC are significantly different from the regime administered by federal banking regulators. Commenters are asked to address whether there is current information about the compliance programs of SEC- and CFTC-regulated entities that OFAC could use in a similar manner to the way compliance information will be used for making enforcement decisions for banks. Commenters are also requested to provide any suggestions concerning how the enforcement procedures described in this interim final rule should be modified for entities regulated by the SEC or CFTC.

OFAC also plans to issue enforcement procedures for certain financial sector entities regulated by state government agencies but not by federal financial regulators. This sector includes entities that are similar to federally-regulated banking institutions, such as certain credit unions and banks not insured by an agency of the U.S. Government, and it includes some money service businesses. Commenters are asked for suggestions concerning how the enforcement procedures in the interim final rule should be modified for the purpose of providing separate enforcement procedures for these entities.

The interim final rule does not apply to other financial sector entities, such as insurance companies (including property and casualty, life, and reinsurance lines of business), pension funds, finance companies, mortgage bankers, and government-sponsored enterprises. Commenters are asked for their suggestions on how enforcement procedures should be modified to apply to these other financial sector entities and whether and how enforcement procedures for financial sector firms should vary depending on the regulatory regime, if any, to which various financial sector firms are subject.

Commenters are also requested to provide suggestions concerning appropriate enforcement procedures for non-financial sectors, such as import-export businesses, the computer and software industries, and e-commerce.

These procedures apply to banking institutions that may be part of a larger corporate structure, with a parent holding company. Commenters are asked how OFAC should consider for enforcement purposes complex corporate structures, which may include entities regulated by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the SEC, and the CFTC. Other affiliates, such as insurance companies, may be regulated by state regulators; some affiliates may be subject to the jurisdiction of foreign regulators; and some entities may not have a functional regulator. Such complicated structures pose challenges for assessing compliance programs and making determinations about enforcement actions when there are violations. Commenters are invited to address the proper enforcement approach for complicated holding company structures.

List of Subjects in 31 CFR Part 501

Administrative practice and procedure, Banks, banking, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 31 CFR part 501 is amended as follows:

PART 501—REPORTING, PROCEDURES AND PENALTIES REGULATIONS

■ 1. The authority citation for Part 501 continues to read as follows:

Authority: 18 U.S.C. 2332d; 21 U.S.C. 1901–1908; 22 U.S.C. 287c; 22 U.S.C. 2370(a); 31 U.S.C. 321(b); 50 U.S.C. 1701–

1706; 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

■ 2. Part 501 is amended by adding the following appendix A, with annexes, to read as follows:

Appendix A to Part 501—Economic Sanctions Enforcement Procedures for Banking Institutions

Note: This appendix provides a general procedural framework for the enforcement of all economic sanctions programs administered by the Office of Foreign Assets Control (''OFAC'') only as they relate to banking institutions, as defined herein.

I. Definitions

A. *Banking regulator* means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision.

B. *Banking institution*, for purposes of this appendix to Part 501, means a depository institution supervised or regulated by a banking regulator.

C. *OFAC* means the Department of the Treasury's Office of Foreign Assets Control.

D. *Voluntary disclosure* means notification to OFAC of an apparent sanctions violation by the banking institution that has committed it. However, such notification to OFAC is not deemed a voluntary disclosure if OFAC has previously received information concerning the conduct from another source, including, but not limited to, a regulatory or law enforcement agency or another person's blocking or funds transfer rejection report.

Notification by a banking institution is also not a voluntary disclosure if another person's blocking or funds transfer rejection report is required to be filed, whether or not this required filing is made. Responding to an administrative subpoena or other inquiry from OFAC is not a voluntary disclosure. The submission of a license request is not a voluntary disclosure unless it is accompanied by a separate disclosure.

II. Enforcement of Economic Sanctions in General

A. *OFAC Civil Investigation and Enforcement Action.* OFAC is responsible for civil investigation and enforcement with respect to economic sanctions violations committed by banking institutions. In these efforts, OFAC may coordinate with banking regulators. OFAC investigations may lead to one or more of the following: an administrative subpoena, an order to cease and desist, a blocking order, an evaluative letter summarizing concerns, or a civil penalty proceeding. In addition to or instead of such actions, if the banking institution involved is currently acting pursuant to an OFAC license, that license may be suspended or revoked.

B. *OFAC's Evaluation of Violative Conduct.* The level of enforcement action undertaken by OFAC involving a banking institution depends on the nature of the apparent violation, the enforcement objectives, and the foreign policy goals of the particular sanctions program involved. In evaluating whether to initiate a civil penalty action, OFAC determines whether there is reason to believe that a violation of the relevant regulations, statutes, or Executive orders has occurred. In making determinations about the disposition of apparent violations by banking institutions, including evaluative letters and civil penalties, OFAC will consider information provided by the banking institution and its banking regulator concerning the institution's compliance program and the adequacy of that program based on its OFAC risk profile. Further information about the evaluation of compliance programs commensurate with the risk profile of a banking institution and a description of a sound OFAC compliance program are provided in Annexes A and B.

C. *Criminal Investigations and Prosecutions.* If the evidence suggests that a banking institution has committed a willful violation of a substantive prohibition or requirement, OFAC may refer those cases to other federal law enforcement agencies for criminal investigation. Cases that an investigative agency has referred to the Department of Justice for criminal prosecution also may be subject to OFAC civil penalty action.

III. Periodic Institutional Review

A. Except for those significant violations for which prompt action, such as a civil penalty proceeding or referral to other federal law enforcement agencies, is appropriate, OFAC will review institutions with violations or suspected violations on a periodic basis. OFAC will review each such institution's apparent violations over a period of time deemed appropriate in light of the number and severity of apparent violations and the institution's OFAC compliance history.

B. Upon completing this review, OFAC will preliminarily determine the type of enforcement action it will pursue for each apparent violation or related apparent violations. OFAC will then seek comment from the banking institution and ask it to provide additional information with regard to the apparent violation or violations. OFAC also will ask the institution to explain what actions led to the apparent violation or violations and what actions, if any, it has taken to overcome the deficiencies in its systems that led to the apparent improper handling of the transactions or accounts. Depending on the number and complexity of the apparent violations, OFAC may grant up to 30 days for a banking institution to respond and may grant further extensions at its sole discretion where it determines this is appropriate. Upon receipt of the institution's response, OFAC will decide whether to pursue the intended administrative action or whether some other action would serve the same purpose.

C. OFAC will subsequently send the banking institution a letter detailing its findings and further actions, if any, concerning the apparent violations. OFAC will provide the banking institution's primary banking regulator with a copy of this letter.

IV. Factors Affecting Administrative Action

In making its decision as to administrative action, if any, OFAC will consider a number of factors, including, but not limited to, the following:

A. The institution's history of sanctions violations.

B. The size of the institution and the number of OFAC-related transactions handled correctly compared to the number and nature of transactions handled incorrectly.

C. The quality and effectiveness of the banking institution's overall OFAC compliance program, as determined by the institution's primary banking regulator and by its history of compliance with OFAC regulations.

D. Whether the apparent violation or violations in question are the result of systemic failures at the banking institution or are atypical in nature.

E. The voluntary disclosure to OFAC of the apparent violation or violations by the banking institution.

F. Providing OFAC a report of, or useful enforcement information concerning, the apparent violation or violations. Providing a report, but not a voluntary disclosure, of the apparent violation or violations will generally be accorded less weight as a mitigating factor than would provision of a voluntary disclosure.

G. The deliberate effort to hide or conceal from OFAC or to mislead OFAC concerning an apparent violation or violations or its OFAC compliance program.

H. An analysis of current or potential sanctions harm as a result of a violation or series of related violations. This analysis will focus both on the specifics of the apparent violation or violations and the institution's compliance effort.

I. Technical, computer, or human error.

J. Applicability of a statute of limitations and any waivers thereof.

K. Actions taken by the banking institution to correct the problems that led to the apparent violation or violations.

L. The level of OFAC action that will best lead to enhanced compliance by the banking institution.

M. The level of OFAC action that will best serve to encourage enhanced compliance by others.

N. Evidence that a transaction or transactions could have been licensed by OFAC under an existing licensing policy.

O. Whether other U.S. government agencies have taken enforcement action.

P. Qualification of the banking institution as a small business or organization for the purposes of the Small Business Regulatory Enforcement Fairness Act, as determined by reference to the applicable regulations of the Small Business Administration.

V. License Suspension and Revocation

In addition to or in lieu of other administrative actions, OFAC authorization to engage in a transaction or transactions pursuant to a general or specific license may

be suspended or revoked with respect to a banking institution for reasons including, but not limited to, the following:

A. The banking institution has made or caused to be made in any license application, or in any report required pursuant to a license, any statement that was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or it has omitted to state in any application or report any material fact that was required;

B. The banking institution has failed to file timely reports or comply with the recordkeeping requirements of a general or specific license;

C. The banking institution has violated any provision of the statutes enforced by OFAC or the rules or regulations issued under any such provision or relevant Executive orders and such violation or violations are significant and merited civil penalty or other enforcement action;

D. The banking institution is reasonably believed to have counseled, commanded, induced, procured, or knowingly aided or abetted the violation of any provision of any legal authority referred to in paragraph C;

E. Based on the information available to it, OFAC considers the banking institution's compliance program inadequate; or

F. The banking institution has committed any other act or omission that demonstrates unfitness to conduct the transactions authorized by the general or specific license.

VI. Civil Penalties

The procedures for addressing the actions of banking institutions that OFAC decides merit civil penalty treatment are provided in the regulations governing the particular sanctions program involved, or, in the case of sanctions regulations issued pursuant to the Trading with the Enemy Act, in this Part. The factors listed in Section IV will be considerations in the civil penalty process.

ANNEX A.—OFAC RISK MATRICES

[The following matrices can be used by banking institutions to evaluate their compliance programs. Matrix A is from the FFIEC *Bank Secrecy Act Anti-Money Laundering Examination Manual* published in 2005, Appendix M (''Quantity of Risk Matrix—OFAC Procedures'')]

Low	Moderate	High
Matrix A		
Stable, well-known customer base in a localized environment.	Customer base changing due to branching, merger or acquisition in the domestic market.	A large, fluctuating client base in an international environment.
Few high-risk customers; these may include nonresident aliens, foreign customers (including accounts with U.S. powers of attorney) and foreign commercial customers.	A moderate number of high-risk customers	A large number of high-risk customers.
No overseas branches and no correspondent accounts with foreign banks.	Overseas branches or correspondent accounts with foreign banks.	Overseas branches or multiple correspondent accounts with foreign banks.
No electronic banking (e-banking) services offered, or products available are purely informational or non-transactional.	The bank offers limited e-banking products and services.	The bank offers a wide array of e-banking products and services (i.e., account transfers, e-bill payment, or accounts opened via the Internet).
Limited number of funds transfers for customers and non-customers, limited third-party transactions, and no international funds transfers.	A moderate number of funds transfers, mostly for customers. Possibly, a few international funds transfers from personal or business accounts.	A high number of customer and non-customer funds transfers, including international funds transfers.
No other types of international transactions, such as trade finance, cross-border ACH, and management of sovereign debt.	Limited other types of international transactions.	A high number of other types of international transactions.
No history of OFAC actions. No evidence of apparent violation or circumstances that might lead to a violation.	A small number of recent actions (i.e., actions within the last five years) by OFAC, including notice letters, or civil money penalties, with evidence that the bank addressed the issues and is not at risk of similar violations in the future.	Multiple recent actions by OFAC, where the bank has not addressed the issues, thus leading to an increased risk of the bank undertaking similar violations in the future.
Matrix B. This matrix consists of additional factors that may be considered by banking institutions in assessing compliance programs in addition to Appendix M of the FFIEC Bank Secrecy Act Anti-Money Laundering Examination Manual.		
Management has fully assessed the bank's level of risk based on its customer base and product lines. This understanding of risk and strong commitment to OFAC compliance is satisfactorily communicated throughout the organization.	Management exhibits a reasonable understanding of the key aspects of OFAC compliance and its commitment is generally clear and satisfactorily communicated throughout the organization, but it may lack a program appropriately tailored to risk.	Management does not understand, or has chosen to ignore, key aspects of OFAC compliance risk. The importance of compliance is not emphasized or communicated throughout the organization.
The board of directors, or board committee, has approved an OFAC compliance program that includes policies, procedures, controls, and information systems that are adequate, and consistent with the bank's OFAC risk profile.	The board has approved an OFAC compliance program that includes most of the appropriate policies, procedures, controls, and information systems necessary to ensure compliance, but some weaknesses are noted.	The board has not approved an OFAC compliance program, or policies, procedures, controls, and information systems are significantly deficient.
Staffing levels appear adequate to properly execute the OFAC to properly execute the OFAC compliance program.	Staffing levels appear generally adequate, but some deficiencies are noted.	Management has failed to provide appropriate staffing levels to handle workload.
Authority and accountability for OFAC compliance are clearly defined and enforced, including the designations of a qualified OFAC officer.	Authority and accountability are defined, but some refinements are needed. A qualified OFAC officer has been designated.	Authority and accountability for compliance have not been clearly established. No OFAC compliance officer, or an unqualified one, has been appointed. The role of the OFAC officer is unclear.

ANNEX A.—OFAC RISK MATRICES—Continued

[The following matrices can be used by banking institutions to evaluate their compliance programs. Matrix A is from the FFIEC *Bank Secrecy Act Anti-Money Laundering Examination Manual* published in 2005, Appendix M (''Quantity of Risk Matrix—OFAC Procedures'')]

Low	Moderate	High
Training is appropriate and effective based on the bank's risk profile, covers applicable personnel, and provides necessary up-to-date information and resources to ensure compliance.	Training is conducted and management provides adequate resources given the risk profile of the organization; however, some ares are not covered within the training program.	Training is sporadic and does not cover important regulatory and risk areas.
The institution employs strong quality control methods.	The institution employs limited quality control methods.	The institution does not employ quality control quality control methods.

Annex B—Sound Banking Institution OFAC Compliance Programs

A. *Identification of High Risk Business Areas.* A fundamental element of a sound OFAC compliance program rests on a banking institution's assessment of its specific product lines and identification of the high-risk areas for OFAC transactions. As OFAC sanctions reach into virtually all types of commercial and banking transactions, no single area will likely pass review without consideration of some type of OFAC compliance measure. Relevant areas to consider in a risk assessment include, but are not limited to, the following: retail operations, loans and other extensions of credit (open and closed-ended; on and off-balance sheet, including letters of credit), funds transfers, trust, private and correspondent banking, international, foreign offices, over-the-counter derivatives, internet banking, safe deposit, payable through accounts, money service businesses, and merchant credit card processing.

B. *Internal Controls.* An effective OFAC compliance program should include internal controls for identifying suspect accounts and transactions and reporting to OFAC. Internal controls should include the following elements:

1. *Flagging and Review of Suspect Transactions and Accounts.* A banking institution's policies and procedures should address how it will flag and review transactions and accounts for possible OFAC violations, whether conducted manually, through interdiction software, or a combination of both methods. For screening purposes, a banking institution should clearly define procedures for comparing names provided on the OFAC list with the names in its files or on the transaction and for flagging transactions or accounts involving sanctioned countries. In high-risk and high-volume areas in particular, a banking institution's interdiction filter should be able to flag close name derivations for review. New accounts should be compared with the OFAC lists prior to allowing transactions. Established accounts, once scanned, should be compared regularly against OFAC updates.

2. *Updating the Compliance Program.* A banking institution's compliance program should also include procedures for maintaining current lists of blocked countries, entities, and individuals and for disseminating such information throughout the institution's domestic operations and its offshore offices, branches and, for purposes of the sanctions programs under the Trading with the Enemy Act, foreign subsidiaries.

3. *Reporting.* A compliance program should also include procedures for handling transactions that are validly blocked or rejected under the various sanctions programs. These procedures should cover the reporting of blocked and rejected items to OFAC as provided in § 501.603 of this Part and the annual report of blocked property required by § 501.604 of this Part.

4. *Management of blocked accounts.* An audit trail should be maintained in order to reconcile all blocked funds. A banking institution is responsible for tracking the amount of blocked funds, the ownership of those funds, interest paid on those funds, and the release of blocked funds pursuant to license.

5. *Maintaining License Information.* Sound compliance procedures dictate that a banking institution maintain copies of customers' OFAC specific licenses on file. This will allow a banking institution to verify whether a customer is initiating a legal transaction. If it is unclear whether a particular transaction is authorized by a license, a banking institution should confirm this with OFAC. Maintaining copies of licenses will also be useful if another banking institution in the payment chain requests verification of a license's validity. In the case of a transaction performed under general license (or, in some cases, a specific license), it is sound compliance for a banking institution to obtain a statement from the licensee that the transaction is in accordance with the terms of the license, assuming the banking institution does not know or have reason to know that the statement is false.

C. *Testing.* Except for a banking institution with a very low OFAC risk profile, a banking institution should have a periodic test of its OFAC program performed by its internal audit department or by outside auditors, consultants, or other qualified independent parties. The frequency of the independent test should be consistent with the institution's OFAC risk profile; however, an in-depth audit of each department in the banking institution might reasonably be conducted at least once a year. The person(s) responsible for testing should conduct an objective, comprehensive evaluation of OFAC policies and procedures. The audit scope should be comprehensive and sufficient to assess OFAC compliance risks across the spectrum of all the institution's activities. If violations are discovered, they should be promptly reported to both OFAC and the banking institution's banking regulator.

D. *Responsible Individuals.* It is sound compliance procedure for an institution to designate a qualified individual or individuals to be responsible for the day-to-day compliance of its OFAC program, including at least one individual responsible for the oversight of blocked funds. This individual or these individuals should be fully knowledgeable about OFAC statutes, regulations, and relevant Executive orders.

E. *Training.* A banking institution should provide adequate training for all appropriate employees. The scope and frequency of the training should be consistent with the OFAC risk profile and the particular employee's responsibilities.

Dated: December 22, 2005.

Robert W. Werner,

Director, Office of Foreign Assets Control.

Approved: December 23, 2005.

Stuart A. Levey,

Under Secretary of the Treasury, Office of Terrorism and Financial Intelligence.

[FR Doc. 06–278 Filed 1–11–06; 8:45 am]

BILLING CODE 4810–35–P

POSTAL SERVICE

39 CFR Part 111

Sack Preparation Changes for Periodicals Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule adopts new mailing standards for Periodicals mail prepared in sacks. The standards include two new types of sacks—a 3-digit carrier routes sack and a merged 3-digit sack—and a new minimum of 24 pieces for most other sacks.

DATES: *Effective Date:* May 11, 2006.

FOR FURTHER INFORMATION CONTACT: Joel Walker, 202–268–7266.

SUPPLEMENTARY INFORMATION:

Background

The Postal Service published a proposal in the **Federal Register** on August 15, 2005 (70 FR 47754), to

require most sacks of Periodicals mail to contain a minimum of 24 pieces. This change encourages more efficient mail preparation, helping us reduce the costs of transporting and processing mail in sacks and, as a result, helping keep Periodicals rates reasonable.

Summary of Comments

We received 65 comments on the proposal. Fifty-six comments came from representatives or publishers of community newspapers; 45 of these were similar comments submitted on their association's preprinted form. Three comments came from individual subscribers to community newspapers, three from community newspaper associations, one from a magazine publishers' association, one from a commercial mailer, and one from a software vendor.

Two commenters, the magazine publishers' association and the commercial mailer, expressed support for the proposal, agreeing that it will significantly reduce the number of sacks. One commenter noted that the proposal would yield substantial cost savings while still preserving carrier route eligibility.

The 56 comments from representatives and publishers of community newspapers, the three comments from community newspaper associations, and three comments from individual subscribers to community newspapers objected to the proposal. They expressed concerns about a potential negative impact on service, especially for the out-of-town subscriber; a potential for increased resources needed to prepare mail under the new standards; and a potential increase in postage for nonautomation pieces.

We believe that two new options we introduced on October 27, 2005, will help to address concerns commenters expressed about service. The first option allows a significant portion of Periodicals mail prepared in mixed area distribution center (ADC) sacks to be processed with First-Class Mail and travel on the surface transportation network. The second preparation option allows mailers to place Automated Flat Sorting Machine (AFSM) 100-compatible mailpieces in ADC and mixed ADC flat trays instead of sacks and will help us move mail quickly to the appropriate flat-sorting equipment instead of handling it manually. Both options should improve service for Periodicals mail.

Some commenters expressed concern that the new standards might increase their postage and mail preparation costs. Mailers of nonautomation pieces may experience some increase in the rates they pay. This rule, however, introduces two new sacks that will mitigate the overall rate impact by preserving carrier route rate eligibility whenever six or more pieces are sorted to a carrier route. Furthermore, we believe that handling and labeling fewer sacks in a mailing is more efficient and therefore less costly for mailers.

One commenter proposed allowing 5-digit sacks of fewer than 24 pieces for ZIP Codes within the service area of the entry sectional center facility (SCF) and allowing these sacks to be drop shipped to delivery units. The new 24-piece requirement for most sacks, including 5-digit sacks, reduces handling of sacks at both the processing plant and the delivery unit because fewer sacks are prepared by mailers. Furthermore, when bundles are combined at the processing plant, fewer and fuller 5-digit sacks or containers are created for the delivery units to handle.

One commenter suggested that the standards should address circumstances for heavy-weight Periodicals where 24 pieces would result in heavy sacks that are, for example, over 35 pounds. We currently allow mailers to balance bundles for a presort destination within sacks to avoid preparation of very heavy sacks without losing rate eligibility, provided the mail would have met the minimum quantity for the rate claimed before balancing the bundles. The new standards do not change this practice.

One commenter suggested the new standards would have a negative impact on publishers' use of exceptional dispatch. The new standards do not change exceptional dispatch.

Summary of Changes

New 3-Digit Carrier Routes Sack for Carrier Route Mailings

This sack contains pieces sorted to multiple carrier routes in a 3-digit area, consolidating the bundles formerly prepared in 5-digit carrier routes sacks containing fewer than 24 pieces.

- This new sack must contain a minimum of one six-piece carrier route bundle.
- This sack may contain additional carrier route bundles of fewer than six pieces when those pieces are paid at the basic rate.

New Merged 3-Digit Sack for Merged Mailings

This sack consolidates carrier route, automation, and presorted bundles formerly prepared in merged 5-digit sacks containing fewer than 24 pieces.

- Mailers must prepare this sack if they have one or more carrier route bundles for the 3-digit area once they have prepared all carrier route and merged 5-digit sacks containing 24 or more pieces.
- If a mailing does not include at least one carrier route bundle for the 3-digit area, the merged 3-digit sack must contain a minimum of 24 pieces prepared in 5-digit, 5-digit scheme, 3-digit, and 3-digit scheme bundles.

New 24-Piece Minimum

The following sacks must contain a minimum of 24 pieces:

- Carrier route sacks;
- 5-digit carrier routes sacks;
- 5-digit scheme carrier routes sacks;
- 5-digit sacks;
- 5-digit scheme sacks;
- Merged 5-digit sacks;
- Merged 5-digit scheme sacks;
- 3-digit sacks;
- 3-digit scheme sacks;
- SCF sacks; and
- ADC sacks.

We provide below the new standards, and how they are applied for different mail preparation options for Periodicals. The effective date of these changes is May 11, 2006.

■ We adopt the following amendments to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Revise the following sections of Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), as follows.

700 Special Standards

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705 Advanced Preparation and Special Postage Payment Systems

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9.0 Preparation for Cotraying and Cosacking Bundles of Automation and Presorted Flats

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9.2 Periodicals

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[Revise the title of 9.2.4 as follows.]

9.2.4 Bundles With Fewer Than Six Pieces

[Revise 9.2.4 by adding a reference to 24 pieces as follows.]

5-digit and 3-digit bundles prepared under 707.22.0 and 707.25.0 or under 9.2.3 may contain fewer than six pieces when the publisher determines that such preparation improves service. These low-volume bundles may be placed in 5-digit, 3-digit, and SCF sacks that contain at least 24 pieces or on 5-digit, 3-digit, or SCF pallets. Pieces in low-volume bundles must claim the applicable basic Presorted or automation rate, except for firm bundles at Presorted rates under 707.22.3.

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10.0 Preparation for Merged Containerization of Bundles of Flats Using City State Product

10.1 Periodicals

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[Revise the title of 10.1.3 as follows.]

10.1.3 Bundles With Fewer Than Six Pieces

[Revise 10.1.3 by restructuring the section for clarity and adding references to 24 pieces and merged 3-digit sacks as follows.]

Carrier route, 5-digit scheme, 5-digit, 3-digit scheme, and 3-digit bundles may contain fewer than six pieces when the publisher determines that such preparation improves service. Pieces in these low-volume bundles must be claimed at the basic rate. Low-volume bundles are permitted only when they are sacked or prepared on pallets as follows:

a. Place low-volume carrier route, 5-digit, 3-digit scheme, and 3-digit bundles in only the following containers:

1. Carrier route, merged 5-digit scheme, 5-digit scheme carrier routes, merged 5-digit, 5-digit carrier routes, 5-digit, 3-digit, and SCF sacks that contain at least 24 pieces;

2. Merged 3-digit sacks that contain at least one six-piece carrier route bundle;

3. Origin/entry SCF sacks; or

4. On merged 5-digit scheme, 5-digit scheme carrier routes, 5-digit scheme, merged 5-digit, 5-digit carrier routes, 5-digit, 5-digit metro, 3-digit, or SCF pallets, as appropriate.

b. Place low-volume 5-digit scheme bundles in only 5-digit scheme, 3-digit, and SCF sacks that contain at least 24 pieces, or in origin/entry SCF sacks, or on 3-digit or SCF pallets, as appropriate.

* * * * *

10.1.4 Sack Preparation and Labeling

[Revise 10.1.4 by adding a reference to 10.1.4h in the introductory paragraph, revising items b through g, adding new item h for merged 3-digit sacks, and revising and renumbering current item h as new item i, as follows.]

Mailers must prepare sacks containing the individual carrier route and 5-digit bundles from the carrier route, automation, and Presorted rate mailings in the mailing job in the following manner and sequence. All carrier route bundles must be placed in sacks under 10.1.4a through 10.1.4e and 10.1.4h as described below. * * *

* * * * *

b. Merged 5-digit scheme, required at 24 pieces, fewer pieces not permitted. Must contain at least one 5-digit ZIP Code in the scheme with an ''A'' or ''C'' indicator in the City State Product. May contain carrier route bundles for any 5-digit ZIP Code(s) in a single scheme listed in L001 as well as automation rate 5-digit bundles and Presorted rate 5-digit bundles for those 5-digit ZIP Codes in the schemes that have an ''A'' or ''C'' indicator in the City State Product. For 5-digit ZIP Code(s) in a scheme that has a ''B'' or ''D'' indicator in the City State Product, prepare sack(s) of automation rate and Presorted rate bundles under 10.1.4g and 10.1.4h. For 5-digit ZIP Codes not included in a scheme, prepare sacks under 10.1.4d through 10.1.4h.

1. Line 1: use L001, Column B.

2. Line 2: ''PER'' or ''NEWS'' as applicable, followed by ''FLTS'' or ''IRREG'' as applicable, followed by ''CR/5D SCH.''

c. 5-digit scheme carrier routes, required at 24 pieces, fewer pieces not permitted. May contain only carrier route bundles for 5-digit ZIP Code(s) in a single scheme listed in L001 when all the 5-digits in the scheme have a ''B'' or ''D'' indicator in the City State Product. Mailers must prepare this sack if there are any carrier route bundle(s) for such a scheme.

1. Line 1: use L001, Column B.

2. Line 2: ''PER'' or ''NEWS'' as applicable, followed by ''FLTS'' or ''IRREG'' as applicable, followed by ''CR–RTS SCH.''

d. Merged 5-digit, required at 24 pieces, fewer pieces not permitted. Must be prepared only for those 5-digit ZIP Codes that are not part of a scheme and that have an ''A'' or ''C'' indicator in the City State Product. May contain carrier route bundles, automation rate 5-digit bundles, and Presorted rate 5-digit bundles.

1. Line 1: use city, state, and 5-digit ZIP Code destination (see 707.21.1.2 for military mail).

2. Line 2: ''PER'' or ''NEWS'' as applicable, followed by ''FLTS'' or ''IRREG'' as applicable, followed by ''CR/5D.''

e. 5-digit carrier routes, required at 24 pieces, fewer pieces not permitted. Include only carrier route bundles for a 5-digit ZIP Code remaining after preparing sacks under 10.1.4a through 10.1.4d. May contain only carrier route bundles for any 5-digit ZIP Code that is not part of a scheme listed in L001 and that has a ''B'' or ''D'' indicator in the City State Product.

1. Line 1: use city, state, and 5-digit ZIP Code destination (see 707.21.1.2 for military mail).

2. Line 2: ''PER'' or ''NEWS'' as applicable, followed by ''FLTS'' or ''IRREG'' as applicable, followed by ''CR-RTS.''

f. 5-digit scheme, required at 24 pieces, fewer pieces not permitted. May contain only automation rate and cobundled automation and Presorted rate 5-digit scheme bundles for the same 5-digit scheme destination.

1. Line 1: L007, Column B.

2. Line 2: ''PER'' or ''NEWS'' as applicable, followed by ''FLTS 5D SCH BC.''

g. 5-digit, required at 24 pieces, fewer pieces not permitted. May contain only automation rate 5-digit bundles and Presorted rate 5-digit bundles for the same 5-digit ZIP Code for any 5-digit ZIP Code that has a ''B'' or ''D'' indicator in the City State Product.

1. Line 1: use city, state, and 5-digit ZIP Code destination (see 707.21.1.2 for military mail).

2. Line 2: ''PER'' or ''NEWS'' as applicable, followed by ''FLTS 5D BC/NBC,'' except if there are no automation rate bundles in the mailing job, label under 707.22.6.

h. Merged 3-digit. May contain carrier route bundles, any 5-digit and 5-digit scheme bundles remaining after preparing sacks under 10.1.4a through 10.1.4g, and any 3-digit and 3-digit scheme bundles. When preparation of this sack level is permitted, mailers must prepare a sack if there are any remaining carrier route bundles for the 3-digit area. Required with at least one six-piece carrier route bundle. Must contain at least one carrier route bundle for the 3-digit area, or a minimum of 24 pieces.

1. Line 1: use L002, Column A.

2. Line 2: ''PER'' or ''NEWS'' as applicable, followed by ''FLTS'' or ''IRREG'' as applicable, followed by ''BC/NBC,'' except if there are no

automation rate bundles in the mailing job, label under 707.22.6.

i. SCF through mixed ADC. Any 5-digit scheme and 5-digit bundles remaining after preparing sacks under 10.1.4a through 10.1.4h and all 3-digit, 3-digit scheme, ADC, and mixed ADC bundles must be sacked and labeled under 9.2 for cosacking of automation rate and Presorted rate bundles, except if there are no automation rate bundles in the mailing job, sack and label under 707.22.6, or if there are no Presorted rate bundles in the mailing job, sack and label under 707.25.3.

* * * * *

11.0 Preparation of Cobundled Automation Rate and Presorted Rate Flats

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11.2 Periodicals

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[Revise the title of 11.2.3 and add a reference to 24 pieces as follows.]

11.2.3 Bundles With Fewer Than Six Pieces

5-digit scheme, 5-digit, 3-digit scheme, and 3-digit bundles may contain fewer than six pieces when the publisher determines that such preparation improves service. Pieces in these low-volume bundles must be claimed at the basic rate. Low-volume bundles are permitted only when they are sacked or prepared on pallets as follows:

a. Place low-volume 5-digit and 3-digit bundles in only 5-digit scheme, 5-digit, 3-digit, and SCF sacks that contain at least 24 pieces; or in origin/entry SCF sacks; or on merged 5-digit scheme, 5-digit scheme, merged 5-digit, 5-digit, 5-digit metro, 3-digit, or SCF pallets, as appropriate.

b. Place low-volume 5-digit scheme and 3-digit scheme bundles in only 5-digit scheme, 3-digit, and SCF sacks that contain at least 24 pieces, or in origin/entry SCF sacks, or on 3-digit or SCF pallets, as appropriate.

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707 Periodicals

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13.0 Carrier Route Rate Eligibility

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13.2 Sortation

13.2.1 Sequencing

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[Revise item b2 by adding ''3-digit carrier routes sacks'' as follows.]

2. Bundles in carrier route, 5-digit scheme carrier routes, 5-digit carrier routes sacks, or 3-digit carrier routes sacks under 23.0. Sacks may be palletized under 705.8.0.

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20.0 Sacks and Trays

* * * * *

22.0 Preparation of Presorted Periodicals

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[Revise the title of 22.4 as follows.]

22.4 Bundles With Fewer Than Six Pieces

[Revise 22.4 for clarity and to add reference to 24 pieces as follows.]

Nonletter-size Periodicals may be prepared in 5-digit and 3-digit bundles containing fewer than six pieces when the publisher determines that such preparation improves service. Pieces in these low-volume bundles must be claimed at the basic rate. Low-volume bundles are permitted only when they are sacked or prepared on pallets as follows:

a. Place bundles in only 5-digit, 3-digit, and SCF sacks that contain at least 24 pieces, or in origin/entry SCF sacks, as appropriate.

b. Place bundles on only merged 5-digit scheme, 5-digit scheme, merged 5-digit, 5-digit, 5-digit metro, 3-digit, and SCF pallets.

* * * * *

22.6 Sack Preparation—Flat-Size Pieces and Irregular Parcels

* * * * *

[Revise items a, b, c, and e to amend sack minimum requirements as follows.]

a. 5-digit, required at 24 pieces, fewer pieces not permitted. * * *

b. 3-digit, required at 24 pieces, fewer pieces not permitted. * * *

c. SCF, required at 24 pieces, fewer pieces not permitted. * * *

* * * * *

e. ADC, required at 24 pieces, fewer pieces not permitted. * * *

* * * * *

23.0 Preparation of Carrier Route Periodicals

* * * * *

23.4 Preparation—Flat-Size Pieces and Irregular Parcels

23.4.1 Sacking and Labeling

[Revise 23.4.1 by adding new item d for 3-digit carrier routes sacks and adding 24-piece minimums to all other sack levels as follows.]

Preparation sequence, sack size, and labeling:

a. Carrier route, required at 24 pieces, fewer pieces not permitted. * * *

b. 5-digit scheme carrier routes, required at 24 pieces, fewer pieces not permitted. * * *

c. 5-digit carrier routes, required at 24 pieces, fewer pieces not permitted. * * *

d. 3-digit carrier routes, optional with one six-piece bundle.

1. Line 1: use the city, state, and ZIP Code shown in L002, Column A, that corresponds to the 3-digit ZIP Code prefix of bundles.

2. Line 2: ''PER'' or ''NEWS'' as applicable, followed by ''FLTS 3D'' or ''IRREG 3D'' as applicable, followed by ''CR–RTS.''

* * * * *

[Revise 23.6 by revising the title, restructuring the text for clarity, deleting ''merged 5-digit scheme'' and ''merged 5-digit'' in item a, and adding a reference to 24 pieces, as follows.]

23.6 Bundles With Fewer Than Six Pieces

Nonletter-size Periodicals may be prepared in carrier route bundles containing fewer than six pieces when the publisher determines that such preparation improves service. Pieces in these low-volume bundles must be claimed at the basic rate. Low-volume carrier route bundles are permitted only when they are sacked or prepared on pallets as follows:

a. Place bundles in only 5-digit scheme carrier routes and 5-digit carrier routes sacks that contain at least 24 pieces, or 3-digit carrier routes or merged 3-digit sacks that contain at least one six-piece carrier route bundle.

b. Place bundles on only merged 5-digit scheme, 5-digit scheme carrier routes, merged 5 digit, 5-digit carrier routes, 5-digit metro, 3-digit, and SCF pallets.

* * * * *

25.0 Preparation of Flat-Size Automation Periodicals

25.1 Basic Standards

* * * * *

[Revise title of 25.1.9 as follows.]

25.1.9 Bundles With Fewer Than Six Pieces

[Revise 25.1.9 for clarity and to add references to 24 pieces, as follows.]

5-digit scheme, 5-digit, 3-digit scheme, and 3-digit bundles may contain fewer than six pieces when the publisher determines that such preparation improves service. Pieces in bundles containing fewer than six pieces must be claimed at the basic rate. These low-volume bundles are permitted only when they are sacked or prepared on pallets under these conditions:

a. Place 5-digit and 3-digit bundles in only 5-digit scheme, 5-digit, 3-digit, and SCF sacks, as appropriate, that contain at least 24 pieces, or in merged 3-digit sacks that contain at least one six-piece carrier route bundle, or in origin/entry SCF sacks.

b. Place 5-digit and 3-digit bundles on only merged 5-digit scheme, 5-digit scheme, merged 5-digit, 5-digit, 5-digit metro, 3-digit, and SCF pallets, as appropriate.

c. Place 5-digit scheme and 3-digit scheme bundles in only 5-digit scheme, 3-digit, and SCF sacks, as appropriate, that contain at least 24 pieces, or in merged 3-digit sacks that contain at least one six-piece carrier route bundle, or in origin/entry SCF sacks.

d. Place 5-digit scheme and 3-digit scheme bundles on only 3-digit and SCF pallets, as appropriate.

* * * * *

25.3 Sacking and Labeling

* * * * *

[Revise items a through d and item f by amending sack minimum requirements as follows.]

a. 5-digit scheme, required at 24 pieces, fewer pieces not permitted; may contain 5-digit scheme bundles only; labeling: * * *

b. 5-digit , required at 24 pieces, fewer pieces not permitted; labeling: * * *

c. 3-digit, required at 24 pieces, fewer pieces not permitted; labeling: * * *

d. SCF, required at 24 pieces, fewer pieces not permitted; labeling: * * *

* * * * *

f. ADC, required at 24 pieces, fewer pieces not permitted; labeling: * * *

* * * * *

708 Technical Specifications

* * * * *

6.1.4 3-Digit Content Identifier Numbers

[Revise Exhibit 6.1.4 by changing the following 5-digit carrier route content identifiers and adding the following new 3-digit content identifier numbers.]

* * * * *

PER Flats—Carrier Route

5-digit carrier routes sacks 386—PER FLTS 5D CR–RTS
3-digit carrier routes sacks 351—PER FLTS 3D CR–RTS

* * * * *

PER Flats—Merged Carrier Route, Automation, and Presorted

merged 3-digit sacks 352—PER FLTS CR/5D/3D

* * * * *

PER Irregular Parcels—Merged Carrier Route and Presorted

merged 3-digit sacks 354—PER IRREG CR/5D/3D

* * * * *

PER Irregular Parcels—Carrier Route

5-digit carrier routes sacks 396—PER IRREG 5D CR–RTS
3-digit carrier routes sacks 355—PER IRREG 3D CR–RTS

* * * * *

NEWS Flats—Carrier Route

5-digit carrier routes sacks 486—NEWS FLTS 5D CR–RTS
3-digit carrier routes sacks 451—NEWS FLTS 3D CR–RTS

* * * * *

NEWS Flats—Merged Carrier Route, Automation, and Presorted

merged 3-digit sacks 452—NEWS FLTS CR/5D/3D

* * * * *

NEWS Irregular Parcels—Merged Carrier Route and Presorted

merged 3-digit sacks 454—NEWS IRREG CR/5D/3D

* * * * *

NEWS Irregular Parcels—Carrier Route

5-digit carrier routes sacks 496—NEWS IRREG 5D CR–RTS
3-digit carrier routes sacks 455—NEWS IRREG 3D CR–RTS

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 06–326 Filed 1–11–06; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–6003–24; I.D. 010406C]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 2,404 nm² (4,452 km²), southeast of Portland, ME, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours January 14, 2006, through 2400 hours January 28, 2006.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM

program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm2 (139 km2)) such that right whale density is equal to or greater than 0.04 right whales per nm2 (1.85 km2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On January 2, 2006, an aerial survey reported a sighting of forty right whales in the proximity 43° 15′ N. lat. and 68° 43′ W. long. This position lies southeast of Portland, ME. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule.

The DAM Zone is bound by the following coordinates:

43° 39′ N., 69° 15′ W. (NW Corner)
43° 39′ N., 68° 09′ W.
42° 49′ N., 68° 09′ W.
42° 49′ N., 69° 15′ W.

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: During January, a portion of this DAM zone overlaps the year-round Cashes Ledge Closure Area found at 50 CFR 648.81(h). Due to this closure, sink gillnet gear is prohibited from this portion of the DAM zone. There are no lobster closures in the area affected by this DAM zone.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Nearshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Gillnet Waters Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends;
5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and
6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours January 14, 2006, through 2400 hours January 28, 2006, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA Web site, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as the AA approves it, thereby providing approximately 3 additional days of notice while the Office of the Federal Register processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: January 6, 2006.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 06–290 Filed 1–9–06; 2:25 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010319075–1217–02; I.D. 122905B]

Fisheries of the Northeastern United States; Tilefish Fishery; Adjustment to the Fishing Year 2006 Tilefish Full-time Tier 1 Permit Category Commercial Quota

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

ACTION: Temporary rule; commercial quota adjustment.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator) has determined that the quota for the tilefish Full-time Tier 1 permit category has been exceeded for fishing year (FY) 2005, requiring an adjustment of the Full-time Tier 1 permit category quota for FY 2006. This action complies with the Fishery Management Plan for the Tilefish Fishery (FMP) and is intended to continue the rebuilding program in the FMP by taking into account previous overages of the tilefish quota.

DATES: Effective February 13, 2006, through October 31, 2006.

FOR FURTHER INFORMATION CONTACT: Brian R. Hooker, Fishery Policy Analyst, (978) 281–9220.

SUPPLEMENTARY INFORMATION: The regulations at 50 CFR 648.290(c) state that any overages of the quota for any tilefish limited access permit category that occur in a given fishing year will be subtracted from the quota for that category in the following fishing year. This section also specifies that, if an adjustment is required, a notification of adjustment of the quota will be published in the **Federal Register**.

The tilefish quota of 1,250,865 lb (567,383 kg) for the limited access Full-time Tier 1 permit category (Category A) is adjusted for FY 2006 through this action. Based upon vessel reports and other information available as of December 1, 2005, FY 2005 tilefish landings for Category A were 1,251,058

lb (567,471 kg). Therefore, an overage of 193 lb (88 kg) is being deducted from the FY 2006 Category A quota through this action, which results in an adjusted quota, rounded to the nearest whole pound, of 1,250,672 lb (567,295 kg) for FY 2006.

The other tilefish permit categories did not exceed their respective quotas in FY 2005. Therefore, the quotas and trip limits associated with these permit categories do not need to be adjusted. The quotas for the Full-time Tier 2 and Part-time permit categories remain 284,288 lb (128,951 kg) and 360,098 lb (163,338 kg), respectively, and the Incidental catch trip limit is 300 lb (136 kg) for FY 2006.

The FY 2005 tilefish Full-time Tier 1 permit category quota, as well as landings, and the resulting overage for this permit category are presented in Table 1.

TABLE 1. TILEFISH FULL-TIME TIER 1 CATEGORY FY 2005 LANDINGS AND OVERAGE

Permit Category	2005 Quota		2005 Landings		2005 Overage	
	lb	kg[1]	lb	kg[1]	lb	kg[1]
Full-time Tier 1	1,250,865	567,383	1,251,058	567,471	193	88

[1]Kilograms are as converted from pounds, and may not necessarily add due to rounding.

The resulting adjusted FY 2006 tilefish Full-time Tier 1 permit category commercial quota is presented in Table 2.

TABLE 2. TILEFISH FULL-TIME TIER 1 CATEGORY ADJUSTED FY 2006 QUOTA

Permit Category	2006 Initial Quota		2006 Adjusted Quota	
	lb	kg[1]	lb	kg[1]
Full-time Tier 1	1,250,865	567,383	1,250,672	567,295

[1]Kilograms are as converted from pounds, and may not necessarily add due to rounding.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment as notice and comment would be impracticable and unnecessary. The regulations under § 648.290(c) requires the Regional Administrator to subtract any overage of the quota for any tilefish limited access category from the quota for that category in the following fishing year. Accordingly, the action being taken by this temporary rule is non-discretionary. There is no discretion to modify this action based on public comment at this time.

The rate of harvest of tilefish by the Full-time Tier 1 Category is updated weekly on the internet at *http://www.nero.noaa.gov*. Accordingly, the public is able to obtain information that would provide at least some advanced notice of a potential action as a result of a tilefish quota being exceeded during the 2005 fishing year. Further, the potential for this action was considered and open to public comment during the development of the tilefish fishery management plan. Therefore, any negative effect the waiving of public comment may have on the public is mitigated by these factors.

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

Dated: January 6, 2006.

John H. Dunnigan

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

[FR Doc. 06–291 Filed 1–11–06; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 8
Thursday, January 12, 2006

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

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1651

Death Benefits

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) proposes to amend the Thrift Savings Plan's (TSP's) death benefit regulations to permit the TSP to rely on a participant's marital status as stated on a Federal income tax form when determining whether a deceased participant had a common law marriage.

DATES: Comments must be received on or before February 13, 2006.

ADDRESSES: Comments may be sent to Elizabeth S. Woodruff, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. The Agency's Fax number is (202) 942–1676.

FOR FURTHER INFORMATION CONTACT: John A. Hahn on (202) 942–1630.

SUPPLEMENTARY INFORMATION: The Board administers the Thrift Savings Plan, which was established by the Federal Employees Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

The Executive Director proposes to amend TSP regulations to clarify the proof needed to establish a common law marriage. If a participant dies without having withdrawn his or her TSP account and without having designated a beneficiary, FERSA's order of precedence provides that the account will be paid to the surviving spouse, if any. The TSP looks to the law of the state in which the participant was domiciled at the time of death to determine whether the participant was married. In most states, this means having a valid marriage license. However, some states (and the District of Columbia) still recognize common law marriage. In addition, every state is constitutionally required to recognize as valid a common law marriage that was recognized in another state.

Contrary to popular belief, a common law marriage is not created when two people simply live together for a certain number of years. In order to have a valid common law marriage, a couple generally must do all of the following: Live together for a significant period of time, hold themselves out as a married couple, and intend to be married. When a common law marriage exists, the couple receives the same legal treatment given to formally married couples, including the requirement that they go through a legal divorce to end the marriage.

In order to facilitate the payment of a death benefit to a spouse claiming to be the common law spouse of a TSP participant, the Executive Director intends to amend TSP regulations to permit, but not require, reliance on the participant's marital status as stated on a Federal income tax form. Such a form is submitted to the Internal Revenue Service under penalty of perjury and, therefore, is presumed to be reliable. Alternatively, the putative spouse may obtain a court order or administrative adjudication.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under § 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Board submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 814(2).

List of Subjects in 5 CFR Part 1651

Employee benefit plans, Government employees, Pensions, Retirement.

Gary A. Amelio,
Executive Director Federal Retirement Thrift Investment Board.

For the reasons set forth in the preamble, the Board amends 5 CFR chapter VI as follows:

PART 1651—DEATH BENEFITS

1. The authority citation for part 1651 continues to read as follows:

Authority: 5 U.S.C. 8424(d), 8432(j), 8433(e), 8435(c)(2), 8474(b)(5), and 8474(c)(1).

2. Revise § 1651.5 to read as follows:

1651.5 Spouse of participant.

(a) For purposes of payment under § 1651.2(a)(2), the spouse of the participant is the person to whom the participant was married on the date of death. A person is considered to be married even if the parties are separated, unless a court decree of divorce or annulment has been entered. State law of the participant's domicile will be used to determine whether the participant was married at the time of death.

(b) If a person claims to have a marriage at common law with a deceased participant, the TSP will pay benefits to the putative spouse under § 1651.2(a)(2) in accordance with the marital status shown on the most recent Federal income tax return filed by the participant. Alternatively, the putative spouse may submit a court order or

administrative adjudication determining that the common law marriage is valid.

[FR Doc. E6–207 Filed 1–11–06; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 04–094–1]

Tuberculosis in Captive Cervids; Extend Interval for Conducting Reaccreditation Test

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding tuberculosis in captive cervids by extending, from 2 years to 3, the term for which accredited herd status is valid and increasing by 12 months the interval for conducting the reaccreditation test required to maintain the accredited tuberculosis-free status of cervid herds. We are also proposing to reduce, from three tests to two, the number of consecutive negative official tuberculosis tests required of all eligible captive cervids in a herd before a herd can be eligible for recognition as an accredited herd. These actions would reduce testing costs for herd owners, lessen the potential for animal injury or death during testing, and lower administrative costs for State and Federal regulatory agencies. In addition, we are proposing to amend the regulations by removing references to the blood tuberculosis test for captive cervids, as that test is no longer used in the tuberculosis eradication program for captive cervids. This proposed change would update the regulations so that they refer only to those official tests currently in use.

DATES: We will consider all comments that we receive on or before March 13, 2006.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2005–0119 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in Regulations.gov.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–094–1, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–094–1.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Dr. Michael Dutcher, Senior Staff Veterinarian, National Tuberculosis Eradication Program, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD, 20737–1231, (301) 734–5467.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis (tuberculosis) is a contagious and infectious granulomatous disease caused by *Mycobacterium bovis.* It affects cattle, bison, deer, elk, goats, and other warm-blooded species, including humans. Tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal. At the beginning of the past century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for bovine tuberculosis in livestock. Through this program, the Animal and Plant Health Inspection Service (APHIS) works cooperatively with the national livestock industry and state animal health agencies to eradicate tuberculosis from domestic livestock in the United States and prevent its recurrence.

Federal regulations implementing this program are contained in 9 CFR part 77, ''Tuberculosis'' (referred to below as the regulations), and in the ''Uniform Methods and Rules—Bovine Tuberculosis Eradication'' (UMR), which is incorporated by reference into the regulations. The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of tuberculosis. Subpart C of the regulations (§§ 77.20 to 77.41) addresses captive cervids.

Accredited Herd Status

In § 77.20, *accredited herd* is defined as ''A herd of captive cervids that has tested negative to at least three consecutive official tuberculosis tests of all eligible captive cervids in accordance with § 77.33(f) and that meets the standards set forth in § 77.35. The tests [i.e., the three tests necessary to qualify for accredited herd status] must be conducted at 9–15 month intervals.'' The regulations in § 77.35(d) set out the conditions that must be met in order for a herd of captive cervids to maintain its accredited herd status. Specifically, to maintain status as an accredited herd, the herd must test negative to an official tuberculosis test within 21–27 months from the anniversary date of the third consecutive test with no evidence of tuberculosis disclosed (that is, the final test necessary for the herd to be recognized as an accredited herd). Each time the herd is tested for reaccreditation, it must be tested 21–27 months from the anniversary date of the accrediting test, not from the last date of reaccreditation (for example, if a herd is accredited on January 1 of a given year, the anniversary date will be January 1 of every second year thereafter). Accredited herd status is valid for 24 months (730 days) from the anniversary date of the accrediting test. If the herd is tested between 24 and 27 months after the anniversary date, its accredited herd status will be suspended for the interim between the anniversary date and the reaccreditation test. During the suspension period, the herd will be considered ''unclassified'' and captive cervids may be moved interstate from the herd only in accordance with the movement requirements for the state or zone in which the herd is located.

In this document, we are proposing to amend the regulations to increase, by 1 year, the term for which accredited herd status is valid and to allow reaccreditation tests to be performed within 33–39 months of the anniversary date. We are also proposing to amend the regulations by reducing, from three tests to two, the number of consecutive negative official tuberculosis tests required of all eligible captive cervids in a herd before a herd can be eligible for recognition as an accredited herd.

Experience has shown that careful management in accredited herds of captive cervids in accordance with the regulations and the UMR virtually eliminates the already low probability of introducing tuberculosis into the herd from outside sources. Amending our regulations to extend the period between reaccreditation tests of captive cervid herds, as well as reducing the number of consecutive negative official tuberculosis tests required of all eligible captive cervids in a herd before a herd can be eligible for recognition as an accredited herd, would reduce testing costs for herd owners, lessen the potential for animal injury or death during testing, and lower administrative costs for state and Federal regulatory agencies.

Tuberculin testing, including veterinary fees and handling expenses, costs about $10 to $15 per test. Thus, increasing the term for which accredited herd status is valid would result in a savings of $10 to $15 per head over a 6-year period, as there would be only two tests required instead of three. Similarly, reducing the number of tests required to qualify for accredited herd status would save another $10 to $15 per head, again due to a reduction in the number of tests from three to two. Additionally, injury and death losses of about 3 to 5 percent can occur in captive cervid herds as animals attempt to jump fences and other hurdles during roundup for testing. Extending the testing period and reducing the number of qualifying tests would eliminate some of these costs as well.

We do not believe that these proposed changes would reduce the effectiveness of our tuberculosis surveillance and eradication program. On the contrary, we expect that lengthening the reaccreditation interval would encourage owners to continue to test their herds rather than abandoning the program. Continued participation by owners in this program will yield monitoring and surveillance data on cervids that is extremely important to our efforts to detect and eliminate tuberculosis-affected herds in the United States.

With respect to the number of qualifying tests, recent surveillance in captive cervids shows that the prevalence of tuberculosis is far lower than originally thought, and we no longer believe that the risk of tuberculosis in captive cervids is high enough to justify requiring three negative official tuberculosis tests before a herd can be eligible for recognition as an accredited herd. In addition, by reducing the number of consecutive negative tests required, we would bring the requirements for the accreditation of cervid herds more in line with the existing bovine tuberculosis regulations and UMR testing requirements for cattle and bison.

Thus, the proposed changes would reduce testing costs for the herd owner, lessen the potential of animal injury or death during testing, and lower administrative costs for State and Federal regulatory agencies. In addition, these proposed rule changes would help further tuberculosis eradication efforts and protect livestock not infected with bovine tuberculosis from the disease.

Blood Tuberculosis Test

The definition of *official tuberculosis test* in § 77.20 identifies the single cervical tuberculin (SCT) test, the comparative cervical tuberculin (CCT) test, and the blood tuberculosis (BTB) test as official tests for tuberculosis in captive cervids. However, the BTB test is no longer used in the program because its sensitivity and specificity were determined to be inadequate for the tuberculosis eradication program's needs; in effect, the test can miss some infected animals and misdiagnose non-infected animals at rates that are unacceptable. Because the BTB test is no longer being used to test captive cervids, we are proposing to amend the definition of *official tuberculosis test* in § 77.20 so that it refers only to the SCT and CCT tests. We would also remove the other references to the BTB test that appear in the regulations.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the regulations regarding tuberculosis in captive cervids by extending, from 2 years to 3, the term for which accredited herd status is valid and increasing by 12 months the interval for conducting the reaccreditation test required to maintain the accredited tuberculosis-free status of cervid herds. We are also proposing to reduce, from three tests to two, the number of consecutive negative official tuberculosis tests required of all eligible captive cervids in a herd before a herd can be eligible for recognition as an accredited herd. These actions would reduce testing costs for herd owners, lessen the potential for animal injury or death during testing, and lower administrative costs for state and Federal regulatory agencies. In addition, we are proposing to amend the regulations by removing references to the blood tuberculosis test for captive cervids, as that test is no longer used in the tuberculosis eradication program for captive cervids. This proposed change would update the regulations so that they refer only to those official tests currently in use.

Of primary importance among captive cervids are deer and elk, which are farmed for breeding stock, velvet antler, meat, and sales to game parks and exhibits. This is a relatively small industry, and as such was not tracked as a separate line item in census data before the 2002 Census of Agriculture. The 2002 Census estimates there are 286,863 deer being raised on 4,901 farms, and 97,901 elk on 2,371 farms in the United States. Due to the devastating effects of chronic wasting disease in captive cervids, these numbers are largely believed to be an overstatement of current market conditions. Unfortunately, the census data do not consider the per head value of deer or elk. However, limited data are collected by the two major cervid industry associations, the North American Elk Breeders Association (NAEBA) and the North American Deer Farmers Association (NADeFA). Membership in the above mentioned associations is estimated to constitute 60 percent of the farmed cervid industry. Attempts to get current information on deer and elk industries and corresponding values were unsuccessful. However, we previously gathered information from the above mentioned major industry associations in connection with another rulemaking related to deer and elk,[1] and have used that information as the source of the estimates in this analysis. We welcome public comment regarding current market conditions in the farmed cervid industry.

NAEBA estimates about 75 percent of its members have 100 or fewer animals, 15 percent have more than 100 but fewer than 500, and the remaining 10 percent have more than 500 elk. Numbers of elk per farm vary depending on the farm classification, commercial or hobby. The value per elk also varies, depending on type of animal (e.g., bull, calf) and market conditions, ranging from a high of $5,000 for superior animals to a low of $500 for non-pedigree animals. In 2002, NAEBA estimated the average value per head of elk was $2,000; using this figure, we can approximate the value of the 97,901 elk on U.S. farms to be $195.8 million. In

[1] See Docket No. 00–108–2, published in the **Federal Register** on December 24, 2003 (68 FR 74513–74529).

2001, gross receipts for members in NAEBA (velvet antler, breeding stock, and meat) totaled $44.3 million.

NADeFA estimates there are an average of 50 deer per farm. The actual number of deer per farm varies, depending on usage, from a high of 3,000 for commercial farms to a low of 5 for hobby farms. The value of each deer also varies depending on the type of animal (e.g., wapiti, white-tail, fallow) and market conditions. NADeFA estimates the average value per animal to be $1,687, with wapiti deer at the high end at $4,000 each, and fallow deer at the low end at $375 each. Using this average per head value of $1,687, the value of the 286,863 deer on U.S. farms can be approximated at $483.9 million.

This proposed rule would amend the regulations by extending the term for which accredited herd status is valid, increasing the interval for conducting reaccreditation tests, and reducing the number of consecutive negative official tuberculosis tests required of all eligible captive cervids in a herd before a herd can be eligible for recognition as an accredited herd. We expect these proposed changes would encourage producers already participating in this voluntary program to maintain accredited herds, as they would reduce testing costs. Continued participation in this program is important to bovine tuberculosis eradication efforts, as accreditation testing yields monitoring and surveillance data on cervids which greatly assist in our efforts to detect and eliminate tuberculosis-affected herds in the United States.

The potential benefits of this proposed rule are fairly clear, the most obvious being decreased testing costs for those producers maintaining accredited herds. Furthermore, reducing testing requirements would lower administrative costs for state and Federal regulatory agencies. In addition, by extending the interval between reaccreditation tests and reducing the number of qualifying tests, the need to round up deer and elk for testing, and the potential for animal injury or death during that process, would be reduced.

Currently, APHIS records indicate there are 1,024 accredited herds of captive cervids in the United States. APHIS is currently in the process of researching the average cost to producers of identifying animals and testing them for tuberculosis, and we welcome public comment on these costs with respect to cervids. Our preliminary research indicates the average cost of tuberculosis testing ranges from $10 to $15 per head. Thus, in a 6-year period, the proposed changes in the regulations would translate to a cost savings of $20 to $30 per head, as there would be only two tests required for reaccreditation and two tests required to qualify for initial accreditation instead of three in each case. If we were to assume each of the 1,024 accredited herds had an average of 50 animals, the longer interval between reaccreditation tests and the reduction in the number of qualifying tests would result in a total cost savings to the domestic industry of approximately $1,024,000 to $1,536,000 over a 6-year period.[2]

According to the two major cervid associations, the majority of their members would be classified as small entities by U.S. Small Business Administration standards.[3] For producers wishing to maintain accredited status, considering that the estimated average value per head is $2,000 and $1,687 for elk and deer, respectively, the cost savings of reduced testing represent less than 2 percent of the per head value. In general practice, we assume a regulation that has compliance costs which equal a small business' profit margin, or 5 to 10 percent of annual sales, pose an impact which can be considered ''significant.''[4] For the purposes of illustration and analysis of potential effects on small entities, if we assume a cervid producer owns only a single average herd of 50 deer, with annual sales or value of approximately $84,350, compliance costs totaling between $4,218 and $8,435 would qualify as posing a ''significant'' economic impact on this entity. In this case, the average compliance costs of tuberculosis testing for an entire herd would be $750, using the high-end average cost per head of $15, which would not qualify as monetarily significant. Thus, for those producers participating in the voluntary cervid accreditation program, the cost savings from the elimination of two tests, while beneficial, would not represent a significant monetary savings.

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

[2] Calculation: 1,024 herd × 50 animals per herd × $10 (or $15 for high-end estimate) × 2 tests.

[3] NAEBA estimates 75 percent of its members have 100 or fewer animals, which translates to an average value per elk farm of $200,000 (100 animals × $2,000). NADeFA estimates there are an average of 50 deer per farm, which translates into an average total value per deer farm of $84,350 (50 animals × $1,687). A small cervid operation is one having $750,000 or less in annual receipts. Table of Size Standards based on NAICS 2002. Washington, DC: U.S. Small Business Administration, 2004.

[4] Verkuil, Paul R. ''A Critical Guide to the Regulatory Flexibility Act.'' Duke Law Journal, Apr. 1982: 928.

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, we propose to amend 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 would continue to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

2. Section 77.20 would be amended as follows:

a. In the definition for *accredited herd,* by removing the word ''three'' and adding the word ''two'' in its place.

b. By removing the definition for *blood tuberculosis (BTB) test.*

c. In the definition for *negative,* by removing the words ''classified by the testing laboratory as ''avian'' or ''negative'' on the BTB test,''.

d. By revising the definition for *official tuberculosis test* to read as set forth below.

e. In the definition for *reactor,* by removing the words '', or is classified by the testing laboratory as ''*M. bovis positive*'' on the BTB test,''.

f. In the definition for *suspect,* by removing the words '', or that is classified by the testing laboratory as equivocal on the BTB test,''.

The revision reads as follows:

§ 77.20 Definitions.

* * * * *

Official tuberculosis test. Any of the following tests for bovine tuberculosis in captive cervids, applied and reported in accordance with this part:

(1) The single cervical tuberculin (SCT) test.

(2) The comparative cervical tuberculin test (CCT) test.

* * * * *

§ 77.33 [Amended]

3. Section 77.33 would be amended as follows:

a. In paragraph (a) introductory text, by removing the words ''in paragraphs (a)(1) and (a)(2)'' and adding the words ''in paragraph (a)(1)'' in their place.

b. By removing and reserving paragraphs (a)(2), (b)(2), (d)(2), and (e)(3).

§ 77.34 [Amended]

4. Section 77.34 would be amended as follows:

a. In paragraph (a)(1), by removing the words ''either the CCT test or the BTB test'' and adding the words ''the CCT test'' in their place.

b. By removing paragraph (c).

5. Section 77.35 would be amended as follows:

a. In paragraph (a)(1), by removing the word ''three'' in the first sentence and adding the word ''two'' in its place.

b. By revising paragraph (d) to read as set forth below.

§ 77.35 Interstate movement from accredited herds.

* * * * *

(d) *Maintenance of accredited herd status.* To maintain status as an accredited herd, the herd must test negative to an official tuberculosis test within 33–39 months from the anniversary date of the second consecutive test with no evidence of tuberculosis disclosed (that is, the test on which the herd was recognized as accredited or the accrediting test). Each time the herd is tested for reaccreditation, it must be tested 33–39 months from the anniversary date of the accrediting test, not from the last date of reaccreditation (for example, if a herd is accredited on January 1 of a given year, the anniversary date will be January 1 of every third year). Accredited herd status is valid for 36 months (1,095 days) from the anniversary date of the accrediting test. If the herd is tested between 36 and 39 months after the anniversary date, its accredited herd status will be suspended for the interim between the anniversary date and the reaccreditation test. During the suspension period, the herd will be considered ''unclassified'' and captive cervids may be moved interstate from the herd only in accordance with the movement requirements for the State or zone in which the herd is located.

§ 77.37 [Amended]

6. In § 77.37, paragraph (a)(2), footnote 3 would be redesignated as footnote 2.

7. In § 77.39, paragraph (a) would be amended as follows:

a. In paragraph (a)(1)(i) introductory text, by removing the words ''or the BTB test''.

b. By removing and reserving paragraph (a)(1)(i)(B).

c. In paragraph (a)(1)(ii) introductory text, by removing the words ''or the first BTB test''.

d. In paragraph (a)(1)(ii)(A), by removing the word ''; or'' and adding a period in its place.

e. By removing and reserving paragraph (a)(1)(ii)(B).

f. In paragraph (e) introductory text, by removing the fourth sentence after the paragraph heading and revising the last two sentences of the paragraph to read as set forth below.

§ 77.39 Other interstate movemements.

* * * * *

(e) *Herds that have received captive cervids from an affected herd.* * * * Any exposed captive cervid that responds to the SCT test must be classified as a reactor and must be slaughter inspected or necropsied. Any exposed captive cervid that tests negative to the SCT test will be considered as part of the affected herd of origin for purposes of testing, quarantine, and the five annual whole herd tests required for affected herds in paragraph (d) of this section.

* * * * *

Done in Washington, DC, this 6th day of January 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–198 Filed 1–11–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 392

[Docket No. 00–019P]

RIN 0583–AC81

Petitions for Rulemaking

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to adopt regulations governing the submission to FSIS of petitions for rulemaking. The Agency is proposing this action to supplement existing non-regulatory guidance on the submission of petitions to FSIS to consider requests to issue, amend, or repeal regulations administered by the Agency. FSIS expects that this proposed rule, if adopted, will help to ensure the filing of well-supported petitions that contain the information necessary to proceed with consideration of the requested rulemaking in a timely manner.

DATES: Comments must be received on or before March 13, 2006.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. FSIS prefers to receive comments through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Food Safety and Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select the FDMS Docket Number to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in *Regulations.gov.*

Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

Electronic mail: *fsis.regulationscomments@fsis.usda.gov.* All submissions received must include the Agency name and docket number 00–019P.

All comments submitted in response to this proposal, as well as research and background information used by FSIS in developing this document, will be posted to the Regulations.gov Web site. The background information and comments also will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lynn Dickey, Ph.D. Director, Regulations and Petitions Policy Staff, Office of Policy, Program, and Employee Development, Food Safety and Inspection Service, U.S. Department of Agriculture; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Background

The Administrative Procedure Act (APA) requires that Federal agencies give interested persons the right to petition for the issuance, amendment, or repeal of a rule (5 U.S.C. 553(e)). The administrative regulations of the Office of the Secretary of Agriculture provide that petitions from interested persons for the issuance, amendment, or repeal of a rule may be filed with the official that issued, or is authorized to issue, the rule (7 CFR 1.28). These administrative regulations also require that all such petitions be given prompt consideration, and that petitioners be notified promptly of the disposition made of their petitions (7 CFR 1.28).

On December 2, 1993, FSIS published in the **Federal Register** a notice to provide guidelines on how to submit petitions for rulemaking to FSIS and to inform the public on how FSIS processes and responds to such petitions (58 FR 63570). This notice was issued in response to the Administrative Conference of the United States (ACUS) recommendation No. 86–6, which advised agencies to review their rulemaking petition procedures and practices and to adopt measures to ensure that the right to petition is a meaningful one. See 51 FR 46985, Dec. 30, 1986.

When it published the 1993 notice, FSIS intended to encourage the filing of well-prepared, detailed petitions. Despite the published guidelines, however, petitions are still submitted to FSIS in various forms, often without adequate data and supporting documentation for FSIS to properly evaluate the merits of the requested action. As a result, FSIS program personnel often must expend significant time and resources to obtain the information needed to evaluate a petition, which prevents the Agency from considering and acting upon petitions effectively and efficiently. Therefore, FSIS is proposing to adopt regulations governing the submission of rulemaking petitions to issue, amend, or repeal a regulation administered by the Agency.

The Proposed Rule

General

FSIS is proposing to amend title 9, subchapter D-Food Safety and Inspection Service Administrative Provisions, to add a new part 392-Petitions for rulemaking. Proposed § 392.1 describes the scope and purpose of part 392 and states that part 392 contains provisions governing the submission to FSIS of petitions for rulemaking. Proposed § 392.1 states that part 392 will apply to all requests to initiate rulemaking, except to the extent that other provisions in the FSIS regulations prescribe procedures for submitting requests to amend a regulation. The proposal contains this exception because the Agency has codified procedures for requests to amend certain provisions of the regulations. For example, a request to amend the regulations to authorize a new Reference Amount or Product Category identified in 9 CFR 317.312(b) and 381.412(b) must be submitted as a labeling application in accordance with the provisions of 9 CFR 317.312(g) and 381.412(g).

Proposed § 392.2 describes the type of request that FSIS considers to be a petition for rulemaking and defines a petition as a written request to issue, amend, or repeal a regulation administered by the Agency. Proposed § 392.2 also provides that a request to issue, amend, or repeal a document that interprets a regulation administered by the Agency may be made by petition. Such documents include FSIS Directives, Notices, and compliance guides.

Required Information

Proposed § 392.3 describes the information that a petition must contain to be considered by FSIS. Proposed § 392.3(a) provides that the petition must include the name, address and telephone number, and e-mail address of the person submitting the petition. Proposed § 392.3(b) provides that a petitioner should specifically state what regulatory action the petitioner is requesting, including the citation and exact wording of any existing regulation affected by the requested action. Proposed § 392.3(c) provides that a petitioner state the factual and legal basis for the action requested in the petition, including all relevant information known to the petitioner, both favorable and unfavorable to the petitioner's position. This statement should identify the problem that the requested action is intended to address and explain why the requested action is necessary to address the problem. This information is necessary to ensure that the Agency has a full understanding of the action requested.

Supporting Documentation

Proposed § 392.4 pertains to information that should be submitted in support of a rulemaking petition and is intended to provide petitioners with a clear idea of the type of supporting documentation that FSIS considers necessary to evaluate a petition. Although the documentation described in proposed § 392.4 is not required for a petition to be considered by FSIS, inclusion of such documentation will allow the Agency to respond to the petition more effectively and efficiently. It will also help to expedite the rulemaking process should the petition be granted.

Proposed § 392.4(a) provides that information referred to or relied on in support of a petition should be included in full. It also provides that a copy of any source cited in a petition should be submitted with the petition. Including this information in the petition will allow the Agency to verify that the information used to support a petition is valid, and that the source of such information is accurately referenced by the petitioner. Proposed § 392.4(b) provides a list of sources of information that the Agency considers appropriate to use in support of a petition. These sources include, but are not limited to, professional journal articles, official government statistics, official government reports, scientific textbooks, research reports, and industry data.

To promote consistency in the manner in which data are presented, if original research reports are used to support a petition, proposed § 392.4(c) provides that the information should be presented in a form that would be acceptable for publication in a peer reviewed scientific or technical journal. For the same reason, if quantitative data are used to support a petition, proposed § 392.4(d) provides that the presentation of such data should include a complete statistical analysis using conventional statistical methods.

Filing Procedures

Proposed § 392.5 sets out the procedures for filing a rulemaking petition with FSIS. Proposed § 392.5(a) provides that any interested person may file a petition with FSIS. For purposes of this proposal, ''interested person'' means any individual, partnership, corporation, association, or public or private organization. Proposed § 392.5(b) explains where to submit petitions for rulemaking to FSIS.

Proposed § 392.5(c) describes how FSIS will process petitions once they are submitted to the Agency. Under proposed § 392.5(c), when a petition is received by FSIS, it will be stamped with the date of filing and assigned a petition number. The petition number assigned under proposed § 392.5(c) is for tracking purposes, and FSIS intends for petitioners to refer to this number when they contact the Agency regarding their petitions. Once a petition has been filed with the Agency, under proposed § 392.5(c), FSIS will inform the petitioner in writing and provide the petitioner with the number assigned to the petition along with the Agency contact for the petition.

Proposed § 392.5(d) provides that a petitioner may withdraw a petition at any time. To withdraw a petition, a petitioner should inform FSIS in writing, and the Agency will return the petition, along with any supporting data, to the petitioner. Once a petition is withdrawn, proposed § 392.5(d) permits the petitioner to re-submit the petition at any time.

Public Display

To encourage the submission of information that can be disclosed to the public, proposed § 392.6 provides for public display of rulemaking petitions and any supporting documentation. When it conducts a review of a rulemaking petition, FSIS relies on the information and data submitted in support of, or in opposition to, the petition to determine whether to grant the petition and initiate rulemaking. Under section 553 of the APA (5 U.S.C. 553), if FSIS grants a petition and commences rulemaking, the Agency will publish a notice of proposed rulemaking (NPRM) in the **Federal Register** and give interested persons an opportunity to participate in the rulemaking through the submission of written data, views, or arguments (5 U.S.C. 553(b) and (c)).

To provide meaningful input on the issues associated with an NPRM, the public must be informed of the data and information that provide the basis for initiating the rulemaking. The Agency believes that all interested persons should have access to this information early in the rulemaking process. Therefore, under proposed § 392.6(a), unless material is exempt from public disclosure under the Freedom of Information Act (FOIA) (5 U.S.C 552 *et seq.*), or under any other applicable laws or regulations, all rulemaking petitions, along with any supporting documentation filed with a petition, will be available for public inspection in the FSIS docket room and posted on the FSIS Web site.

The FOIA provides public access to all records under the custody and control of Federal agencies, except those that are protected from release by one or more of the nine exemptions. One of the nine exemptions that prohibits information from being disclosed to the public is Exemption 4, which protects trade secrets and other confidential commercial information (5 U.S.C. 552(b)(4)). If a petitioner submits supporting documentation that contains trade secrets or other confidential commercial information that would be exempt from public disclosure under the FOIA, FSIS is responsible for making the final determination with regard to the disclosure or non-disclosure of such information (E.O. 12600, 52 FR 23781 (June 23, 1987) and 7 CFR 1.11(a)).

Proposed § 392.6(b) provides that if FSIS can not readily determine whether information submitted by a petitioner is privileged or confidential business information, FSIS will request that the petitioner submit a written statement that certifies that the petition does not contain confidential information that should not be put on public display. When it issues the request, FSIS will also specify a date by which the petitioner must respond. If the petitioner fails to provide the certification by the specified date, FSIS will assume that the information is confidential.

To ensure compliance with the FOIA, proposed § 392.6(c) provides that if FSIS determines that information submitted in support of a petition is exempt from public disclosure under the FOIA, or any other applicable laws or regulations, and that such information would provide the basis for granting the petition, FSIS will inform the petitioner in writing. FSIS will provide the petitioner with an opportunity to withdraw the petition or the supporting documentation, or to modify the supporting documentation to permit public disclosure.

Comments

To encourage public participation in the petition process, FSIS intends to permit interested persons to submit comments on rulemaking petitions filed with the Agency. Proposed § 392.7 sets out the procedures for submitting comments on a petition that has been filed with FSIS. Proposed § 392.7(a) provides that any interested person may submit written comments on a petition. The comments may support or oppose a petition in whole or in part. If a person chooses to comment on a petition, proposed § 392.7(b) provides that the comments be submitted within 60 days of the posting date of the petition, and that the comments identify the number assigned to the petition to which the comments refer.

Proposed § 392.7(c) provides that FSIS will consider all comments that are timely submitted as part of its review of a rulemaking petition. Under proposed § 392.7(d), these comments will become part of the petition file and, like the petition, will be on public display in the FSIS docket room and posted on the FSIS Web site. Those persons that wish to request an alternative action to the action requested by a petition are advised in proposed § 392.7(e) to submit the request as a separate petition, not as a comment on the petition. The Agency is proposing that alternatives be submitted in this way to ensure that it receives the full information necessary to evaluate the suggested alternative action.

Proposed § 392.7(f) provides that if FSIS determines that a comment received on a petition is in fact a request for an alternative action, the Agency will inform the commenter in writing. FSIS will take no further action on the suggested alternative action unless the commenter submits an appropriate petition for rulemaking.

Expedited Review

One of FSIS' food safety goals is to enhance the public health by reducing the risk of foodborne illness associated with the consumption of meat, poultry, and egg products to the greatest extent possible. Therefore, to reflect this goal, proposed § 392.8(a) provides for expedited review of petitions that request actions that are intended to enhance the public health by removing or reducing foodborne pathogens or other potential food safety hazards that might be present in or on meat, poultry, or egg products. For a petition to qualify for expedited review, proposed § 392.8(b) provides that the petitioner must submit scientific information that demonstrates that the requested action will reduce or remove foodborne pathogens or other potential food safety hazards, and how it will do so. Proposed § 392.8(c) explains that if FSIS determines that a petition should receive expedited review, the Agency will review the petition ahead of other pending petitions, but the petition will still be subject to all other provisions that are applicable to rulemaking petitions.

Availability of Guidance on the Internet

In conjunction with this proposed rule, FSIS plans to post information

related to petitions for rulemaking on the FSIS Internet site. Therefore, proposed § 392.9 states that information related to the processing of petitions for rulemaking may be found on the FSIS Web site. If FSIS adopts this proposed rule, the site will include a document that clearly explains the petition filing process, the type of information that is required for FSIS to consider a petition for rulemaking, and the type of information that FSIS recommends be submitted with a petition for rulemaking. FSIS also intends to post all petitions for rulemaking that are submitted to the Agency, and any comments received on the petitions, on its Internet site.

Information Required for Regulatory Analyses and Request for Comments

When considering a petition for rulemaking, in addition to evaluating the technical merits of the requested action, FSIS also weighs a number of factors to determine whether, on balance, granting the petition would be an appropriate use of Agency resources. Some of these factors include: the degree to which the requested action is consistent with Agency priorities; the resources that the Agency would need to conduct the required analyses associated with the requested action; the resources available to the Agency to conduct the required analyses; the amount and quality of information submitted by the petitioner on the impacts of the requested action; and, if the petitioner did not submit data on the impact of the requested action, whether the information is obtainable by the petitioner with reasonable effort.

As part of the regulatory development process, FSIS is required by law, Executive Order, and regulation to conduct certain analyses on the impact of proposed and final agency regulations. To comply with these requirements, FSIS must often commit a significant amount of time and resources to conduct the prescribed analyses. Following is a list of U.S. statutes and Executive orders that most often affect rulemakings conducted by FSIS.

- *The Regulatory Flexibility Act* (5 U.S.C. 601 *et seq.*) requires that Federal agencies consider the effect of proposed rule changes on small businesses, non-profit organizations, and government jurisdictions.
- *Executive Order 12866—Regulatory Planning and Review* requires, among other things, that agencies (1) assess costs and benefits of regulatory alternatives and select those that maximize net benefits, (2) issue a regulation only when benefits justify the costs, and (3) submit rules to the Office of Management and Budget (OMB) for review when OMB designates the rules as ''significant.''
- *The Paperwork Reduction Act* (44 U.S.C. *et seq.*) prohibits Federal agencies from conducting or sponsoring the collection of information from regulated parties without first obtaining the approval of OMB.
- *Public Law 103–354, Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994* requires that FSIS publish an analysis of the risks addressed by a proposed regulation if the regulation is likely to have an annual impact on the economy of the United States of $100 million dollars or more (in 1994 dollars), and its primary purpose is to regulate issues of human health, human safety, or the environment.

Once a petition is granted, the subsequent rulemaking often requires that FSIS expend resources to conduct the impact analyses described above. Thus, when FSIS evaluates a petition for rulemaking, it does more than analyze the technical merits of the requested regulatory action. The Agency also determines whether it is willing to commit resources to the development of the resulting rulemaking and the required impact analyses. When making this determination the Agency considers, among other things, whether the requested action is consistent with Agency priorities, and whether the Agency has available resources for regulatory development in the event the petition is granted. The Agency may be able to more efficiently consider a petition if, in addition to the requested regulatory action, the petitioner includes data that FSIS could use to conduct the required regulatory impact analyses.

FSIS is not proposing to require that petitions for rulemaking include data needed to complete the analyses described above. However, the Agency encourages the submission of these types of data for two reasons. First, the Agency will assess the appropriateness of granting a petition based, in part, on whether ultimately the rulemaking will not fail under any one of the impact analyses. Therefore, FSIS would like to have as much information as possible available as part of the petition review. Second, the Agency's resources for both petition review and regulatory development are limited, and significant information is often readily available to petitioners, *i.e.*, the information is either in the petitioner's possession or is more readily obtainable by the petitioner than by the Agency. Including information on the impact of a requested action in a rulemaking petition would facilitate review of rulemaking petitions and regulatory development in the event a petition is granted.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. It has been determined to be not significant for purposes of E.O. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule will benefit both prospective petitioners and FSIS by facilitating the review and evaluation of rulemaking petitions filed with the Agency. This proposal establishes procedures for the submission of rulemaking petitions. It specifies what should be included in a rulemaking petition and describes the type and quality of data that should be submitted in support of a petition. If this proposal is issued as a final rule, it will provide clear guidance to persons who would like to petition FSIS to issue, amend, or repeal a regulation administered by the Agency.

This proposed action will benefit persons interested in filing a rulemaking petition with FSIS by providing information on how to prepare and submit a petition to best ensure prompt consideration by the Agency. Petitioners will also benefit from this proposed action because it will promote a more timely resolution of their petitions. This proposed action will benefit FSIS by encouraging consistency in the content of the petitions submitted to the Agency and by reducing the number of incomplete petitions filed with the Agency.

Under this proposed rule, persons interested in petitioning FSIS to issue, amend, or repeal a rule will bear the costs associated with preparing a rulemaking petition. These costs will vary depending on the complexity of the requested action and the type of documentation needed to support the petition. However, because the decision to submit a petition for rulemaking is voluntary, persons interested in issuing, amending, or repealing a regulation administered by FSIS will most likely submit a rulemaking petition if the benefits of the requested action outweigh the costs of preparing the petition. By encouraging consistency in the content of rulemaking petitions and the submission of adequate supporting documentation, this proposed rule will reduce the administrative costs to FSIS associated with the review and evaluation of rulemaking petitions, as well as expedite the time it takes for the Agency to review petitions.

In addition to the proposed rule, FSIS considered the option of no rulemaking. Under this option, prospective petitioners would continue to rely on the guidelines for the submission, consideration, and disposition of petitions that FSIS published in the 1993 **Federal Register** notice. FSIS rejected this option because it determined that its procedures for submitting petitions need clarification, and that they should be codified to best ensure adherence.

Effect on Small Entities

The Administrator, FSIS, has made an initial determination that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The decision to submit a petition for rulemaking is voluntary, and therefore, small entities are not required to comply with the proposed regulations unless they choose to submit a rulemaking petition. Furthermore, although FSIS encourages petitioners to submit data needed to complete the regulatory analyses that would be required should the petition be granted, it is not proposing to require such a submission. As discussed above, if a petitioner does not include data on the potential impact of the requested regulatory action, FSIS will consider whether the information is obtainable with reasonable effort. FSIS is aware that some small entities may not have access to certain data that is readily available to large companies or industry trade associations. FSIS would take this into consideration when evaluating petitions submitted by small entities.

Executive Order 12988

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

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that this proposed rule comes to the attention of the public—including minorities, women, and persons with disabilities—FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov.*

The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a broader and more diverse audience.

In addition, FSIS offers an electronic mail subscription service that provides an automatic and customized notification when popular pages are updated, included **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options in eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or record keeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB).

Title: Petitions for Rulemaking.

Type of Collection: New.

Abstract: FSIS is proposing to adopt regulations governing the submission to FSIS of petitions for rulemaking. The Agency is proposing this action to supplement existing non-regulatory guidance on the submission of petitions to FSIS to consider requests to issue, amend, or repeal regulations administered by the Agency. The proposed regulations contain information on how to prepare and submit a petition to FSIS to best ensure prompt consideration by the Agency.

Estimate of burden: FSIS estimates that developing a petition to issue, amend, or repeal a regulation in accordance with this proposed rule will take an average of 40 hours.

Respondents: Manufacturers of meat and poultry products, trade organizations, consumer organizations, or unaffiliated individuals.

Estimated number of respondents: 5.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 200 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 112 Annex, 300 12th St., SW., Washington, DC 20250. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to John O'Connell, see address above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253. Comments are requested by July 19, 2005. To be most effective, comments should be sent to the Office of Management and Budget (OMB) within 30 days of the publication date.

FSIS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects in 9 CFR Part 392

Administrative practice and procedure, Freedom of Information.

For the reasons discussed in the preamble, FSIS proposes to amend 9 CFR Chapter III as follows:

Subchapter D—Food Safety and Inspection Service Administrative Provisions

Subchapter D would be amended by adding a new Part 392 to read as follows:

PART 392—PETITIONS FOR RULEMAKING

Sec.
392.1 Scope and purpose.
392.2 Definition of petition.
392.3 Required information.
392.4 Supporting documentation.
392.5 Filing procedures.
392.6 Public display.
392.7 Comments.
392.8 Expedited review.
392.9 Availability of additional guidance.

Authority: 5 U.S.C. 553(e), 7 CFR 1.28.

§ 392.1 Scope and purpose.

This part contains provisions governing the submission of petitions for rulemaking to the Food Safety and Inspection Service (FSIS). The provisions in this part apply to all such petitions submitted to FSIS, except to the extent that other parts or sections of this chapter prescribe procedures for submitting a request to amend a particular regulation.

§ 392.2 Definition of petition.

For purposes of this part, a ''petition'' is a written request to issue, amend, or repeal a regulation administered by FSIS. A request to issue, amend, or repeal a document that interprets a regulation administered by FSIS may also be submitted by petition.

§ 392.3 Required information.

To be considered by FSIS, a petition must contain the following information:

(a) The name, address, telephone number, and e-mail address, if available, of the person who is submitting the petition;

(b) A full statement of the action requested by the petitioner, including the exact wording and citation of the existing regulation, if any, and the proposed regulation or amendment requested;

(c) A full statement of the factual and legal basis on which the petitioner relies for the action requested in the petition, including all relevant information and views on which the petitioner relies, as well as information known to the petitioner that is unfavorable to the petitioner's position. The statement should identify the problem that the requested action is intended to address and explain why the requested action is necessary to address the problem.

§ 392.4 Supporting documentation.

(a) Information referred to or relied on in support of a petition should be included in full and should not be incorporated by reference. A copy of any article or other source cited in a petition should be submitted with the petition.

(b) Sources of information that are appropriate to use in support of a petition include, but are not limited to:

(1) Professional journal articles,

(2) Research reports,

(3) Official government statistics,

(4) Official government reports,

(5) Industry data, and

(6) Scientific textbooks.

(c) If an original research report is used to support a petition, the information should be presented in a form that would be acceptable for publication in a peer reviewed scientific or technical journal.

(d) If quantitative data are used to support a petition, the presentation of the data should include a complete statistical analysis using conventional statistical methods.

§ 392.5 Filing procedures.

(a) Any interested person may file a petition with FSIS. For purposes of this part, an ''interested person'' is any individual, partnership, corporation, association, or public or private organization.

(b) To file a petition with FSIS, a person should submit the petition to the FSIS Docket Clerk, Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700.

(c) Once a petition is submitted in accordance with this part, it will be filed by the FSIS Docket Clerk, stamped with the date of filing, and assigned a petition number. Once a petition has been filed, FSIS will notify the petitioner in writing and provide the petitioner with the number assigned to the petition and the Agency contact for the petition. The petition number should be referenced by the petitioner in all contacts with the Agency regarding the petition.

(d) If a petitioner elects to withdraw a petition submitted in accordance with this part, the petitioner should inform FSIS in writing. Once a petition has been withdrawn, the petitioner may re-submit the petition at any time.

§ 392.6 Public display.

(a) All rulemaking petitions filed with FSIS, along with any documentation submitted in support of a petition, will be available for public inspection in the FSIS docket room and will be posted on the FSIS Web site at *http://www.fsis.usda.gov/*.

(b) If FSIS can not readily determine whether information submitted in support of a petition is privileged or confidential business information, FSIS will request that the petitioner submit a written statement that certifies that the petition does not contain confidential information that should not be put on public display. If the petitioner fails to submit the certification within a time specified by FSIS, the Agency will consider the information to be confidential.

(c) If FSIS determines that a petition, or any documentation submitted in support of a petition, contains information that is exempt from public disclosure under the Freedom of Information Act (5 U.S.C. 552 *et seq.*) or any other applicable laws or regulations, and that the information would provide the basis for granting the petition, FSIS will inform the petitioner in writing. FSIS will provide the petitioner an opportunity to withdraw the petition or supporting documentation, or modify the supporting documentation to permit public disclosure.

§ 392.7 Comments.

(a) Any interested person may submit written comments on a petition filed with FSIS.

(b) Comments on a petition should be submitted by any interested person to FSIS within 60 days of the posting date of the petition and should identify the number assigned to the petition to which the comments refer.

(c) FSIS will consider all timely comments on a petition that are submitted in accordance with this section as part of its review of the petition.

(d) All comments on a petition will become part of the petition file and will be available for public inspection in the FSIS docket room and posted on the FSIS Web site at *http://www.fsis.usda.gov/*.

(e) Any interested person who wishes to suggest an alternative action to the action requested by the petition should submit a separate petition that complies with these regulations and not submit the alternative as a comment on the petition.

(f) If FSIS determines that a comment received on a petition is in fact a request for an alternative action, the Agency will inform the commenter in writing.

The Agency will take no further action on the requested alternative action unless the commenter submits an appropriate petition for rulemaking.

§ 392.8 Expedited review.

(a) A petition will receive expedited review by FSIS if the requested action is intended to enhance the public health by removing or reducing foodborne pathogens or other potential food safety hazards that might be present in or on meat, poultry, or egg products.

(b) For a petition to be considered for expedited review, the petitioner must submit scientific information that demonstrates that the requested action will reduce or remove foodborne pathogens or other potential food safety hazards that are likely to be present in or on meat, poultry, or egg products, and how it will do so.

(c) If FSIS determines that a petition warrants expedited review, FSIS will review the petition ahead of other pending petitions.

§ 392.9 Availability of additional guidance.

Information related to the submission and processing of petitions for rulemaking may be found on the FSIS Web site at *http://www/fsis.usda.gov/.*

Done at Washington, DC, on January 6, 2006.

Barbara J. Masters,

Administrator.

[FR Doc. E6–172 Filed 1–11–06; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 501

Reporting and Procedures Regulations: Cuban Assets Control Regulations; Economic Sanctions Enforcement Guidelines; Partial Withdrawal

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Partial withdrawal of proposed rule.

SUMMARY: This document withdraws in part the proposed rule published on January 29, 2003, relating to the economic sanctions enforcement guidelines.[1] In addition, in the Rules and Regulations section of this issue of the **Federal Register**, the Treasury Department is issuing an interim final rule—Economic Sanctions Enforcement Procedures for Banking Institutions.

FOR FURTHER INFORMATION CONTACT: Assistant Director of Records, (202) 622–2500 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Partial Withdrawal of Proposed Rule

The proposed rule (68 FR 4422–4429, January 29, 2003) is withdrawn with respect to ''banking institutions,'' as that term is defined in the interim final rule (''OFAC Economic Sanctions Enforcement Procedures for Banking Institutions'') amending 31 CFR part 501, appearing in the Rules and Regulations section of this issue of the **Federal Register**.

Approved: December 22, 2005.

Robert W. Werner,

Director, Office of Foreign Assets Control.

Approved: December 23, 2005.

Stuart A. Levey,

Under Secretary of the Treasury, Office of Terrorism and Financial Intelligence.

[FR Doc. 06–277 Filed 1–11–06; 8:45 am]

BILLING CODE 4810–25–P

[1] 68 FR 4422–4429 (2003).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2005–0563, FRL–8020–9]

Approval and Promulgation of Implementation Plans; Wisconsin; Wisconsin Construction Permit Permanency SIP Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Wisconsin State Implementation Plan (SIP) submitted by the State of Wisconsin on December 8, 2005. Wisconsin has submitted for approval into its SIP a statutory provision designed to ensure the permanency of construction permit conditions. EPA is proposing to approve this revision because it is consistent with Federal regulations governing State permit programs. This revision also addresses one of the deficiencies identified in EPA's Notice of Deficiency (NOD), published in the Federal Register on March 4, 2004. (69 FR 10167.)

DATES: Written comments must be received on or before February 13, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2005–0563, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *Blakley.Pamela@epa.gov.*
- Fax: (312) 886–5824.
- Mail: Pamela Blakley, Chief, Air Permit Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- Hand Delivery: Pamela Blakley, Chief, Air Permit Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2005–0563. 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. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://*

www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Susan Siepkowski, Environmental Engineer, at (312) 353–2654, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Susan Siepkowski, Environmental Engineer, Air Permit Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–2654, *siepkowski.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Should I Consider as I Prepare My Comments for EPA?
II. Background Information for This Action
III. What Has Wisconsin Submitted?
IV. Does This Submittal Comply With Federal Requirements?
V. What Action is EPA Taking Today?
VI. Statutory and Executive Order Reviews

I. What Should I Consider as I Prepare My Comments for EPA?

A. Submitting CBI. Do not submit this information to EPA through *http://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.

B. Tips for Preparing Your Comments. When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. Background Information for This Action

On March 4, 2004, EPA published a Notice of Deficiency for the Clean Air Act (Act) Operating Permit Program in Wisconsin. (69 FR 10167). The NOD was based upon EPA's findings that the State's title V program did not comply with the requirements of the Act or with the implementing regulations at 40 CFR part 70.

One of the deficiencies raised in the NOD was related to the expiration of Wisconsin's construction permits. 40 CFR 70.1 requires that each title V source has a permit that assures compliance with all applicable requirements, including any term or condition of any preconstruction permit issued pursuant to programs approved or promulgated under title I, including parts C or D of the Act. Title I of the Act authorizes permitting authorities to establish in permits source specific terms and conditions necessary for sources to comply with the requirements of the Prevention of Significant Deterioration (PSD) and New Source Review (NSR) programs. These permits must remain in effect because they are the legal mechanism through which underlying NSR or PSD requirements become applicable, and remain applicable, to individual sources. (May 20, 1999, EPA Memorandum from John Seitz). If the underlying construction permit expires, then the construction permit terms would no longer be applicable requirements to the source. Additionally, 40 CFR 52.21, the federal regulation governing the PSD program, provides at 52.21(w)(1), ''[a]ny permit issued under this section or a prior version of this section shall remain in effect, unless and until it expires under paragraph (s) of this section or is rescinded.''

Wisconsin statutes, Wis. Stat. 285.66(1), had provided that construction permits expire after 18 months. Consequently, EPA identified this as an issue in the NOD. Wis. Stat. 285.66 was previously numbered Wis. Stat 144.396 and had been approved into Wisconsin's SIP on June 25, 1986 (51 FR 23056), prior to EPA's approval of Wisconsin's Nonattainment NSR program (January 18, 1995, 60 FR 3538) and Wisconsin's PSD program (64 FR 28745, May 27, 1999).

III. What Has Wisconsin Submitted?

On December 8, 2005, the Wisconsin Department of Natural Resources (WDNR) submitted to EPA for approval, the SIP revision ''Request to the EPA to Revise Wisconsin's SIP Pertaining to the Permanency of Construction Permit Conditions.'' Wisconsin has revised its statutes to make permanent all conditions in construction permits. Wisconsin has revised Statute 285.66(1) to provide that, ''[n]otwithstanding the fact that authorization to construct, reconstruct, replace, or modify a source expires under this subsection, all conditions in a construction permit are permanent unless the conditions are revised through a revision of the construction permit or through the issuance of a new construction permit.'' This revision was adopted as part of the Wisconsin 2005–07 biennial budget bill enacted into law as 2005 Wisconsin Act 25. (Published July 26, 2005.)

IV. Does This Submittal Comply With Federal Requirements?

EPA reviewed Wisconsin's December 8, 2005, SIP revision submittal to determine completeness, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V, and found the submittal to be complete. The next step in the review process was EPA's analysis of the State's submittal for compliance with Federal program requirements.

Wisconsin's SIP revision is necessary to correct a deficiency identified in the March 4, 2004 NOD. As noted in the March 4, 2004 NOD, title V generally does not impose new substantive air quality control requirements. Therefore, to be included in a title V permit, applicable requirements, such as terms in previously issued construction permits, must exist independent of the

title V permit. EPA's approval of this SIP revision will ensure that construction permit terms are included as applicable requirements in Wisconsin's title V permits, and will satisfy the deficiency identified in the NOD. Therefore, EPA has determined that this revision is approvable.

V. What Action Is EPA Taking Today?

EPA is proposing to approve revisions to the Wisconsin SIP which will make permanent all terms of Wisconsin's permits to construct, reconstruct, replace or modify sources unless the terms are revised through a revision of the construction permit or issuance of a new construction permit. EPA is also soliciting comment on this proposed approval.

VI. Statutory and Executive Order Reviews. Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

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

Regulatory Flexibility Act

This proposed 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.).

Unfunded Mandates Reform Act

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).

Executive Order 13132—Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

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

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

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

Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

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

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Date: January 4, 2006.

Gary Gulezian,

Acting Regional Administrator, Region 5.

[FR Doc. E6–227 Filed 1–11–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2005–MD–0015; FRL–8021–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revised Definition of Interruptible Gas Service

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Maryland Department of the Environment. This revision amends the regulation pertaining to the control of fuel-burning equipment, stationary internal combustion engines, and certain fuel burning installations. The revision clarifies the definition of ''interruptible gas service''. This action is being taken under the Clean Air Act (CAA or the Act).

DATES: Written comments must be received on or before February 13, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2005–MD–0015 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: *morris.makeba@epa.gov.*

C. Mail: EPA–R03–OAR–2005–MD–0015, Makeba Morris, 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–2005–MD–0015. 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 EPA *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 h*ttp://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 Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230.

FOR FURTHER INFORMATION CONTACT: Helene Drago, (215) 814–5796, or by e-mail at *drago.helene@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 31, 2005, the Maryland Department of the Environment submitted a revision to its State Implementation Plan (SIP). The revision clarifies the definition of ''interruptible gas service''. The revision consists of amendments to Regulation .01 under COMAR 26.11.09 Control of Fuel Burning Equipment, Stationary Internal Combustion Engines and Certain Fuel-Burning Installations.

I. Background

The Maryland Department of the Environment developed as one of its control strategies for particulate matter, a requirement to install a mechanical dust collector on fuel burning equipment burning residual fuel oil. This requirement applied in the Baltimore/Washington areas.

When the dust collector requirement was developed, it was the normal practice for gas suppliers to interrupt gas service for several days up to two weeks when gas supply was low. Gas customers that had dual firing capability had no choice but to burn oil during the interruptible period. At that time a question arose as to the applicability of the dust collector requirement for those sources that burn residual oil when the gas service was interrupted. In response to that question, the term ''interruptible gas service'' was defined. The regulation provided an exemption from the dust collector requirement for sources that burned residual oil during the interruptible period. The current definition, however, does not clearly state that the exemption applies only when there is a shortage of natural gas.

II. Summary of SIP Revision

On October 31, 2005, the State submitted a SIP revision request which concerned clarification of the definition of ''interruptible gas service''. This SIP revision includes amendments to Regulation .01 under COMAR 26.11.09 Control of Fuel-burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations. Documentation of public participation was included in the submittal.

The amendment clarifies the definition of the term ''interruptible gas service''. The revision clarifies that the gas supplier (utility) makes the decision to interrupt the gas service based on the availability of gas and not on the cost of fuel or other parameter. A user is not involved with the decision to interrupt gas service except when the user is notified that the service will be interrupted.

III. Proposed Action

EPA's review of this material indicates the revision will not cause or contribute to a violation of the NAAQS. EPA is proposing to approve the State of Maryland SIP revision concerning the clarification of the definition of ''interruptible gas service'', which was submitted on October 31, 2005. 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 is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. 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 to approve revisions that clarify the definition of ''interruptible gas service'' 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, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: December 30, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E6–221 Filed 1–11–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 051213334–5334–01; I.D. 112905C]

RIN 0648–AS27

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a rule to implement Amendment 19 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 19 provides for a comprehensive program to describe and protect essential fish habitat (EFH) for Pacific Coast Groundfish. The proposed management measures are intended to minimize, to the extent practicable, adverse effects to EFH from fishing. The measures include fishing gear restrictions and prohibitions, areas that would be closed to bottom trawl, and areas that would be closed to all fishing that contacts the bottom.

DATES: Comments on this proposed rule must be received by 5 p.m. local time February 27, 2006.

ADDRESSES: You may submit comments on this proposed rule identified by I.D. 112905C by any of the following methods:

- E-mail: *GroundfishEFHproposedrule .nwr@noaa.gov* Include ID 112905C in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: 206–526–6736, Attn: Steve Copps.
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Steve Copps.

Copies of Amendment 19, which includes a regulatory impact review (RIR/IRFA) and the Final Environmental Impact Statement—(FEIS) on EFH for Pacific Coast Groundfish and Amendment 19 to the Pacific Coast Groundfish FMP are available for public review during business hours at the office of the Pacific Fishery Management Council (Pacific Council), at 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280. Copies of additional reports referred to in this document may also be obtained from the Pacific Council.

FOR FURTHER INFORMATION CONTACT: Steve Copps (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736 and; e-mail: *steve.copps@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

The proposed rule also is accessible via the Internet at the Office of the Federal Register's website at *http://www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the NMFS Northwest Region website at *http://www.nwr.noaa.gov/* and at the Pacific Council's website at *http://www.pcouncil.org*.

Background

Amendment 19 to the FMP has been developed by NMFS and the Pacific Council to comply with section 303(a)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by amending the Pacific Coast Groundfish FMP to: (1) Describe and identify EFH for the fishery, (2) designate Habitat Areas of Particular Concern (HAPAC), (3) minimize to the extent practicable the adverse effects of fishing on EFH, and (4) identify other actions to encourage the conservation and enhancement of EFH. This proposed rule is based on recommendations of the Pacific Council, under the authority of the Pacific Coast Groundfish FMP and the Magnuson-Stevens Act. Background information and the Pacific Council's recommendations are summarized below. Further details are in the FEIS/RIR/IRFA prepared by NMFS for this action.

NMFS considered the environmental effects of this action in an environmental impact statement (EIS) for the comprehensive strategy to conserve and enhance EFH for fish managed under the FMP. The notice of availability for the FEIS was published on December 9, 2005, (70 FR 73233). The comprehensive strategy to conserve EFH, including its identification and the implementation of measures to minimize, to the extent practicable, adverse impacts to EFH from fishing is consistent with provisions in the Magnuson-Stevens Act and implementing regulations. The Magnuson-Stevens Act is the principal legal basis for Federal fishery management within the exclusive economic zone (EEZ), which extends

from the outer boundary of the territorial sea to a distance of 200 nautical miles from shore.

The EIS was prepared in order to comply with a 2000 court order in *American Oceans Campaign et. al.* v. *Daley*, Civil Action 99–982 (GK) (D.D.C. September 14, 2000). The Court ordered NMFS and the Pacific Council to prepare an EIS to evaluate the effects of fishing on EFH and identify and evaluate a reasonable range of alternatives for measures to minimize those impacts, to the extent practicable. The public comment period on the draft EIS ended on May 11, 2005. The Pacific Council identified a final preferred alternative at their June 13–17, 2005, meeting in Foster City, CA. The FEIS includes the identification and evaluation of the final preferred alternative, responses to comments on the DEIS and appropriate revisions from the Draft Environmental Impact Statement (DEIS). After the FEIS is published, a 30-day ''cooling off'' period ensues before the responsible official may sign a record of decision and implement the proposed action. NMFS must approve any amendments to the Pacific Coast Groundfish FMP amendment or implementing regulations it deems necessary by May 6, 2006.

The purpose of Amendment 19 is: First, to provide the Pacific Council and NMFS with the information they need to better account for the function of Pacific Coast groundfish EFH when making fishery management decisions; second, to ensure that this EFH is capable of sustaining groundfish stocks at levels that support sustainable fisheries; and third, to ensure that EFH is a healthy component of fully functioning ecosystems. The amendment is needed because the Pacific Council and NMFS have not had the tools to consider groundfish habitat and ecosystem function, and their relation to other biological and socioeconomic conditions affecting the groundfish fishery, in management decision-making. The Pacific Council considered draft amendatory language for the Pacific Coast Groundfish FMP at its September 19–23, 2005, meeting in Portland, OR, and finalized its recommendations at its October 30–November 4, 2005, meeting in San Diego, CA. On November 23, 2005, the Pacific Council transmitted Amendment 19 to NMFS, asking that NMFS make Amendment 19 available for public review via the Magnuson-Stevens Act review process. NMFS published a Notice of Availability for Amendment 19 on December 7, 2005 (70 FR 72777), and will take public comments on Amendment 19 through February 6, 2006.

In the Magnuson-Stevens Act, Congress found that ''one of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats'' and ''habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States (16 U.S.C. 1801(a)(9)).'' Furthermore, one of the long-term goals for the groundfish fishery, adopted by the Pacific Council in its strategic plan, is ''to protect, maintain, and/or recover those habitats necessary for healthy fish populations and the productivity of those habitats.'' This proposed rule provides the management measures that are being considered under Amendment 19 to the FMP that are intended to minimize to the extent practicable adverse impacts to EFH.

EFH Identification and Description in Amendment 19

The Pacific Council is required to identify and describe EFH for all managed species based on a scientific process to determine the extent of habitat that is essential for managed species throughout their life history. EFH is defined by the Magnuson-Stevens Act to mean those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity (16 U.S.C. 1802 (10)). EFH identification and description provides the basis for the statutory requirement for Federal agencies to consult on actions that may adversely affect EFH and provides geographic focus for development of conservation strategies. EFH is identified and described in an amendment to the Pacific Coast Groundfish FMP and does not require implementation through regulation; however, the EFH description is summarized in this proposed rule due to its connection to proposed management measures.

The identification and description of EFH does not in and of itself have direct effects on habitat, the status of groundfish stocks, or the ecosystem; however, the geographic focus it provides can serve as a tool for managers to focus conservation efforts and stewardship over the habitat component of groundfish resources. Section 303(a)(7) of the Magnuson-Stevens Act requires that adverse effects from fishing on EFH must be minimized to the extent practicable and other actions encouraged that would conserve and enhance such habitat. In addition, the identification and description of EFH provides the basis for the consultation process as described in section 305(b) of the Magnuson-Stevens Act, which states that Federal action agencies must consult with NMFS on any action that may adversely affect EFH. Identification and description of EFH is a management tool that is the starting point for considering EFH conservation and enhancement.

Under Amendment 19 to the Pacific Coast Groundfish FMP, the overall extent of groundfish EFH for all fishery management unit species is identified as all waters and substrate within the following areas:

- Depths less than or equal to 3,500 m (1,914 fm) shoreward to the mean higher high water level or the upriver extent of saltwater intrusion (defined as upstream and landward to where ocean-derived salts measure less than 0.5 parts per thousand during the period of average annual low flow).
- Seamounts in depths greater than 3,500 m (1,914 fm), as mapped in the EFH assessment geographic information system.

This includes 187,741 square miles in the EEZ, and to the mean higher high water line and upriver extent of salt water, as EFH.

To identify EFH, NMFS gathered all available information on location of groundfish species, and then used a model to determine the relationship between the location of the fish and information including substrate, estuaries, kelp, seagrass, invertebrates, bathymetry, latitude, pelagic habitat, and available literature on functional relationships between fish and habitat. This allowed NMFS and the Pacific Council to consider a large amount of information regarding where groundfish are found and their habitat associations. NMFS and the Pacific Council also considered the rebuilding needs of overfished groundfish species managed under the Pacific Coast Groundfish FMP. Even though NMFS had a huge amount of information available that it considered, there still are data gaps and NMFS was not able to quantify the relationship between habitat and groundfish abundance. Therefore, the preferred alternative takes a precautionary approach that defines EFH as moderately exceeding known areas where groundfish occur. This precautionary approach is intended to account for any possible errors in the model. Maps and text descriptions of EFH are also included in Amendment 19 to the Pacific Coast Groundfish FMP.

HAPC in Amendment 19

Although the Magnuson-Stevens Act does not require Councils to designate HAPCs, NMFS encourages them to do

so, based on one or more of the following considerations from the EFH regulations at 50 CFR 600.815(a)(8): (1) The importance of the ecological function provided by the habitat; (2) the extent to which the habitat is sensitive to human-induced environmental degradation; (3) whether, and to what extent, development activities are, or will be, stressing the habitat type; and, (4) the rarity of the habitat type.

The Pacific Council and NMFS are considering designation of estuaries, canopy kelp, seagrass, rocky reefs, areas of interest, and oil production platforms as HAPCs through Amendment 19 to the Pacific Coast Groundfish FMP. The amendment was developed by the Pacific Council and NMFS to meet the four considerations listed in the EFH regulations. The HAPCs, if approved, will be designated through Amendment 19 to the FMP and do not require rulemaking, so are not considered further in this proposed rule. Copies of the FMP amendment are available through NMFS (*see* **ADDRESSES**).

Minimization of Adverse Impacts From Fishing

The Magnuson-Stevens Act mandates that the Pacific Coast Groundfish FMP contain measures to minimize to the extent practicable adverse effects from fishing on EFH. The EFH guidelines establish that Councils must act to minimize to the extent practicable adverse effects from fishing when such effects are more than minimal and temporary in nature (50 CFR 600.815). Adverse effect means any impact that reduces the quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from actions occurring within EFH or outside EFH, and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions (50 CFR 600.810).

NMFS and the Pacific Council undertook an assessment process to determine if and where adverse effects to EFH have occurred or are occurring. As a result of the assessment process, NMFS determined that the best available information is not sufficient to support a definitive determination of adverse effects on EFH from fishing. However, based on all the information available regarding impacts of fishing, NMFS and the Pacific Council concluded there is a potential for adverse effects. Therefore, NMFS is proposing certain management measures that would protect EFH from potential adverse effects of fishing. It is practicable to take precautionary action to protect EFH because the proposed management measures would protect EFH and have insignificant socioeconomic consequences.

The central constraint for determining if adverse impacts have occurred or are occurring is insufficient data of the necessary resolution to model a relationship between the intensity of fishing effort and effects on habitat. Three variables are fundamental to assessing the status of habitat: The locations and intensity of fishing impacts, the sensitivity of specific habitat types to specific impacts at differing levels of intensity, and the potential for habitat to recover between impact events. Each of the habitat types on the West Coast is likely to react differently to different types and intensity of impact and have unique rates of recovery. The status of habitat is a balance between how the habitat was affected by an impact and how much recovery takes place between impacts. Although it is not possible at this time to quantify the status of habitat, several principles were utilized as the environmental basis for the management measures as follows: (1) Habitat that has not been subject to impact is considered pristine; (2) the sensitivity of habitat to impact governs the rate at which adverse effects occur (e.g., highly sensitive habitat is subject to adverse effect with relatively little fishing effort); (3) there is a maximal level of impact for any given habitat at which no further adverse effects would occur; (4) habitat has a limited capacity to recover from impact, and recovery is ongoing from some point in time after the impact ceases; (5) repeated contact with fishing gear will cause the status of habitats to become more impacted while recovery between contacts allows the habitat to become less impacted; (6) adverse impacts to habitat can impair the ability of fish to carry out basic biological functions such as spawning, feeding, breeding, and growth to maturity; and (7) large-scale modification to habitat may have long-lasting or permanent implications at the scale of the ecosystem.

Known effects of fishing on EFH are focused on physical alteration to habitat and changes in biodiversity that result from impact. It is not known if or to what extent such effects alter the dynamics of fish stocks. The relevance of this limitation is that management measures cannot be quantitatively constructed to increase production of groundfish or enhance ecosystem function. Even with this data limitation, NMFS is able to base the management measures on the potential adverse effects of fishing on EFH.

Fish, like all organisms, rely on habitat for their survival. The habitat requirements of many fish change depending on the life history stage. Pacific coast rockfish, for example, spend their early life history as eggs and larvae floating in the water column before settling as juveniles on the substrate, where they grow to maturity and reproduce. Although its value cannot be quantified, healthy functioning habitat is critical for populations of fish to sustain themselves and there is a level at which adverse impacts to habitat will impair the ability of fish to do so. Benthic and pelagic habitats are fundamental components of the ecosystems off the West Coast as are the fish and other organisms that rely on them. It follows that large-scale modification to habitat can result in fundamental change to the ecosystem. For example, if a complex habitat that supports reproduction of a species is modified to the point that the species can no longer reproduce successfully there, and the species is unable to adapt and reproduce elsewhere, the survival of the species and its role in the ecosystem would be threatened. The extent of the threat would depend on the extent of the modification (e.g., all of the habitat non-functional or just a portion), and the related ability of the habitat to recover and/or the species to adapt to alternative habitats. Some habitats may take a long time to recover or may reach an alternative stable state from which a return to its former state is highly unlikely, even following a complete removal of impacts, and thus evolve into a new role in the ecosystem.

NMFS and the Pacific Council considered fishing gear restrictions and area closures as the primary tools for minimizing adverse effects to EFH based on a report by the National Academy of Sciences, National Research Council. These measures directly control where impacts may occur and the type of impact, based on gear type, that would be allowed.[1] Gear types were ranked for their potential to have adverse effects in the following order: (1) Bottom-tending mobile gear types (e.g., bottom trawl in which the otter boards or the footrope of the net are in contact with the seabed) and (2) other gears that contact the

[1] NRC (National Research Council). 2002. Effects of Trawling and Dredging on Seafloor Habitat. National Academy Press, Washington, DC.

bottom. Gear types that do not contact the bottom were not prioritized. Pristine benthic habitat was prioritized with an emphasis on biogenic habitat (e.g., deep sea corals) as was hard bottom due to its potential ecological complexity and sensitivity to impact. NMFS also conducted a literature review of the best available information to determine impacts on EFH from fishing gear. This information is provided in the EIS and is available from NMFS (*see* **ADDRESSES**). The EIS considers impacts from the gear types that are used off the West Coast. The information available on impacts from fishing gear is primarily from other areas of the world and not the West Coast. Although the information is from other areas of the world, it was considered in the context of West Coast habitat and gear types and provides a solid basis for determining there is a potential for adverse impacts on EFH.

NMFS and the Pacific Council worked closely with environmental groups and the fishing industry to determine appropriate gear restrictions and area closures to minimize adverse effects on EFH and with minimal negative socioeconomic effects. The selection of the specific closed areas was an iterative process with many opportunities for public input through Pacific Council meetings, local outreach meetings, and comments on the DEIS. The closed areas proposed here are based on all the above input and a collaborative process involving Oceana; groundfish trawl fishermen, organized by the Fishermen's Marketing Association; the Fisheries Heritage Group, bringing together harbor managers, the Nature Conservancy, Environmental Defense, the Center for Future Oceans, and fisheries representatives; Pacific Council advisory bodies; and West Coast states. By combining the perspectives of these groups, the management measures are practicable because they implement the mandate to conserve EFH while taking into account the effects on fishing communities.

Proposed Management Measures in Amendment 19

NMFS and the Pacific Council developed a suite of management measures that include gear restrictions and area closures. The gear restrictions are as follows: (1) Bottom trawl gear with footropes larger than eight inches (20 cm) in diameter is prohibited shoreward of a line approximating the 100-fm (183 m) depth contour; (2) the use of bottom trawl footrope gear with a footrope diameter larger than 19 inches (48 cm) is prohibited; (3) the use of dredge gear is prohibited; and (4) the use of beam trawl gear is prohibited.

The Pacific Council has identified discrete areas that are closed to fishing with specified gear types. These ecologically important habitat closed areas are intended to minimize to the extent practicable the adverse effects of fishing on groundfish EFH. There are two types of closures. First are areas where bottom trawling would be prohibited. Second are areas where bottom-contacting gears would be prohibited. The extent and configuration of these areas do not vary seasonally and they are not usually modified through inseason or biennial management actions and may be considered Marine Managed Areas. The areas are listed below and described in the attached regulatory text by specific latitude and longitude coordinates.

Areas off the coast of Washington where bottom trawling would be prohibited are:

Olympic 2; Biogenic 1; Biogenic 2; Grays Canyon; and, Biogenic 3.

Areas off the coast of Oregon where bottom trawling would be prohibited are: Nehalem Bank/Shale Pile; Astoria Canyon; Siletz Deepwater; Daisy Bank/Nelson Island; Newport Rockpile/Stonewall Bank; Heceta Bank; Deepwater off Coos Bay; Bandon High Spot; Rogue Canyon.

Areas off the coast of California where bottom trawling would be prohibited include: Eel River Canyon; Blunts Reef; Mendocino Ridge; Delgada Canyon; Tolo Bank; Pt Arena South Biogenic Area; Biogenic Area; Pt Arena South Biogenic Area; Farallon Islands/Fanny Shoal; Half Moon Bay; Monterey Bay/Canyon; Point Sur Deep; Big Sur Coast/Port San Luis; East Santa Lucia Bank; Point Conception; Potato Bank; Cherry Bank; Hidden Reef/Kidney Bank; Catalina Island; and Cowcod Conservation Area East.

Areas off Oregon where bottom contact gear would be prohibited include: Thompson Seamount; and President Jackson Seamount.

Areas off California where bottom contact gear would be prohibited include: Cordell Bank (50 fm (91 m) isobath); Anacapa Island MCA; Anacapa Island MR; Carrington Point; Footprint; Gull Island; Harris Point; Judith Rock; Painted Cove; Richardson Rock; Santa Barbara; Scorpion; Skunk Point; and South Point. Bottom contact gear at Davidson seamount would also be prohibited with all fishing prohibited below 500 fm (914 m) as a precautionary adjustment to protect the seamount.

Summary of Rationale for the Proposed Managed Areas

Since there may be adverse impacts on EFH from fishing, NMFS has made a preliminary determination that it is necessary to take precautionary action to protect EFH from the possible adverse impacts of fishing. NMFS has concluded that there is a potential for adverse impacts from fishing activities, based on the TRC report, and other literature used in the appendices to the EIS, although these impacts cannot be specifically identified for EFH for groundfish. As a result, NMFS is proposing to minimize to the extent practicable, these unidentified impacts in the event that the regulated fishing activities do have an adverse impact on EFH that is more than minimal and not temporary. Additionally, these measures are practicable because they have minimal impact on the fishery. The gear closures are mainly in areas that are not currently being fished, and for areas that would require the industry to shift its location, the effect would be on roughly less than 10 percent of the fishery. That amount of effort is likely to be able to relocate so the net effect would be for little change in overall catch.

After reviewing the best available scientific information, NMFS cannot positively state that any adverse impacts on EFH from the groundfish fishery are occurring. Conversely, NMFS cannot positively state that there are no adverse impacts to EFH from fishing activities. NMFS does have reason to suspect that, based on general knowledge of the impacts of certain gear types used in this fishery, adverse impacts may be occurring. Based on this potential that adverse impacts are occurring but have not been identified, NMFS believes that it is necessary and appropriate to ensure that measures are taken to minimize to the extent practicable any unidentified adverse impacts to EFH that may exist.

In summary, at this time NMFS and the Pacific Council are not able to make a definitive determination that adverse effects from fishing to EFH have occurred or are occurring. However, we have taken a precautionary approach, based on the best available science, to developing the alternatives based on the potential for adverse effects to EFH. The precautionary approach is practicable because it protects EFH from potential adverse effects and does not significantly adversely affect the fishing industry and associated communities.

Specific Request for Additional Comments and Information

A coastwide prohibition on bottom trawling in all areas within the EEZ that

are deeper than 700 fm (1280) is also included in the proposed regulation. NMFS is specifically seeking comment on this aspect of the regulation as well as the gear restrictions described above because they would apply in areas deeper than 3500 m (1914 fm), and, therefore, would be outside EFH. Management measures to minimize adverse impacts on EFH could apply in the EEZ in areas not described as EFH, if there is a link between the fishing activity and adverse effects on EFH. Additionally, management measures could be based on the Pacific Council's discretionary authority to protect habitat outside EFH if there is a basis for these measures. This authority is based on section 303(a)(1), 303(b)(2), and (b)(12) of the Magnuson-Stevens Act. NMFS will consider public comments and information received on this proposed rule and on the proposed Amendment 19 to determine if the measures should be applied in areas outside EFH (deeper than 3500 m (1914 fm)).

Practicability of the Management Measures

Section 303(a)(7) of the Magnuson-Stevens Act requires that FMPs minimize to the extent practicable the adverse effects of fishing on EFH. EFH regulations at 50 CFR 600.815(a)(2)(iii) state that: In determining whether it is practicable to minimize an adverse effect from fishing, Councils should consider (1) the nature and extent of the adverse effects on EFH and (2) the long- and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation, consistent with National Standard 7. In determining whether management measures are practicable, Councils are not required to perform a formal cost/benefit analysis.

The management measures in this proposed rule provide a balance of socioeconomic costs and benefits to the fishing industry and communities, impacts to management and enforcement agencies, and protection of EFH. This suite of impact minimization measures protects a diverse set of habitat types and is most heavily focused on the bottom trawl sector by excluding areas from bottom trawling. Other fishing gears are also excluded or limited depending on the habitat, the geographic area, opportunities for research in those areas in order to further the science and management of habitat, and the amount of information known about areas and gear/habitat interaction.

Although the proposed management measures close certain areas to bottom trawling and other bottom tending gear types, these measures do not reduce catch quotas. Harvest put at risk by closed areas may be made up elsewhere within the EEZ. If closing certain areas to certain gear types appears to impact catch, then as a regular part of inseason management, the Pacific Council could be reasonably expected to increase vessel catch limits and recreational opportunities so that the fisheries may achieve, but not exceed allowable harvest levels. However, the more effort and revenue is displaced, the more likely it is that displaced revenues and effort will also translate into lost revenue and effort. Additional information on practicability and the socioeconomic impacts of the management measures is contained in the Classification section below.

Enforcement

Using traditional enforcement methods (aerial surveillance, boarding at sea via patrol boats, landing inspections and documentary investigation) is especially difficult for monitoring closed areas when those areas are large-scale. Furthermore, when management measures allow some gear types and target fishing in all or a portion of the closed area, while other fishing activities are prohibited, it is difficult and costly to effectively enforce closures using traditional methods. Scarce state and Federal resources also limit the use of traditional enforcement methods. For these reasons, the Pacific Council recommended as part of its preferred alternative in the EIS that all trawl vessels be required to carry and use vessel monitoring system (VMS) units. A VMS is a NMFS approved mobile transceiver unit that automatically determines a vessel's position for enforcement monitoring by NMFS, Office of Law Enforcement. In 2004, NMFS implemented a VMS requirement for limited entry fishery participants in order to maintain the integrity of the Rockfish Conservation Areas (RCAs) and their benefits to rebuilding overfished groundfish species. Concurrent with its work on Amendment 19, the Pacific Council also developed recommendations to expand VMS requirements to the open access groundfish fisheries to maintain the integrity of the RCAs in those fisheries. When the Pacific Council took final action on VMS requirements in the open access fisheries, it also recommended that NMFS implement VMS requirements for the non-groundfish trawl vessels that would be affected by the trawl gear area prohibitions in Amendment 19. NMFS is developing a proposed rule for publication in early 2006 that would expand the VMS program requirements to include all open access vessels that take and retain, possess, or land groundfish, as well as all non-groundfish trawl vessels—including those targeting pink shrimp, California halibut, sea cucumber, and ridgeback prawn. The VMS expansion action and this Amendment 19 action will be managed so that implementation is as nearly concurrent as possible; however, implementation of this proposed rule for Amendment is not contingent on expansion of the VMS program.

Classification

These proposed management measures are issued under the authority of, and are in accordance with, the Magnuson-Stevens Act, the Pacific Coast Groundfish FMP, and 50 CFR parts 600 and 660 subpart G (the regulations implementing the Pacific Coast Groundfish FMP).

NMFS and the Pacific Council prepared a DEIS and an FEIS for this proposed action; NMFS published a Notice of Intent (NOI) to prepare an EIS on April 10, 2001 (66 FR 18586). According to the NOI, the EIS would evaluate the Pacific Coast Groundfish FMP from a broad, programmatic perspective, presenting ''an overall picture of the environmental effects of fishing as conducted under Pacific Coast Groundfish FMP.'' However, as a result of this initial public scoping, NMFS decided the process would be improved if the programmatic evaluation of the Pacific Coast Groundfish FMP were shifted to two separate EISs, one on bycatch minimization and one on EFH issues (67 FR 5962, February 8, 2002). A copy of the draft EIS is available on the Internet at: *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/NEPA-Documents/Index.cfm.*

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

Pursuant to Executive Order 13175, this rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the Pacific Coast Groundfish FMP. NMFS does not intend for any of the regulations described below to apply to tribal fisheries in usual and accustomed grounds described in 50 CFR 660.324(c). NMFS will continue to work with the tribes towards the goal of ensuring that, within their usual and accustomed fishing grounds, adequate measures are in place to protect EFH.

NMFS prepared an IRFA that describes the impact that this proposed rule, if adopted, would have on small

entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the preamble to this document. A copy of this analysis is available from NMFS (*see* **ADDRESSES**). A summary of the analysis follows.

NMFS is proposing regulations to minimize to the extent practicable adverse impacts from fishing to EFH. The proposed regulations include restrictions on the type of fishing gear that may be used and the establishment of specific areas that would be closed to specified gear types. The action is fully described in the preamble to this proposed rule.

The entities that would be directly regulated by this action are those that operate vessels fishing for groundfish, California and Pacific halibut, crab and lobster, shrimp, and species like groundfish such as California sheephead and white croaker in Federal EEZ waters off of the Pacific coast. Although harvest and gross revenue information is confidential for individual vessels, all shorebased vessels fishing off the Pacific coast are considered small entities for purposes of this IRFA. Although the number of vessels engaged in Pacific coast fisheries will vary by year, the average is approximately 3,800 to 4,300. Of these, approximately 1,500 to 1,200 participate in groundfish fisheries; 1,200 to 1,400 participate in crab fisheries; and 215 to 330 participate in shrimp fisheries, and many of these vessels participate in all three fisheries. Many vessels participating in these fisheries will be directly regulated by the proposed rule.

A total of 23 alternatives (including sub-options and the final preferred alternative) to minimize fishing impacts to EFH were analyzed within the FEIS. A brief description of the alternatives analyzed and considered in addition to the preferred alternative is described below. For a more complete description of the alternatives, see chapter 2 of the FEIS. Five of the alternatives were designed to accomplish the objective of protecting EFH while minimizing economic impacts on small entities. These include three alternatives designed to close areas to trawling that are were analyzed to be non-critical to the economic future of the trawl industry based on historical trawling patterns, an alternative to prohibit geographic expansion of the trawl fishery (e.g., limiting the fishery to historically valuable areas), and an alternative to close specified areas and compensate impacted fishermen through private purchase of their permits. The final preferred alternative includes components that were compiled from discrete elements of the other alternatives. A detailed description of all the alternatives is available in the FEIS for this action (*see* **ADDRESSES**).

Each of the alternatives analyzed by NMFS was expected to have different overall effects on the economy. The only consistent measure of gross revenue impacts is an analysis of limited entry trawl revenues that would be displaced by the alternatives. The proposed management measures in this rule would displace $8,523,085 over a 4-year period. The other alternatives would have impacts ranging from $58,458,226 to $0 for no action. In addition, a qualitative analysis of the alternatives was performed. The final preferred alternative was determined to have the most acceptable socioeconomic impact on commercial fishers, recreational fishers, and communities. In general, the proposed management measures are not expected to significantly curtail harvesting opportunities. Over the long-term, the measures may improve harvesting opportunities by enhancing the productivity of harvestable fish stocks.

The proposed management measures would result in the protection of over 67,000,000 hectares of habitat found in the U.S. exclusive economic zone off the West Coast of the U.S. This represents over 81 percent of the EEZ. Other alternatives analyzed in the FEIS protected amounts of habitat that are similar in quantity, but can be considered impracticable for various reasons. Of the alternatives protecting similar amounts of habitat, one is considered impracticable to administrative agencies because of the complexity of implementing the alternative, and one is considered impracticable because it would close the Dungeness crab fishery. The others were modified to reduce socioeconomic impacts to acceptable levels and included as part of the preferred alternative.

NMFS issued Biological Opinions (BOs) under the Endangered Species Act on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, analyzing the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal, Oregon coastal), chum salmon (Hood Canal, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, northern California, and southern California). During the 2000 Pacific whiting season, the whiting fisheries exceeded the chinook bycatch amount specified in the most recent Biological Opinion's (whiting BO) (December 19, 1999) incidental catch statement estimate of 11,000 fish, by approximately 500 fish. In the 2001 whiting season, however, the whiting fishery's chinook bycatch was about 7,000 fish, which approximates the long-term average. After reviewing data from, and management of, the 2000 and 2001 whiting fisheries (including industry bycatch minimization measures), the status of the affected listed chinook, environmental baseline information, and the incidental catch statement from the 1999 whiting BO, NMFS determined in a letter dated April 25, 2002, that a re-initiation of consultation for the whiting fishery was not required. NMFS has concluded that implementation of the Pacific Coast Groundfish FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. This action is within the scope of these consultations.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: December 28, 2005.

James W. Balsiger,

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

For the reasons set out in the preamble, NMFS proposed to amend 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

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

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

2. In § 660.301, paragraph (a) is revised as follows:

§ 660.301 Purpose and scope.

(a) This subpart implements the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) developed by the Pacific Fishery Management Council. This subpart governs fishing vessels of the U.S. in the EEZ off the coasts of Washington, Oregon, and California. All weights are in round weight or round-weight equivalents, unless specified otherwise.

* * * * *

3. In § 660.302, a definition for ''Essential Fish Habitat EFH'' is added in alphabetical order, and the definition for ''Fishing gear'' is revised to read as follows:

§ 660.302 Definitions.

* * * * *

Essential Fish Habitat (EFH). (See § 600.10).

* * * * *

Fishing gear includes the following types of gear and equipment:

(1) *Bottom contact gear.* Fishing gear designed or modified to make contact with the bottom. This includes, but is not limited to, beam trawl, bottom trawl, dredge, fixed gear, set net, demersal seine, dinglebar gear, and other gear (including experimental gear) designed or modified to make contact with the bottom. Gear used to harvest bottom dwelling organisms (e.g. by hand, rakes, and knives) are also considered bottom contact gear for purposes of this subpart.

(2) *Demersal seine.* A net designed to encircle fish on the seabed. The Demersal seine is characterized by having its net bounded by lead-weighted ropes that are not encircled with bobbins or rollers. Demersal seine gear is fished without the use of steel cables or otter boards (trawl doors). Scottish and Danish Seines are demersal seines. Purse seines, as defined at § 600.10, are not demersal seines. Demersal seine gear is included in the definition of bottom trawl gear in (9)(i) of this subsection.

(3) *Dredge gear.* Dredge gear, with respect to the U.S. West Coast EEZ, refers to a gear consisting of a metal frame attached to a holding bag constructed of metal rings or mesh. As the metal frame is dragged upon or above the seabed, fish are pushed up and over the frame, then into the mouth of the holding bag.

(4) *Fixed gear (anchored nontrawl gear)* includes the following gear types: Longline, trap or pot, set net, and stationary hook-and-line (including commercial vertical hook-and-line) gears.

(5) *Entangling nets* include the following types of net gear:

(i) *Gillnet.* (See § 600.10).

(ii) *Set net.* A stationary, buoyed, and anchored gillnet or trammel net.

(iii) *Trammel net.* A gillnet made with two or more walls joined to a common float line.

(6) *Hook-and-line.* One or more hooks attached to one or more lines. It may be stationary (commercial vertical hook-and-line) or mobile (troll).

(i) *Commercial vertical hook-and-line.* Commercial fishing with hook-and-line gear that involves a single line anchored at the bottom and buoyed at the surface so as to fish vertically.

(ii) *Dinglebar gear.* One or more lines retrieved and set with a troll gurdy or hand troll gurdy, with a terminally attached weight from which one or more leaders with one or more lures or baited hooks are pulled through the water while a vessel is making way.

(iii) *Bottom longline.* A stationary, buoyed, and anchored groundline with hooks attached, so as to fish along the seabed. It does not include pelagic hook-and-line or troll gear.

(iv) *Troll gear.* A lure or jig towed behind a vessel via a fishing line. Troll gear is used in commercial and recreational fisheries.

(7) *Mesh size.* The opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot, regardless of twine size.

(8) *Nontrawl gear.* All legal commercial groundfish gear other than trawl gear.

(9) *Trawl gear.* (See § 600.10)

(i) *Bottom trawl.* A trawl in which the otter boards or the footrope of the net are in contact with the seabed. It includes demersal seine gear, and pair trawls fished on the bottom. Any trawl not meeting the requirements for a midwater trawl in § 660.381 is a bottom trawl.

(A) *Beam trawl gear.* A type of trawl gear in which a beam is used to hold the trawl open during fishing. Otter boards or doors are not used.

(B) *Large footrope trawl gear.* Large footrope gear is bottom trawl gear with a footrope diameter larger than 8 inches (20 cm,) and no larger than 19 inches (48 cm) including any rollers, bobbins, or other material encircling or tied along the length of the footrope.

(C) *Small footrope trawl gear.* Small footrope trawl gear is bottom trawl gear with a footrope diameter of 8 inches (20 cm) or smaller, including any rollers, bobbins, or other material encircling or tied along the length of the footrope. Selective flatfish trawl gear that meets the gear component requirements in § 660.381 is a type of small footrope trawl gear.

(ii) *Midwater (pelagic or off-bottom) trawl.* A trawl in which the otter boards and footrope of the net remain above the seabed. It includes pair trawls if fished in midwater. A midwater trawl has no rollers or bobbins on any part of the net or its component wires, ropes, and chains.

(iii) *Trawl gear components.*

(A) *Breastline.* A rope or cable that connects the end of the headrope and the end of the trawl fishing line along the edge of the trawl web closest to the towing point.

(B) *Chafing gear.* Webbing or other material attached to the codend of a trawl net to protect the codend from wear.

(C) *Codend.* (See § 600.10).

(D) *Double-bar mesh.* Webbing comprised of two lengths of twine tied into a single knot.

(E) *Double-walled codend.* A codend constructed of two walls of webbing.

(F) *Footrope.* A chain, rope, or wire attached to the bottom front end of the trawl webbing forming the leading edge of the bottom panel of the trawl net, and attached to the fishing line.

(G) *Headrope.* A chain, rope, or wire attached to the trawl webbing forming the leading edge of the top panel of the trawl net.

(H) *Rollers or bobbins* are devices made of wood, steel, rubber, plastic, or other hard material that encircle the trawl footrope. These devices are commonly used to either bounce or pivot over seabed obstructions, in order to prevent the trawl footrope and net from snagging on the seabed.

(I) *Single-walled codend.* A codend constructed of a single wall of webbing knitted with single or double-bar mesh.

(J) *Trawl fishing line.* A length of chain or wire rope in the bottom front end of a trawl net to which the webbing or lead ropes are attached.

(K) *Trawl riblines.* Heavy rope or line that runs down the sides, top, or underside of a trawl net from the mouth of the net to the terminal end of the codend to strengthen the net during fishing.

(10) *Spear.* A sharp, pointed, or barbed instrument on a shaft.

(11) *Trap or pot.* These terms are used as interchangeable synonyms. See § 600.10 definition of ''trap.''

* * * * *

4. In § 660.306, paragraphs (a)(13) and (a)(14), and (h)(4) through (h)(10) are added to read as follows:

§ 660.306 Prohibitions.

* * * * *

(a) * * *

(13) Fish with dredge gear (defined in § 660.302) anywhere within the EEZ.

(14) Fish with beam trawl gear (defined in § 660.302) anywhere within the EEZ.

* * * * *

(h) * * *

(4) Fish with bottom trawl gear (defined in § 660.302) anywhere within the EEZ seaward of a line approximating the 700 fathom (1280 m) depth contour, as defined in § 660.395.

(5) Fish with bottom trawl gear (defined in § 660.302) with a footrope diameter greater than 19 inches (48 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope) anywhere within the EEZ.

(6) Fish with bottom trawl gear (defined in § 660.302) with a footrope diameter greater than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope) anywhere within the EEZ shoreward of a line approximating the 100-fm (183-m) depth contour (defined in § 660.393).

(7) Fish with bottom trawl gear (as defined in § 660.302), within the EEZ in the following areas (defined in §§ 660.395 through 660.397): Olympic 2, Biogenic 1, Biogenic 2, Grays Canyon, Biogenic 3, Nahelem Bank/Shale Pile, Astoria Canyon, Siletz Deepwater, Daisy Bank/Nelson Island, Newport Rockpile/Stonewall Bank, Heceta Bank, Deepwater off Coos Bay, Bandon High Spot, Rogue Canyon.

(8) Fish with bottom trawl gear (as defined in § 660.302), other than Danish or demersal seine, within the EEZ in the following areas (defined in §§ 660.395 through 660.397): Eel River Canyon, Blunts Reef, Mendocino Ridge, Delgada Canyon, Tolo Bank, Point Arena North, Outer Cordell Bank, Pt. Arena South Biogenic Area, Farallon Islands/Fanny Shoal, Half Moon Bay, Monterey Bay/Canyon, Point Sur Deep, Big Sur Coast/Port San Luis, East Santa Lucia Bank, Point Conception, Potato Bank (within Cowcod Conservation Area West), Cherry Bank (within Cowcod Conservation Area West) Hidden Reef/Kidney Bank (within Cowcod Conservation Area West), Catalina Island and Cowcod Conservation Area East.

(9) Fish with bottom contact gear (as defined in § 660.302) within the EEZ in the following areas (defined in § 660.396): Anacapa Island SMR, Anacapa Island SMCA, Carrington Point, Footprint, Gull Island, Harris Point, Judith Rock, Painted Cave, Richardson Rock, Santa Barbara, Scorpion, Skunk Point, and South Point, Thompson Seamount, President Jackson Seamount, (50 fm (91 m) isobath).

(10) Fish with bottom contact gear (as defined in § 660.302), or any other gear that is deployed deeper than 500 fm (914 m), within the Davidson Seamount area (defined in § 660.396).

* * * * *

5. In § 660.385, the introductory text is revised to read as follows:

§ 660.385 Washington coastal tribal fisheries management measures.

In 1994, the United States formally recognized that the four Washington coastal treaty Indian tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish in the Pacific Ocean, and concluded that, in general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish that pass through the tribes usual and accustomed fishing areas (described at 50 CFR 660.324). Measures implemented to minimize adverse impacts to groundfish EFH, as described in § 660.306 do not apply to tribal fisheries in their usual and accustomed fishing areas (described in 660.324). Treaty fisheries can not operate outside ususal and accustomed fishing areas. Tribal fishery allocations for sablefish and whiting, are provided in paragraphs (a) and (e) of this section, respectively, and the tribal harvest guideline for black rockfish is provided in paragraph (b)(1) of this section. Trip limits for certain species were recommended by the tribes and the Council for 2005–2006 and are specified here with the tribal allocations.

* * * * *

6. Section 660.395 is added to read as follows:

§ 660.395 Groundfish Essential Fish Habitat (EFH) conservation areas.

Essential fish habitat (EFH) is defined as those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity (16 U.S.C. 1802 (10). The areas in this subsection are designated to minimize to the extent practicable adverse effects to EFH caused by fishing(16 U.S.C. 1853 section 303(a)(7)). Straight lines connecting a series of latitude/longitude coordinates demarcate the boundaries for areas designated as Groundfish EFH Conservation Areas. Coordinates outlining the boundaries of Groundfish EFH Conservation Areas are provided in §§ 660.395 through 660.397. Fishing activity that is prohibited or permitted within the EEZ in a particular area designated as a groundfish EFH Conservation Area is detailed at § 660.306 and § 660.385.

(a) *Seaward of the 700-fm (1280-m) contour.* This area includes all waters within the West Coast EEZ west of a line approximating the 700-fm (1280-m) depth contour and is defined by straight lines connecting all of the following points in the order stated:

(1) 48°06.97′ N. lat., 126°02.96′ W. long.;

(2) 48°00.44′ N. lat., 125°54.96′ W. long.;

(3) 47°55.96′ N. lat., 125°46.51′ W. long.;

(4) 47°47.21′ N. lat., 125°43.73′ W. long.;

(5) 47°42.89′ N. lat., 125°49.58′ W. long.;

(6) 47°38.18′ N. lat., 125°37.26′ W. long.;

(7) 47°32.36′ N. lat., 125°32.87′ W. long.;

(8) 47°29.77′ N. lat., 125°26.27′ W. long.;

(9) 47°28.54′ N. lat., 125°18.82′ W. long.;

(10) 47°19.25′ N. lat., 125°17.18′ W. long.;

(11) 47°08.82′ N. lat., 125°10.01′ W. long.;

(12) 47°4.69′ N. lat., 125°03.77′ W. long.;

(13) 46°48.38′ N. lat., 125°18.43′ W. long.;

(14) 46°41.92′ N. lat., 125°17.29′ W. long.;

(15) 46°27.49′ N. lat., 124°54.36′ W. long.;

(16) 46°14.13′ N. lat., 125°02.72′ W. long.;

(17) 46°09.53′ N. lat., 125°04.75′ W. long.;

(18) 45°46.64′ N. lat., 124°54.44′ W. long.;

(19) 45°40.86′ N. lat., 124°55.62′ W. long.;

(20) 45°36.50′ N. lat., 124°51.91′ W. long.;

(21) 44°55.69′ N. lat., 125°08.35′ W. long.;

(22) 44°49.93′ N. lat., 125°01.51′ W. long.;

(23) 44°46.93′ N. lat., 125°02.83′ W. long.;

(24) 44°41.96′ N. lat., 125°10.64′ W. long.;

(25) 44°28.31′ N. lat., 125°11.42′ W. long.;

(26) 43°58.37′ N. lat., 125°02.93′ W. long.;

(27) 43°52.74′ N. lat., 125°05.58′ W. long.;

(28) 43°44.18′ N. lat., 124°57.17′ W. long.;

(29) 43°7.58′ N. lat., 125°07.70′ W. long.;

(30) 43°15.95′ N. lat., 125°07.84′ W. long.;

(31) 42°47.50′ N. lat., 124°59.96′ W. long.;

(32) 42°39.02′ N. lat., 125°01.07′ W. long.;
(33) 42°34.80′ N. lat., 125°02.89′ W. long.;
(34) 42°34.11′ N. lat., 124°55.62′ W. long.;
(35) 42°23.81′ N. lat., 124°52.85′ W. long.;
(36) 42°16.80′ N. lat., 125°00.20′ W. long.;
(37) 42°06.60′ N. lat., 124°59.14′ W. long.;
(38) 41°59.28′ N. lat., 125°06.23′ W. long.;
(39) 41°31.10′ N. lat., 125°01.30′ W. long.;
(40) 41°14.52′ N. lat., 124°52.67′ W. long.;
(41) 40°40.65′ N. lat., 124°45.69′ W. long.;
(42) 40°35.05′ N. lat., 124°45.65′ W. long.;
(43) 40°23.81′ N. lat., 124°41.16′ W. long.;
(44) 40°20.54′ N. lat., 124°36.36′ W. long.;
(45) 40°20.84′ N. lat., 124°57.23′ W. long.;
(46) 40°18.54′ N. lat., 125°09.47′ W. long.;
(47) 40°14.54′ N. lat., 125°09.83′ W. long.;
(48) 40°11.79′ N. lat., 125°07.39′ W. long.;
(49) 40°06.72′ N. lat., 125°04.28′ W. long.;
(50) 39°50.77′ N. lat., 124°37.54′ W. long.;
(51) 39°56.67′ N. lat., 124°26.58′ W. long.;
(52) 39°44.25′ N. lat., 124°12.60′ W. long.;
(53) 39°35.82′ N. lat., 124°12.02′ W. long.;
(54) 39°24.54′ N. lat., 124°16.01′ W. long.;
(55) 39°01.97′ N. lat., 124°11.20′ W. long.;
(56) 38°33.48′ N. lat., 123°48.21′ W. long.;
(57) 38°14.49′ N. lat., 123°38.89′ W. long.;
(58) 37°56.97′ N. lat., 123°31.65′ W. long.;
(59) 37°49.09′ N. lat., 123°27.98′ W. long.;
(60) 37°40.29′ N. lat., 123°12.83′ W. long.;
(61) 37°22.54′ N. lat., 123°4.65′ W. long.;
(62) 37°05.98′ N. lat., 123°05.31′ W. long.;
(63) 36°59.02′ N. lat., 122°50.92′ W. long.;
(64) 36°50.32′ N. lat., 122°17.44′ W. long.;
(65) 36°44.54′ N. lat., 122°19.42′ W. long.;
(66) 36°40.76′ N. lat., 122°17.28′ W. long.;
(67) 36°39.88′ N. lat., 122°09.69′ W. long.;
(68) 36°44.52′ N. lat., 122°07.13′ W. long.;
(69) 36°42.26′ N. lat., 122°03.54′ W. long.;
(70) 36°30.02′ N. lat., 122°09.85′ W. long.;
(71) 36°22.33′ N. lat., 122°22.99′ W. long.;
(72) 36°14.36′ N. lat., 122°21.19′ W. long.;
(73) 36°09.50′ N. lat., 122°14.25′ W. long.;
(74) 35°51.50′ N. lat., 121°55.92′ W. long.;
(75) 35°49.53′ N. lat., 122°13.00′ W. long.;
(76) 34°58.30′ N. lat., 121°36.76′ W. long.;
(77) 34°53.13′ N. lat., 121°37.49′ W. long.;
(78) 34°46.54′ N. lat., 121°46.25′ W. long.;
(79) 34°37.81′ N. lat., 121°35.72′ W. long.;
(80) 34°37.72′ N. lat., 121°27.35′ W. long.;
(81) 34°26.77′ N. lat., 121°07.58′ W. long.;
(82) 34°18.54′ N. lat., 121°05.01′ W. long.;
(83) 34°02.68′ N. lat., 120°54.30′ W. long.;
(84) 33°48.11′ N. lat., 120°25.46′ W. long.;
(85) 33°42.54′ N. lat., 120°38.24′ W. long.;
(86) 33°46.26′ N. lat., 120°43.64′ W. long.;
(87) 33°40.71′ N. lat., 120°51.29′ W. long.;
(88) 33°33.14′ N. lat., 120°40.25′ W. long.;
(89) 32°51.57′ N. lat., 120°23.35′ W. long.;
(90) 32°38.54′ N. lat., 120°09.54′ W. long.;
(91) 32°35.76′ N. lat., 119°53.43′ W. long.;
(92) 32°29.54′ N. lat., 119°46.00′ W. long.;
(93) 32°25.99′ N. lat., 119°41.16′ W. long.;
(94) 32°30.46′ N. lat., 119°33.15′ W. long.;
(95) 32°23.47′ N. lat., 119°25.71′ W. long.;
(96) 32°19.19′ N. lat., 119°13.96′ W. long.;
(97) 32°13.18′ N. lat., 119°04.44′ W. long.;
(98) 32°13.40′ N. lat., 118°51.87′ W. long.;
(99) 32°19.62′ N. lat., 118°47.80′ W. long.;
(100) 32°27.26′ N. lat., 118°50.29′ W. long.;
(101) 32°8.42′ N. lat., 118°53.15′ W. long.;
(102) 32°31.30′ N. lat., 118°55.09′ W. long.;
(103) 32°33.04′ N. lat., 118°53.57′ W. long.;
(104) 32°19.07′ N. lat., 118°27.54′ W. long.;
(105) 32°18.57′ N. lat., 118°18.97′ W. long.;
(106) 32°09.01′ N. lat., 118°13.96′ W. long.;
(107) 32°06.57′ N. lat., 118°18.78′ W. long.;
(108) 32°01.32′ N. lat., 118°18.21′ W. long.; and
(109) 31°57.82′ N. lat., 118°10.34′ W. long.;

(b) *Astoria Canyon.* Astoria Canyon is defined by straight lines connecting all of the following points in the order stated:
(1) 46°06.48′ N. lat., 125°05.46′ W. long.;
(2) 46°03.00′ N. lat., 124°57.36′ W. long.;
(3) 46°02.28′ N. lat., 124°57.66′ W. long.;
(4) 46°01.92′ N. lat., 125°02.46′ W. long.;
(5) 45°48.72′ N. lat., 124°56.58′ W. long.;
(6) 45°47.70′ N. lat., 124°52.20′ W. long.;
(7) 45°40.86′ N. lat., 124°55.62′ W. long.;
(8) 45°29.82′ N. lat., 124°54.30′ W. long.;
(9) 45°25.98′ N. lat., 124°56.82′ W. long.;
(10) 45°26.04′ N. lat., 125°10.50′ W. long.;
(11) 45°33.12′ N. lat., 125°16.26′ W. long.;
(12) 45°40.32′ N. lat., 125°17.16′ W. long.;
(13) 46°03.00′ N. lat., 125°14.94′ W. long.; and connecting back to 46°06.48′ N. lat., 125°05.46′ W. long.

(c) *Daisy Bank/Nelson Island.* Daisy Bank/Nelson Island is defined by straight lines connecting all of the following points in the order stated:
(1) 44°9.73′ N. lat., 124°41.43′ W. long.;
(2) 44°39.60′ N. lat., 124°41.29′ W. long.;
(3) 44°37.17′ N. lat., 124°38.60′ W. long.;
(4) 44°35.55′ N. lat., 124°39.27′ W. long.;
(5) 44°37.57′ N. lat., 124°41.70′ W. long.;
(6) 44°36.90′ N. lat., 124°42.91′ W. long.;
(7) 44°38.25′ N. lat., 124°46.28′ W. long.;
(8) 44°38.52′ N. lat., 124°49.11′ W. long.;
(9) 44°40.27′ N. lat., 124°49.11′ W. long.;

(10) 44°41.35′ N. lat., 124°48.03′ W. long.; and connecting back to 44°39.73′ N. lat., 124°41.43′ W. long.

(d) *Newport Rockpile/Stonewall Bank.* Newport Rockpile/Stonewall Bank is defined by straight lines connecting all of the following points in the order stated:

(1) 44°27.61′ N. lat., 124°26.93′ W. long.;

(2) 44°34.64′ N. lat., 124°26.82′ W. long.;

(3) 44°38.15′ N. lat., 124°25.15′ W. long.;

(4) 44°37.78′ N. lat., 124°23.05′ W. long.;

(5) 44°28.82′ N. lat., 124°18.80′ W. long.;

(6) 44°25.16′ N. lat., 124°20.69′ W. long.; and connecting back to 44°27.61′ N. lat., 124°26.93′ W. long.

(e) *Cherry Bank.* Cherry Bank is within the Cowcod Conservation Area West, an area south of Point Conception, and is defined by straight lines connecting all of the following points in the order stated:

(1) 32°59.00′ N. lat., 119°32.05′ W. long.;

(2) 32°59.00′ N. lat., 119°17.05′ W. long.;

(3) 32°46.00′ N. lat., 119°17.05′ W. long.;

(4) 32°46.00′ N. lat., 119°32.05′ W. long.; and connecting back to 32°59.00′ N. lat., 119°32.05′ W. long.

(f) *Potato Bank.* Potato Bank is within the Cowcod Conservation Area West, an area south of Point Conception, and is defined by straight lines connecting all of the following points in the order stated:

(1) 33°30.00′ N. lat., 120°00.06′ W. long.;

(2) 33°30.00′ N. lat., 119°50.06′ W. long.;

(3) 33°20.00′ N. lat., 119°50.06′ W. long.;

(4) 33°20.00′ N. lat., 120°00.06′ W. long.; and connecting back to 33°30.00′ N. lat., 120°00.06′ W. long.

(g) *Olympic 2.* Olympic 2 is defined by straight lines connecting all of the following points in the order stated:

(1) 48°21.46′ N. lat., 124°51.61′ W. long.;

(2) 48°17.00′ N. lat., 124°57.18′ W. long.;

(3) 48°06.13′ N. lat., 125°00.68′ W. long.;

(4) 48°06.66′ N. lat., 125°06.55′ W. long.;

(5) 48°08.44′ N. lat., 125°14.61′ W. long.;

(6) 48°22.57′ N. lat., 125°09.82′ W. long.;

(7) 48°21.42′ N. lat., 125°03.55′ W. long.;

(8) 48°22.99′ N. lat., 124°59.29′ W. long.;

(9) 48°23.89′ N. lat., 124°54.37′ W. long.; and connecting back to 48°21.46′ N. lat., 124°51.61′ W. long.

(h) *Biogenic 1.* Biogenic 1 is defined by straight lines connecting all of the following points in the order stated:

(1) 47°29.97′ N. lat., 125°20.14′ W. long.;

(2) 47°30.01′ N. lat., 125°30.06′ W. long.;

(3) 47°40.09′ N. lat., 125°50.18′ W. long.;

(4) 47°47.27′ N. lat., 125°50.06′ W. long.;

(5) 47°47.00′ N. lat., 125°24.28′ W. long.;

(6) 47°39.53′ N. lat., 125°10.49′ W. long.;

(7) 47°30.31′ N. lat., 125°08.81′ W. long.; and connecting back to 47°29.97′ N. lat., 125°20.14′ W. long.

(i) *Biogenic 2.* Biogenic 2 is defined by straight lines connecting all of the following points in the order stated:

(1) 47°08.77′ N. lat., 125°00.91′ W. long.;

(2) 47°08.82′ N. lat., 125°10.01′ W. long.;

(3) 47°20.01′ N. lat., 125°10.00′ W. long.;

(4) 47°20.00′ N. lat., 125°01.25′ W. long.; and connecting back to 47°08.77′ N. lat., 125°00.91′ W. long.

(j) *Biogenic 3.* Biogenic 3 is defined by straight lines connecting all of the following points in the order stated:

(1) 46°48.16′ N. lat., 125°10.75′ W. long.;

(2) 46°40.00′ N. lat., 125°10.00′ W. long.;

(3) 46°40.00′ N. lat., 125°20.01′ W. long.;

(4) 46°50.00′ N. lat., 125°20.00′ W. long.; and connecting back to 46°48.16′ N. lat., 125°10.75′ W. long.

(k) *Grays Canyon.* Grays Canyon is defined by straight lines connecting all of the following points in the order stated:

(1) 46°′51.55′ N. lat., 125°00.00′ W. long.;

(2) 46°56.79′ N. lat., 125°00.00′ W. long.;

(3) 46°58.01′ N. lat., 124°55.09′ W. long.;

(4) 46°55.07′ N. lat., 124°54.14′ W. long.;

(5) 46°59.60′ N. lat., 124°49.79′ W. long.;

(6) 46°58.72′ N. lat., 124°48.78′ W. long.;

(7) 46°54.45′ N. lat., 124°48.36′ W. long.;

(8) 46°53.99′ N. lat., 124°49.95′ W. long.;

(9) 46°54.38′ N. lat., 124°52.73′ W. long.;

(10) 46°52.38′ N. lat., 124°52.02′ W. long.;

(11) 46°48.93′ N. lat., 124°49.17′ W. long.; and connecting back to 46°51.55′ N. lat., 120°00.00′ W. long.

(l) *Tolo Bank.* Tolo Bank is defined by straight lines connecting all of the following points in the order stated:

(1) 39°58.75′ N. lat., 124°04.58′ W. long.;

(2) 39°56.05′ N. lat., 124°01.45′ W. long.;

(3) 39°53.99′ N. lat., 124°00.17′ W. long.;

(4) 39°52.28′ N. lat., 124°03.12′ W. long.;

(5) 39°57.90′ N. lat., 124°07.07′ W. long.; and connecting back to 39°58.75′ N. lat., 124°04.58′ W. long.

(m) *Point Sur Deep.* The Point Sur Deep is defined by straight lines connecting all of the following points in the order stated:

(1) 36°25.25′ N. lat., 122°11.61′ W. long.;

(2) 36°16.05′ N. lat., 122°14.37′ W. long;

(3) 36°16.14′ N. lat., 122°15.94′ W. long.;

(4) 36°17.98′ N. lat., 122°15.93′ W. long.;

(5) 36°17.83′ N. lat., 122°22.56′ W. long.;

(6) 36°22.33′ N. lat., 122°22.99′ W. long.;

(7) 36°26.00′ N. lat., 122°20.81′ W. long.; and connecting back to 36°25.25′ N. lat., 122°11.61′ W. long.

(n) *Pt. Arena North.* Point Arena North is defined by straight lines connecting all of the following points in the order stated:

(1) 39°03.32′ N. lat., 123°51.15′ W. long.;

(2) 38°56.54′ N. lat., 123°49.79′ W. long.;

(3) 38°54.12′ N. lat., 123°52.69′ W. long.;

(4) 38°59.64′ N. lat., 123°55.02′ W. long.;

(5) 39°02.83′ N. lat., 123°55.21′ W. long.; and connecting back to 39°03.32′ N. lat., 123°51.15′ W. long.

(o) *Blunts Reef.* Blunts Reef is defined by straight lines connecting all of the following points in the order stated:

(1) 40°27.53′ N. lat., 124°26.84′ W. long.;

(2) 40°24.66′ N. lat., 124°29.49′ W. long.;

(3) 40°28.50′ N. lat., 124°32.42′ W. long.;

(4) 40°30.46′ N. lat., 124°32.23′ W. long.;

(5) 40°30.21′ N. lat., 124°26.85′ W. long.; and connecting back to 40°27.53′ N. lat., 124°26.84′ W. long.

(p) *Pt. Arena South Biogenic Area.* Pt. Arena South Biogenic Area is defined by straight lines connecting all of the following points in the order stated:

(1) 38°35.49′ N. lat., 123°34.79′ W. long.;
(2) 38°32.86′ N. lat., 123°41.09′ W. long.;
(3) 38°34.92′ N. lat., 123°42.53′ W. long.;
(4) 38°35.74′ N. lat., 123°43.82′ W. long.;
(5) 38°47.28′ N. lat., 123°51.19′ W. long.;
(6) 38°49.50′ N. lat., 123°45.83′ W. long.;
(7) 38°41.22′ N. lat., 123°41.76′ W. long.; and connecting back to 38°35.49′ N. lat., 123°34.79′ W. long.

(q) *Half Moon Bay.* Half Moon Bay is defined by straight lines connecting all of the following points in the order stated:
(1) 37°18.14′ N. lat., 122°31.15′ W. long.;
(2) 37°19.80′ N. lat., 122°34.70′ W. long.;
(3) 37°19.28′ N. lat., 122°38.76′ W. long.;
(4) 37°23.54′ N. lat., 122°40.75′ W. long.;
(5) 37°25.41′ N. lat., 122°33.20′ W. long.;
(6) 37°23.28′ N. lat., 122°30.71′ W. long.; and connecting back to 37°18.14′ N. lat., 122°31.15′ W. long.

(r) *Big Sur Coast/Port San Luis.* Big Sur Coast/Port San Luis is defined by straight lines connecting all of the following points in the order stated:
(1) 36°17.83′ N. lat., 122°22.56′ W. long.;
(2) 36°17.98′ N. lat., 122°15.93′ W. long.;
(3) 36°16.14′ N. lat., 122°15.94′ W. long.;
(4) 36°10.82′ N. lat., 122°15.97′ W. long.;
(5) 36°15.84′ N. lat., 121°56.35′ W. long.;
(6) 36°14.27′ N. lat., 121°53.89′ W. long.;
(7) 36°10.93′ N. lat., 121°48.66′ W. long.;
(8) 36°07.40′ N. lat., 121°43.14′ W. long.;
(9) 36°04.89′ N. lat., 121°51.34′ W. long.;
(10) 35°55.70′ N. lat., 121°50.02′ W. long.;
(11) 35°53.05′ N. lat., 121°56.69′ W. long.;
(12) 35°38.99′ N. lat., 121°49.73′ W. long.;
(13) 35°20.06′ N. lat., 121°27.00′ W. long.;
(14) 35°20.54′ N. lat., 121°35.84′ W. long.;
(15) 35°02.49′ N. lat., 121°35.35′ W. long.;
(16) 35°02.79′ N. lat., 121°26.30′ W. long.;
(17) 34°58.71′ N. lat., 121°24.21′ W. long.;
(18) 34°47.24′ N. lat., 121°22.40′ W. long.;
(19) 34°35.70′ N. lat., 121°45.99′ W. long.;
(20) 35°47.36′ N. lat., 122°30.25′ W. long.;
(21) 35°27.26′ N. lat., 122°45.15′ W. long.;
(22) 35°34.39′ N. lat., 123°00.25′ W. long.;
(23) 36°01.64′ N. lat., 122°40.76′ W. long.;
(24) 36°17.41′ N. lat., 122°41.22′ W. long.; and connecting back to 36°17.83′ N. lat., 122°22.56′ W. long.

(s) *East San Lucia Bank.* East San Lucia Bank is defined by straight lines connecting all of the following points in the order stated:
(1) 34°45.09′ N. lat., 121°05.73′ W. long.;
(2) 34°39.90′ N. lat., 121°10.30′ W. long.;
(3) 34°43.39′ N. lat., 121°14.73′ W. long.;
(4) 34°52.83′ N. lat., 121°14.85′ W. long.;
(5) 34°52.82′ N. lat., 121°05.90′ W. long.; and connecting back to 34°45.09′ N. lat., 121°05.73′ W. long.

(t) *Point Conception.* Point Conception is defined by straight lines connecting all of the following points in the order stated:
(1) 34°29.24′ N. lat., 120°36.05′ W. long.;
(2) 34°28.57′ N. lat., 120°34.44′ W. long.;
(3) 34°26.81′ N. lat., 120°33.21′ W. long.;
(4) 34°24.54′ N. lat., 120°32.23′ W. long.;
(5) 34°23.41′ N. lat., 120°30.61′ W. long.;
(6) 33°53.05′ N. lat., 121°05.19′ W. long.;
(7) 34°13.64′ N. lat., 121°20.91′ W. long.;
(8) 34°40.04′ N. lat., 120°54.01′ W. long.;
(9) 34°36.41′ N. lat., 120°43.48′ W. long.;
(10) 34°33.50′ N. lat., 120°43.72′ W. long.;
(11) 34°31.22′ N. lat., 120°42.06′ W. long.;
(12) 34°30.04′ N. lat., 120°40.27′ W. long.;
(13) 34°30.02′ N. lat., 120°40.23′ W. long.;
(14) 34°29.26′ N. lat., 120°37.89′ W. long.; and connecting back to 34°29.24′ N. lat., 120°36.05′ W. long.

(u) *Nehalem Bank/Shale Pile.* Nehalem Bank/Shale Pile is defined by straight lines connecting all of the following points in the order stated:
(1) 46°00.60′ N. lat., 124°33.94′ W. long.;
(2) 45°52.77′ N. lat., 124°28.75′ W. long.;
(3) 45°47.95′ N. lat., 124°31.70′ W. long.;
(4) 45°52.75′ N. lat., 124°39.20′ W. long.;
(5) 45°58.02′ N. lat., 124°38.99′ W. long.;
(6) 46°00.83′ N. lat., 124°36.78′ W. long.; and connecting back to 46°00.60′ N. lat., 124°33.94′ W. long.

(v) *Bandon High Spot.* Bandon High Spot is defined by straight lines connecting all of the following points in the order stated:
(1) 43°08.83′ N. lat., 124°50.93′ W. long.;
(2) 43°08.77′ N. lat., 124°49.82′ W. long.;
(3) 43°05.16′ N. lat., 124°49.05′ W. long.;
(4) 43°02.94′ N. lat., 124°46.87′ W. long.;
(5) 42°57.18′ N. lat., 124°46.01′ W. long.;
(6) 42°56.10′ N. lat., 124°47.48′ W. long.;
(7) 42°56.66′ N. lat., 124°48.79′ W. long.;
(8) 42°52.89′ N. lat., 124°52.59′ W. long.;
(9) 42°53.82′ N. lat., 124°55.76′ W. long.;
(10) 42°57.56′ N. lat., 124°54.10′ W. long.;
(11) 42°58.00′ N. lat., 124°52.99′ W. long.;
(12) 43°00.39′ N. lat., 124°51.77′ W. long.;
(13) 43°02.64′ N. lat., 124°52.01′ W. long.;
(14) 43°04.60′ N. lat., 124°53.01′ W. long.;
(15) 43°05.89′ N. lat., 124°51.60′ W. long.; and connecting back to 43°08.83′ N. lat., 124°50.93′ W. long.

(w) *Heceta Bank.* Heceta Bank is defined by straight lines connecting all of the following points in the order stated:
(1) 43°57.68′ N. lat., 124°55.48′ W. long.;
(2) 44°00.14′ N. lat., 124°55.25′ W. long.;
(3) 44°02.88′ N. lat., 124°53.96′ W. long.;
(4) 44°13.47′ N. lat., 124°38.72′ W. long.;
(5) 44°13.52′ N. lat., 124°40.45′ W. long.;
(6) 44°09.00′ N. lat., 124°45.30′ W. long.;
(7) 44°03.46′ N. lat., 124°45.71′ W. long.;
(8) 44°03.26′ N. lat., 124°49.42′ W. long.;
(9) 43°58.61′ N. lat., 124°49.87′ W. long.; and connecting back to 43°57.68′ N. lat., 124°55.48′ W. long.

(x) *Rogue Canyon.* Rogue Canyon is defined by straight lines connecting all of the following points in the order stated:

(1) 42°41.33′ N. lat., 125°16.61′ W. long.;

(2) 42°41.55′ N. lat., 125°03.05′ W. long.;

(3) 42°35.29′ N. lat., 125°02.21′ W. long.;

(4) 42°34.11′ N. lat., 124°55.62′ W. long.;

(5) 42°30.61′ N. lat., 124°54.97′ W. long.;

(6) 42°23.81′ N. lat., 124°52.85′ W. long.;

(7) 42°17.94′ N. lat., 125°10.17′ W. long.; and connecting back to 42°41.33′ N. lat., 125°16.61′ W. long.

(y) *Deepwater off Coos Bay.* Deepwater off Coos Bay is defined by straight lines connecting all of the following points in the order stated:

(1) 43°29.32′ N. lat., 125°20.11′ W. long.;

(2) 43°38.96′ N. lat., 125°18.75′ W. long.;

(3) 43°37.88′ N. lat., 125°08.26′ W. long.;

(4) 43°36.58′ N. lat., 125°06.56′ W. long.;

(5) 43°33.04′ N. lat., 125°08.41′ W. long.;

(6) 43°27.74′ N. lat., 125°07.25′ W. long.;

(7) 43°15.95′ N. lat., 125°07.84′ W. long.;

(8) 43°15.38′ N. lat., 125°10.47′ W. long.;

(9) 43°25.73′ N. lat., 125°19.36′ W. long.; and connecting back to 43°29.32′ N. lat., 125°0.11′ W. long.

(z) *Siletz Deepwater.* Siletz Deepwater is defined by straight lines connecting all of the following points in the order stated:

(1) 44°42.72′ N. lat., 125°08.49′ W. long.;

(2) 44°56.26′ N. lat., 125°12.61′ W. long.;

(3) 44°56.34′ N. lat., 125°09.13′ W. long.;

(4) 44°49.93′ N. lat., 125°01.51′ W. long.;

(5) 44°46.93′ N. lat., 125°02.83′ W. long.;

(6) 44°41.96′ N. lat., 125°10.64′ W. long.;

(7) 44°33.36′ N. lat., 125°08.82′ W. long.;

(8) 44°33.38′ N. lat., 125°07.08′ W. long.; and connecting back to 44°42.72′ N. lat., 125°18.49′ W. long.

(aa) Essential fish habitat (EFH) is defined as those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity. The areas in this subsection are designated to minimize adverse effects to EFH caused by fishing to the extent practicable. Straight lines connecting a series of Latitude/longitude coordinates demarcate the boundaries for areas designated as Groundfish EFH Conservation Areas.

Coordinates outlining the boundaries of Groundfish EFH Conservation Areas are provided in §§ 660.395 through 660.397. Fishing activity that is prohibited or permitted within the EEZ in a particular area designated as a groundfish EFH Conservation Area is detailed at § 660.306 and § 660.385.

(bb) *Hidden Reef/Kidney Bank.* Hidden Reef/Kidney Bank is defined by straight lines connecting all of the following points in the order stated:

(1) 33°48.00′ N. lat., 119°15.06′ W. long.;

(2) 33°48.00′ N. lat., 118°57.06′ W. long.;

(3) 33°33.00′ N. lat., 118°57.06′ W. long.;

(4) 33°33.00′ N. lat., 119°15.06′ W. long.; and connecting back to 33°48.00′ N. lat., 119°15.06′ W. long.

(cc) *Eel River Canyon.* Eel River Canyon is defined by straight lines connecting all of the following points in the order stated:

(1) 40°38.27′ N. lat., 124°27.16′ W. long.;

(2) 40°35.60′ N. lat., 124°28.75′ W. long.;

(3) 40°37.52′ N. lat., 124°33.41′ W. long.;

(4) 40°37.47′ N. lat., 124°40.46′ W. long.;

(5) 40°35.47′ N. lat., 124°42.97′ W. long.;

(6) 40°32.78′ N. lat., 124°44.79′ W. long.;

(7) 40°24.32′ N. lat., 124°39.97′ W. long.;

(8) 40°23.26′ N. lat., 124°42.45′ W. long.;

(9) 40°27.34′ N. lat., 124°51.21′ W. long.;

(10) 40°32.68′ N. lat., 125°05.63′ W. long.;

(11) 40°49.12′ N. lat., 124°47.41′ W. long.;

(12) 40°44.32′ N. lat., 124°46.48′ W. long.;

(13) 40°40.75′ N. lat., 124°47.51′ W. long.;

(14) 40°40.65′ N. lat., 124°46.02′ W. long.;

(15) 40°39.69′ N. lat., 124°33.36′ W. long.; and connecting back to 40°38.27′ N. lat., 124°27.16′ W. long.

(dd) *Davidson Seamount.* Davidson Seamount is defined by straight lines connecting the following points in the order stated:

(1) 35°54.00′ N. lat., 123°00.00′ W. long.;

(2) 35°54.00′ N. lat., 122°30.00′ W. long.;

(3) 35°30.00′ N. lat., 122°30.00′ W. long.;

(4) 35°30.00′ N. lat., 123°00.00′ W. long.; and connecting back to 35°54.00′ N. lat., 123°00.00′ W. long.

(ee) *Cordell Bank/Biogenic Area.* Cordell Bank/Biogenic Area is located offshore of California's Marin County defined by straight lines connecting all of the following points in the order stated:

(1) 38°04.05′ N. lat., 123°07.28′ W. long.;

(2) 38°02.84′ N. lat., 123°07.36′ W. long.;

(3) 38°01.09′ N. lat., 123°07.06′ W. long.;

(4) 38°01.02′ N. lat., 123°22.08′ W. long.;

(5) 37°54.75′ N. lat., 123°23.64′ W. long.;

(6) 37°46.01′ N. lat., 123°25.62′ W. long.;

(7) 37°46.68′ N. lat., 123°27.05′ W. long.;

(8) 37°47.66′ N. lat., 123°28.18′ W. long.;

(9) 37°50.26′ N. lat., 123°30.94′ W. long.;

(10) 37°54.41′ N. lat., 123°32.69′ W. long.;

(11) 37°56.94′ N. lat., 123°32.87′ W. long.;

(12) 37°57.12′ N. lat., 123°25.04′ W. long.;

(13) 37°59.43′ N. lat., 123°27.29′ W. long.;

(14) 38°00.82′ N. lat., 123°29.61′ W. long.;

(15) 38°02.31′ N. lat., 123°30.88′ W. long.;

(16) 38°03.99′ N. lat., 123°30.75′ W. long.;

(17) 38°04.85′ N. lat., 123°30.36′ W. long.;

(18) 38°04.88′ N. lat., 123°27.85′ W. long.;

(19) 38°04.44′ N. lat., 123°24.44′ W. long.;

(20) 38°03.05′ N. lat., 123°21.33′ W. long.;

(21) 38°05.77′ N. lat., 123°06.83′ W. long.; and connecting back to 38°04.05′ N. lat., 123°07.28′ W. long.

(ff) *Cordell Bank (50 fm (91 m) isobath).* Cordell Bank (50 fm (91 m) isobath) is located offshore of California's Marin County defined by straight lines connecting all of the following points in the order stated:

(1) 37°57.62′ N. lat., 123°24.22′ W. long.;

(2) 37°57.70′ N. lat., 123°25.25′ W. long.;

(3) 37°59.47′ N. lat., 123°26.63′ W. long.;

(4) 38°00.24′ N. lat., 123°27.87′ W. long.;

(5) 38°00.98′ N. lat., 123°27.65′ W. long.;
(6) 38°02.81′ N. lat., 123°28.75′ W. long.;
(7) 38°04.26′ N. lat., 123°29.25′ W. long.;
(8) 38°04.55′ N. lat., 123°28.32′ W. long.;
(9) 38°03.87′ N. lat., 123°27.69′ W. long.;
(10) 38°04.27′ N. lat., 123°26.68′ W. long.;
(11) 38°02.67′ N. lat., 123°24.17′ W. long.;
(12) 38°00.87′ N. lat., 123°23.15′ W. long.;
(13) 37°59.32′ N. lat., 123°22.52′ W. long.;
(14) 37°58.24′ N. lat., 123°23.16′ W. long.; and connecting back to 37°57.62′ N. lat., 123°24.22′ W. long.

(gg) *Cowcod Conservation Area East.* Cowcod Conservation Area East is an area west of San Diego defined by straight lines connecting all of the following points in the order stated:
(1) 32°41.15′ N. lat., 118°02.00′ W. long.;
(2) 32°42.00′ N. lat., 118°02.00′ W. long.;
(3) 32°42.00′ N. lat., 117°50.00′ W. long.;
(4) 32°36.70′ N. lat., 117°50.00′ W. long.;
(5) 32°30.00′ N. lat., 117°53.50′ W. long.;
(6) 32°30.00′ N. lat., 118°02.00′ W. long.;
(7) 32°40.49′ N. lat., 118°02.00′ W. long.; and connecting back to 32°41.15′ N. lat., 118°02.00′ W. long.

(hh) *Thompson Seamount.* Thompson Seamount is defined by straight lines connecting all of the following points in the order stated:
(1) 46°06.93′ N. lat., 128°39.77′ W. long.;
(2) 46°06.76′ N. lat., 128°39.60′ W. long.;
(3) 46°07.80′ N. lat., 128°39.43′ W. long.;
(4) 46°08.50′ N. lat., 128°34.39′ W. long.;
(5) 46°06.76′ N. lat., 128°29.36′ W. long.;
(6) 46°03.64′ N. lat., 128°28.67′ W. long.;
(7) 45°59.64′ N. lat., 128°31.62′ W. long.;
(8) 45°56.87′ N. lat., 128°33.18′ W. long.;
(9) 45°53.92′ N. lat., 128°39.25′ W. long.;
(10) 45°54.26′ N. lat., 128°43.42′ W. long.;
(11) 45°56.87′ N. lat., 128°45.85′ W. long.;
(12) 46°00.86′ N. lat., 128°46.02′ W. long.;
(13) 46°03.29′ N. lat., 128°44.81′ W. long.;
(14) 46°06.24′ N. lat., 128°42.90′ W. long.; and connecting back to 46°06.93′ N. lat., 128°39.77′ W. long.

(ii) *President Jackson Seamount.* President Jackson Seamount is defined by straight lines connecting all of the following points in the order stated:
(1) 42°21.41′ N. lat., 127°42.91′ W. long.;
(2) 42°21.96′ N. lat., 127°43.73′ W. long.;
(3) 42°23.78′ N. lat., 127°46.09′ W. long.;
(4) 42°26.05′ N. lat., 127°48.64′ W. long.;
(5) 42°28.60′ N. lat., 127°52.10′ W. long.;
(6) 42°31.06′ N. lat., 127°55.02′ W. long.;
(7) 42°34.61′ N. lat., 127°58.84′ W. long.;
(8) 42°37.34′ N. lat., 128°01.48′ W. long.;
(9) 42°39.62′ N. lat., 128°05.12′ W. long.;
(10) 42°41.81′ N. lat., 128°08.13′ W. long.;
(11) 42°43.44′ N. lat., 128°10.04′ W. long.;
(12) 42°44.99′ N. lat., 128°12.04′ W. long.;
(13) 42°48.27′ N. lat., 128°15.05′ W. long.;
(14) 42°51.28′ N. lat., 128°15.05′ W. long.;
(15) 42°53.64′ N. lat., 128°12.23′ W. long.;
(16) 42°52.64′ N. lat., 128°08.49′ W. long.;
(17) 42°51.64′ N. lat., 128°06.94′ W. long.;
(18) 42°50.27′ N. lat., 128°05.76′ W. long.;
(19) 42°48.18′ N. lat., 128°03.76′ W. long.;
(20) 42°45.45′ N. lat., 128°01.94′ W. long.;
(21) 42°42.17′ N. lat., 127°57.57′ W. long.;
(22) 42°41.17′ N. lat., 127°53.92′ W. long.;
(23) 42°38.80′ N. lat., 127°49.92′ W. long.;
(24) 42°36.43′ N. lat., 127°44.82′ W. long.;
(25) 42°33.52′ N. lat., 127°41.36′ W. long.;
(26) 42°31.24′ N. lat., 127°39.63′ W. long.;
(27) 42°28.33′ N. lat., 127°36.53′ W. long.;
(28) 42°23.96′ N. lat., 127°35.89′ W. long.;
(29) 42°21.96′ N. lat., 127°37.72′ W. long.;
(30) 42°21.05′ N. lat., 127°40.81′ W. long.; and connecting back to 42°21.41′ N. lat., 127°42.91′ W. long.

(jj) *Catalina Island.* Catalina Island is defined by straight lines connecting all of the following points in the order stated:
(1) 33°34.71′ N. lat., 118°11.40′ W. long.;
(2) 33°05.88′ N. lat., 118°03.76′ W. long.;
(3) 33°11.69′ N. lat., 118°09.21′ W. long.;
(4) 33°19.73′ N. lat., 118°35.41′ W. long.;
(5) 33°23.90′ N. lat., 118°35.11′ W. long.;
(6) 33°25.68′ N. lat., 118°41.66′ W. long.;
(7) 33°30.25′ N. lat., 118°42.25′ W. long.;
(8) 33°32.73′ N. lat., 118°38.38′ W. long.;
(9) 33°27.07′ N. lat., 118°20.33′ W. long.; and connecting back to 33°34.71′ N. lat., 118°11.40′ W. long.

(kk) *Monterey Bay/Canyon.* Monterey Bay/Canyon is defined by straight lines connecting all of the following points in the order stated:
(1) 36°38.21′ N. lat., 121°55.96′ W. long.;
(2) 36°25.31′ N. lat., 121°54.86′ W. long.;
(3) 36°25.25′ N. lat., 121°58.34′ W. long.;
(4) 36°30.86′ N. lat., 122°00.45′ W. long.;
(5) 36°30.02′ N. lat., 122°09.85′ W. long.;
(6) 36°30.23′ N. lat., 122°36.82′ W. long.;
(7) 36°55.08′ N. lat., 122°36.46′ W. long.;
(8) 36°51.41′ N. lat., 122°14.14′ W. long.;
(9) 36°49.37′ N. lat., 122°15.20′ W. long.;
(10) 36°48.31′ N. lat., 122°18.59′ W. long.;
(11) 36°45.55′ N. lat., 122°18.91′ W. long.;
(12) 36°40.76′ N. lat., 122°07.28′ W. long.;
(13) 36°39.88′ N. lat., 122°09.69′ W. long.;
(14) 36°44.94′ N. lat., 122°08.46′ W. long.;
(15) 36°47.37′ N. lat., 122°03.16′ W. long.;
(16) 36°49.60′ N. lat., 122°00.85′ W. long.;
(17) 36°51.53′ N. lat., 121°58.25′ W. long.;
(18) 36°50.78′ N. lat., 121°56.89′ W. long.;
(19) 36°47.39′ N. lat., 121°58.16′ W. long.;
(20) 36°48.34′ N. lat., 121°50.95′ W. long.;
(21) 36°47.23′ N. lat., 121°52.25′ W. long.;

(22) 36°45.60′ N. lat., 121°54.17′ W. long.;
(23) 36°44.76′ N. lat., 121°56.04′ W. long.;
(24) 36°41.68′ N. lat., 121°56.33′ W. long.; and connecting back to 36°38.21′ N. lat., 121°55.96′ W. long.

(ll) *Farallon Islands/Fanny Shoal.* Farallon Islands, Fanny Shoal is defined by straight lines connecting all of the following points in the order stated:
(1) 37°51.58′ N. lat., 123°14.07′ W. long.;
(2) 37°44.51′ N. lat., 123°01.50′ W. long.;
(3) 37°41.71′ N. lat., 122°58.38′ W. long.;
(4) 37°40.80′ N. lat., 122°58.54′ W. long.;
(5) 37°39.87′ N. lat., 122°59.64′ W. long.;
(6) 37°42.05′ N. lat., 123°03.72′ W. long.;
(7) 37°43.73′ N. lat., 123°04.45′ W. long.;
(8) 37°49.23′ N. lat., 123°16.81′ W. long.; and connecting back to 37°51.58′ N. lat., 123°14.07′ W. long.

(mm) *Delgada Canyon.* Delgada Canyon is defined by straight lines connecting all of the following points in the order stated:
(1) 40°07.13′ N. lat., 124°09.09′ W. long.;
(2) 40°06.58′ N. lat., 124°07.39′ W. long.;
(3) 40°01.18′ N. lat., 124°08.84′ W. long.;
(4) 40°02.48′ N. lat., 124°12.93′ W. long.;
(5) 40°05.71′ N. lat., 124°09.42′ W. long.;
(6) 40°07.18′ N. lat., 124°09.61′ W. long.; and connecting back to 40°07.13′ N. lat., 124°09.09′ W. long.

(nn) *Mendocino Ridge.* Mendocino Ridge is defined by straight lines connecting all of the following points in the order stated:
(1) 40°25.23′ N. lat., 124°24.06′ W. long.;
(2) 40°12.50′ N. lat., 124°22.59′ W. long.;
(3) 40°14.40′ N. lat., 124°35.82′ W. long.;
(4) 40°16.16′ N. lat., 124°39.01′ W. long.;
(5) 40°17.47′ N. lat., 124°40.77′ W. long.;
(6) 40°19.26′ N. lat., 124°07.97′ W. long.;
(7) 40°19.98′ N. lat., 124°52.73′ W. long.;
(8) 40°20.06′ N. lat., 125°02.18′ W. long.;
(9) 40°11.79′ N. lat., 125°07.39′ W. long.;
(10) 40°12.55′ N. lat., 125°11.56′ W. long.;
(11) 40°12.81′ N. lat., 125°02.98′ W. long.;
(12) 40°20.72′ N. lat., 125°57.31′ W. long.;
(13) 40°23.96′ N. lat., 125°56.83′ W. long.;
(14) 40°24.04′ N. lat., 125°56.82′ W. long.;
(15) 40°25.68′ N. lat., 125°09.77′ W. long.;
(16) 40°21.03′ N. lat., 124°33.96′ W. long.;
(17) 40°25.72′ N. lat., 124°24.15′ W. long.; and connecting back to 40°25.23′ N. lat., 124°24.06′ W. long.

(oo) *Anacapa Island SMCA.* Anacapa Island SMCA is bounded by mean high water and straight lines connecting all of the following points in the order stated:
(1) 34°00.80′ N. lat., 119°26.70′ W. long.;
(2) 34°05.00′ N. lat., 119°26.70′ W. long.;
(3) 34°05.00′ N. lat., 119°24.60′ W. long.;
(4) 34°00.40′ N. lat., 119°24.60′ W. long.

(pp) *Anacapa Island SMR.* Anacapa Island SMR is bounded by mean high water and straight lines connecting all of the following points in the order stated:
(1) 34°00.40′ N. lat., 119°24.60′ W. long.;
(2) 34°05.00′ N. lat., 119°24.60′ W. long.;
(3) 34°05.00′ N. lat., 119°21.40′ W. long.;
(4) 34°01.00′ N. lat., 119°21.40′ W. long.

(qq) *Carrington Point.* Carrington Point is bounded by mean high water and straight lines connecting all of the following points:
(1) 34°01.30′ N. lat., 120°05.20′ W. long.;
(2) 34°04.00′ N. lat., 120°05.20′ W. long.;
(3) 34°04.00′ N. lat., 120°01.00′ W. long.;
(4) 34°00.50′ N. lat., 120°01.00′ W. long.;
(5) 34°00.50′ N. lat., 120°02.80′ W. long.;

(rr) *Footprint.* Footprint is defined by straight lines connecting all of the following points in the order stated:
(1) 33°59.00′ N. lat., 119°26.00′ W. long.;
(2) 33°59.00′ N. lat., 119°31.00′ W. long.;
(3) 33°54.11′ N. lat., 119°31.00′ W. long.;
(4) 33°54.11′ N. lat., 119°26.00′ W. long.; and connecting back to 33°59.00′ N. lat., 119°26.00′ W. long.

(ss) *Gull Island.* Gull Island is bounded by mean high water and straight lines connecting all of the following points in the order stated:
(1) 33°58.02′ N. lat., 119°51.00′ W. long.;
(2) 33°58.02′ N. lat., 119°53.00′ W. long.;
(3) 33°51.63′ N. lat., 119°53.00′ W. long.;
(4) 33°51.62′ N. lat., 119°48.00′ W. long.;
(5) 33°57.70′ N. lat., 119°48.00′ W. long.

(tt) *Harris Point.* Harris Point is bounded by mean high water and straight lines connecting all of the following points in the order stated:
(1) 34°03.10′ N. lat., 120°23.30′ W. long.;
(2) 34°12.50′ N. lat., 120°23.30′ W. long.;
(3) 34°12.50′ N. lat., 120°18.40′ W. long.;
(4) 34°01.80′ N. lat., 120°18.40′ W. long.;
(5) 34°02.90′ N. lat., 120°20.20′ W. long.;
(6) 34°03.50′ N. lat., 120°21.30′ W. long.;

(uu) *Harris Point Exception.* An exemption to the Harris Point reserve, where commercial and recreational take of living marine resources is allowed, exists between mean high water in Cuyler Harbor and a straight line connecting all of the following points:
(1) 34°02.90′ N. lat., 120°20.20′ W. long.;
(2) 34°03.50′ N. lat., 120°21.30′ W. long.;

(vv) *Judith Rock.* Judith Rock is bounded by mean high water and a straight line connecting all of the following points in the order stated:
(1) 34°01.80′ N. lat., 120°26.60′ W. long.;
(2) 33°58.50′ N. lat., 120°26.60′ W. long.;
(3) 33°58.50′ N. lat., 120°25.30′ W. long.;
(4) 34°01.50′ N. lat., 120°25.30′ W. long.

(ww) *Painted Cave.* Painted Cave is bounded by mean high water and a straight line connecting all of the following points in the order stated:
(1) 34°04.50′ N. lat., 119°53.00′ W. long.;
(2) 34°05.20′ N. lat., 119°53.00′ W. long.;
(3) 34°05.00′ N. lat., 119°51.00′ W. long.;
(4) 34°04.00′ N. lat., 119°51.00′ W. long.

(xx) *Richardson Rock.* Richardson Rock is defined by straight lines connecting all of the following points in the order stated:
(1) 34°10.40′ N. lat., 120°28.20′ W. long.;

(2) 34°10.40′ N. lat., 120°36.29′ W. long.;

(3) 34°02.21′ N. lat., 120°36.29′ W. long.;

(4) 34°02.21′ N. lat., 120°28.20′ W. long.; and connecting back to 34°10.40′ N. lat., 120°28.20′ W. long.

(yy) *Santa Barbara.* Santa Barbara is bounded by mean high water and straight lines connecting all of the following points in the order stated:

(1) 33°28.50′ N. lat., 119°01.70′ W. long.;

(2) 33°28.50′ N. lat., 118°54.54′ W. long.;

(3) 33°21.78′ N. lat., 118°54.54′ W. long.;

(4) 33°21.78′ N. lat., 119°02.20′ W. long.;

(5) 33°27.90′ N. lat., 119°02.20′ W. long.

(zz) *Scorpion.* Scorpion is bounded by mean high water and a straight line connecting all of the following points in the order stated:

(1) 34°02.94′ N. lat., 119°35.50′ W. long.;

(2) 34°09.35′ N. lat., 119°35.50′ W. long.;

(3) 34°09.35′ N. lat., 119°32.80′ W. long.;

(4) 34°02.80′ N. lat., 119°32.80′ W. long.

(aaa) *Skunk Point.* Skunk Point is bounded by mean high water and straight lines connecting all of the following points in the order stated:

(1) 33°59.00′ N. lat., 119°58.80′ W. long.;

(2) 33°59.00′ N. lat., 119°58.02′ W. long.;

(3) 33°57.10′ N. lat., 119°58.00′ W. long.;

(4) 33°57.10′ N. lat., 119°58.20′ W. long.;

(bbb) *South Point.* South Point is bounded by mean high water and straight lines connecting all of the following points in the order stated:

(1) 33°55.00′ N. lat., 120°10.00′ W. long.;

(2) 33°50.40′ N. lat., 120°10.00′ W. long.;

(3) 33°50.40′ N. lat., 120°06.50′ W. long.;

(4) 33°53.80′ N. lat., 120°06.50′ W. long.

[FR Doc. 06–209 Filed 1–11–06; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 71, No. 8

Thursday, January 12, 2006

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–304]

United States Standards for Grades of Mangos

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is establishing voluntary United States Standards for Grades of Mangos. The standards are intended to provide industry with a common language and uniform basis for trading, thus promoting orderly and efficient marketing of fresh mangos.

EFFECTIVE DATE: February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Cheri Emery, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661, South Building, Stop 0240, Washington, DC 20250–0240, fax (202) 720–8871, call (202) 720–2185, or e-mail *Cheri.Emery@usda.gov*. The United States Standards for Grades of Mangos is available at the above address or by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda. gov/standards/stanfrfv.htm*.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements, no longer appear in the Code of Federal Regulations, but are maintained by the USDA/AMS/Fruit and Vegetable Programs.

AMS is establishing United States Standards for Grades of Mangos using procedures that appear in Part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36).

Background

On December 16, 2003, AMS published a notice in the **Federal Register** (68 FR 69984) soliciting comments for the possible development of United States Standards for Grades of Mangos. Based on the comments received and information gathered, AMS developed proposed grade standards for Mangos. A notice was then published in the March 11, 2005, **Federal Register** (70 FR 12173) requesting comments on the proposed United States Standards for Grades of Mangos. The proposed standards contained sections pertaining to grades, sizes, tolerances, application of tolerances, definitions, and a table of defects. The following grades as well as a tolerance for each grade would be established: U.S. Fancy, U.S. No. 1 and U.S. No. 2. In addition, ''Application of Tolerances'' section and ''Size Requirements'' section with a table listing size designations would also be established. The standards defined ''Injury,'' ''Damage,'' ''Serious damage,'' along with specific basic requirements and other defects. Also included was a ''Classification of Defects'' section, in a table format, which would list some of the various defects affecting mangos and scoring guides for the particular grade involved. In response to this notice a request was received from a national trade association representing produce receivers for an extension of the comment period. Following a review of the request, AMS published a notice in the July 1, 2005, **Federal Register** (38091) extending the comment period. AMS received eighteen comments from the mango industry on the proposed standards. The comments are available by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/fv/fpbdocketlist.htm*.

AMS received fourteen comments opposing the size proposed in the table because it did not include some of the currently marketed sizes. The commenters stated that the table was limiting because it did not take into account different varieties. Some felt the table was too inconsistent by suggesting a four ounce and a six ounce difference between the top and the bottom of the size. In addition, three of those commenters stated that the customer base and the existing packing house technology would prevent the industry from implementing the size requirement. The comments suggesting that the table be removed have merit. Accordingly, the size section of the standards is removed.

The proposed standard provided that ''soft'' would be scored as a defect. AMS received three comments that stated that the word ''soft'' was not a negative attribute and therefore should not be used as a term which may cause confusion in the mango industry. They went on further to state that consumers are taught that mangos are ripe when they yield to gentle pressure or are soft and that ''overripe'' was a negative attribute. In addition, two commenters referred to the defect as overripe in their table of classification of defects with their scoring guides in the comments which were submitted in the form of quality assurance standards. Therefore, based on the comments received, the references to ''soft'' are removed and replaced with the word ''overripe.'' The term overripe will now also be defined in the standard as follows: ''Overripe'' means that flesh of the mango yields to slight pressure and is beginning to disintegrate and is past commercial utility. Also, one commenter stated there was some confusion over the term ''Soft nose.'' Upon further review, we believe that use of the term would be confusing; therefore, this term has been eliminated from the requirements of the grades and from the classification of defects table.

Three commenters expressed the concern that the scoring guide for the classification of skin defects such as external (surface) discoloration and sunken discolored areas were too tight. One commenter believed that a majority of the fruit being shipped today would not even pass the U.S. No. 2 grade due

to skin defects such as sap burn, abrasions, freckling, pitting, or other discolorations that do not affect the eating quality of the fruit. The commenter went on to state, ''At the same time, we must not allow normal levels of minor skin defects to cause the fruit to fall completely out of grade and destroy any commercial value the fruit would otherwise have without the grade standard.'' Another commenter stated, ''In the Ataulfo variety, some resin spots on the skin vanish while reaching yellow color.'' However, one commenter felt that the scoring guides were too loose. Based upon the comments received, AMS believes it is appropriate to increase the percentage of the surface affected before scoring of certain skin defects. Therefore, external (surface) discoloration was increased from ten and fifteen percent to aggregate areas of more than fifteen and twenty-five percent for damage and serious damage respectively in the classification of defects table. The skin defect shriveling was changed from scored when present in any amount, when affecting an aggregate are more than five percent of the surface, and when affecting an aggregate area more than ten percent of the surface to five, fifteen, and twenty-five percent respectively for injury, damage, and serious damage in the classification of defects table. AMS believes that the sunken discolored areas category does not need adjustment because it is a combination defect and combination defects affect the marketing of mangos more than surface discoloration or sunken areas alone.

Additionally, AMS believes the defect Anthracnose should also be removed from the classification of defects table. There may be difficulty in identifying this defect. This defect has various symptoms such as superficial black spots and streaks or fruit staining that then may become sunken and eventually lead to fruit rot. However, this defect will be scored according to the general definitions of injury, damage, and serious damage.

The adoption of these standards will provide the rapidly growing mango industry with grade standards similar to those extensively in use by the fresh produce industry to assist in orderly marketing of other commodities.

The official grade of a lot of mangos covered by these standards will be determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (Sec. 51.1 to 51.61).

The United States Standards for Grades of Mangos will become effective 30 days after publication in the **Federal Register**.

Authority: 7 U.S.C. 1621–1627.

Dated: January 6, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–281 Filed 1–11–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–05–311]

United States Standards for Grades of Muscadine (Vitis Rotundifolia) Grapes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is establishing a voluntary United States Standards for Grades of Muscadine (Vitis Rotundifolia) Grapes. AMS received a request from an industry group representing muscadine grape growers to develop a standard that will provide a common language for trade and a means of measuring value in the marketing of muscadine grapes, thus promoting orderly and efficient marketing of muscadine grapes.

DATES: *Effective Date:* February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Cheri Emery, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1661 South Building, STOP 0240, Washington, DC 20250–0240, Fax (202) 720–8871 or call (202) 720–2185; E-mail *Cheri.Emery@usda.gov*. The United States Standards for Grades of Muscadine (Vitis Rotundifolia) Grapes will be available either through the address cited above or by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/standards/stanfrfv.htm*.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities. AMS makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements no longer appear in the Code of Federal Regulations, but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is establishing the voluntary United States Standards for Grades of Muscadine (Vitis Rotundifolia) Grapes using procedures that appear in part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36).

Background

AMS received a request from an industry group representing muscadine grape growers to develop a standard that will provide a common language for trade and a means of measuring value in the marketing of muscadine grapes. Based on information gathered and comments rendered by the industry, AMS developed a proposed U.S. Standards for Grades of Muscadine (Vitis Rotundifolia) Grapes. The proposal would establish the following grades as well as a tolerance for each grade: U.S. Extra No. 1 and U.S. No. 1. In addition, proposed ''Application of Tolerances'' and ''Size Classifications'' sections would be established. This proposal also defines ''Damage,'' ''Serious Damage,'' specific basic requirements and other defects.

On August 8, 2005, AMS published a notice in the **Federal Register** (69 FR 58879) soliciting comments on the proposed United States Standards for Grades of Muscadine (Vitis Rotundifolia) Grapes.

In response to our request for comments, AMS received one comment from an industry group representing growers that was in favor of the proposed standard, and requested the standard be published with no further changes.

Based on the comment received and information gathered, AMS believes that the standard, as proposed, is beneficial to the industry and provides a common language for trade.

The official grade of a lot of muscadine grapes covered by these standards is determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (Sec. 51.1 to 51.61).

The United States Standards for Grades of Muscadine (Vitis Rotundifolia) Grapes will become

effective 30 days after the publication of this notice in the **Federal Register**.

Authority: 7 U.S.C. 1621–1627.

Dated: January 6, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–223 Filed 1–11–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Miller West Fisher Project, Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of vegetation management through commercial timber harvest, precommercial thinning and prescribed fire; access management changes; trail construction and improvement; treatment of fuels in campgrounds; and watershed rehabilitation activities. The project is located in the Silverfish planning subunit on the Libby Ranger District, Kootenai National Forest, Lincoln County, Montana, and south of Libby, Montana.

Scoping Comment Date: The scoping period will close and comments will be due 30 days following publication of this notice.

ADDRESSES: Written comments and suggestions concerning the scope of the analysis should be sent to Malcolm R. Edwards, District Ranger, Libby Ranger District, 12557 Hwy 37, Libby, MT 59923.

FOR FURTHER INFORMATION CONTACT: Contact Leslie Ferguson, Team Leader, Libby Ranger District, 12557 Hwy 37, Libby, MT 59923. Phone: (406) 293–7773.

SUPPLEMENTARY INFORMATION: The project area is approximately 20 air miles south of Libby, Montana, within all or portions of T27N, R29W–R31W, T26N, R29W–R31W, and T25N, R29W–R31W, PMM, Lincoln County, Montana. The area contains the Miller, West Fisher and Silver Butte Creek watersheds.

The purpose and need for this project is to (1) Maintain ecosystem function and vegetative health; (2) Reduce hazardous fuels and restore natural fire regimes; (3) Provide commodities; (4) Provide appropriate levels and types of access while minimizing impacts to resources; (5) Maintain or improve watershed condition; (6) Maintain or improve wildlife habitat; and (7) Improve recreational opportunities through several segments of trial reconstruction, and fuels treatment in Lake Creek campground.

To meet this purpose and need this project proposes:

(1) Vegetation treatments, including commercial timber harvest and associated fuel treatments, precommercial thinning, and prescribed burning without associated timber harvest. Vegetation treatments total 5,800 acres of treated area.

(2) Road and access management, including access changes new road construction, and road storage and decommissioning. Access changes would occur over approximately 8.72 miles. Approximately 1.2 miles of new road construction if proposed. Approximately 12.1 miles of road storage and 0.87 of road decommissioning are also proposed.

(3) Improvement, construction and reconstruction of trail tread for a total of 5.5 miles in the project area.

(4) Fuels and hazardous tree removal in Lake Creek Campground.

(5) Watershed condition improvement in the form of best management practices (BMP) implementation, including installation of ditch relief culverts, culvert replacement, surface water deflectors and cleaning ditches is proposed for all haul routes. Additional BMP work on roads not used for timber haul is proposed and will be performed as funding becomes available. Stream stabilization projects are also proposed.

(6) Design features and mitigations to maintain and protect resource values.

Range of Alternatives: The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative in which none of the proposed activities will implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

Public Involvement and Scoping: The public is encouraged to take part in the process and to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, Tribal governments, and other individuals or organizations that may be interested in, or affected by, the proposed action. This input will be used in preparation of the draft and final EIS. The scoping process will include:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying alternatives to the proposed action.
4. Exploring additional alternatives that will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this proposal (i.e. direct, indirect, and cumulative effects and connected actions).

Estimated Dates For Filing: The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in April of 2006. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The final EIS is scheduled to be completed in July 2006. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and to applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations: The Forest Service believes 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 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 substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy

of the statement or the merit of the alternatives discussed. 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.

Responsible Official: As the Forest Supervisor of the Kootenai National Forest, 1101 U.S. Highway 2 West, Libby, MT 59923, Bob Castaneda is the Responsible Official. As the Responsible Official, Bob will decide if the proposed project will be implemented. Bob will document the decision and reasons for the decision in the Record of Decision. Bob has delegated the responsibility for preparing the DEIS and FEIS to Malcolm R. Edwards, District Ranger, Libby Ranger District.

Dated: January 4, 2006.

Cami Winslow,

Acting Forest Supervisor, Kootenai National Forest.

[FR Doc. 06–248 Filed 1–11–06; 8:45am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Finding of No Significant Impact for Rehabilitation of Grade Stabilization Structures S–27, S–31 and S–32 Papillion Creek Watershed, Sarpy County, NE

Introduction

The Rehabilitation of Grade Stabilization Structures S–27, S–31 and S–32 in Papillion Creek Watershed is a federally assisted action authorized for planning under Public Law 83–566, the Watershed Protection and Flood Prevention Act as amended by section 313 of Public Law 106–472, the Small Watershed Rehabilitation Amendments of 2000. An environmental assessment was undertaken in conjunction with the development of the supplemental watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, Nebraska 68508–3866.

Recommended Action

Proposed is the rehabilitation to High Hazard Criteria of three grade stabilization structures, Papillion Creek Watershed structures S–27, S–31 and S–32 that protect the drainage areas of 152 acres, 249 acres and 223 acres respectively.

Effect of Recommended Action

Rehabilitation of the structures will meet state dam safety requirements for High Hazard Class (c) and prolong the life of the structures and pools for 100 years. The existing principal spillways would be removed and replaced, the auxiliary spillways would be widened, the top of dam would be raised to provide a combination of storage capacity and auxiliary spillway conveyance to pass the design storm without overtopping the dams, and some of the accumulated sediment would be removed from GSS S–27.

Sediment delivery to downstream areas will continue to be held back.

If there is a significant cultural resource discovery during construction, appropriate notice will be made by NRCS to the State Historic Preservation Officer and the National Park Service. Consultation and coordination have been and will continue to be used to ensure the provisions of section 106 of Public Law 89–665 have been met and to include provisions of Public Law 89–523, as amended by Public Law 93–291. NRCS will take action as prescribed in NRCS GM 420, Part 401, to protect or recover any significant cultural resources discovered during construction.

No endangered or threatened species in the watershed will be adversely affected by the project.

No significant adverse environmental impacts will result from installations. The construction process and temporary draining of the pool may cause minor inconveniences to local residents during construction.

Alternatives

Three alternatives were analyzed in this plan.

No Action alternative includes a sponsor's constructed breach. This alternative would remove a portion of the embankment necessary to establish stable overbank velocities. A series of drop spillway structures would be constructed to control the change in elevation at each structure.

Federal Decommissioning alternative would remove a portion of the embankment necessary to establish stable overbank velocities. A series of drop spillway structures would be constructed to control the change in elevation at each structure.

Rehabilitation to High Hazard Criteria alternative, the structures would be rehabilitated to current criteria and would be brought into compliance with state dam safety regulations for high hazard structures. The life of the structures would be extended for 100 years. Grade stabilization and sediment control would continue to be provided by the structure, pool and surrounding area.

Consultation-Public Participation

The Papio-Missouri River Natural Resources District submitted an application for assistance in May 9, 2003. The request was a result of local concern and interest in extending the service life of these aging watershed structures and addressing dam safety.

Scoping meetings were held September 30, 2004. An afternoon meeting was held involving interdisciplinary efforts. Nebraska Game and Parks Commission, Papio-Missouri River Natural Resources District, Nebraska Department of Natural Resources, U.S. Army Corps of Engineers, Environmental Protection Agency, Douglas/Sarpy County Extension Service, and the City of Bellevue were in attendance. An evening meeting was held with twenty-six local residents in attendance and 12 representatives from the NRCS, NRD and HDR Engineering, Inc. A second public meeting for residents was held March 3, 2005.

The environmental assessment was transmitted to all participating and interested agencies, groups, and individuals for review and comment on May 20, 2005. The public meetings were held to keep all interested parties informed of the study progress and to obtain public input to the supplemental plan and environmental evaluation.

Agency consultation and public participation to date have shown no unresolved conflicts with the implementation of the selected plan.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant local, regional or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the Rehabilitation of Grade Stabilization Structures S–27, S–31 and S–32 in Papillion Creek Watershed is not required.

Stephen K. Chick,

State Conservationist.

[FR Doc. E6–190 Filed 1–11–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Finding of No Significant Impact for Upper Salt Creek 19–B Rehabilitation; Lancaster County, NE

Introduction

The Upper Salt Creek 19–B Rehabilitation is a federally assisted action authorized for planning under Public Law 83–566, the Watershed Protection and Flood Prevention Act as amended by Section 313 of Public Law 106–472, The Small Watershed Rehabilitation Amendments of 2000. An environmental assessment was undertaken in conjunction with the development of the supplemental watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, Nebraska 68508–3866.

Recommended Action

Proposed is the rehabilitation of one floodwater retarding structure, Upper Salt Creek 19–B on Wagon Train Creek above Wagon Train Lake Recreation Area. The Upper Salt Creek 19–B structure controls the drainage of 585 acres.

Effect of Recommended Action

Rehabilitation of the structure will meet State dam safety requirements and prolong the life of the structure and pool for 100 years. The permanent pool will decrease in size from 8.5 acres to 6.0 acres and the temporary flood pool will increase from 26.6 acres to 27.0 acres.

Sediment delivery to downstream areas including Wagon Train Lake will continue to be held back.

If there is a significant cultural resource discovery during construction, appropriate notice will be made by NRCS to the State Historic Preservation Officer and the National Park Service. Consultation and coordination have been and will continue to be used to ensure the provisions of Section 106 Public Law 89–665 have been met and to include provisions of Public Law 89–523, as amended by Public Law 93–291. NRCS will take action as prescribed in NRCS GM 420, Part 401, to protect or recover any significant cultural resources discovered during construction.

No endangered or threatened species in the watershed will be adversely affected by the project.

No significant adverse environmental impacts will result from installations except for temporary draining of the pool and minor inconveniences to local residents during construction.

Alternatives

Three alternatives were analyzed in this plan.

No Action alternative: the structure is breached by the sponsor in approximately four years. The structure will continue to be out of compliance with State dam safety regulations until it is breached. Flood protection and sediment control provided by the structure would end and increased flooding and associated problems would increase.

Decommissioning alternative: the structure would be removed and would therefore not be out of compliance with the State dam safety regulations. Flood protection and sediment control provided by the structure would end and increased flooding and associated problems would increase.

Rehabilitation to High Hazard Criteria alternative: the structure would be rehabilitated to current criteria and would be brought into compliance with State dam safety regulations for high hazard structures. Flood protection and sediment control would continue to be provided by the structure, pool and surrounding area.

Consultation—Public Participation

The Lower Platte South Natural Resources District submitted an application for assistance in January 2001. The request was a result of local concern and interest in addressing dam safety, flood protection, and sediment control.

A scoping meeting was held June 6, 2002 involving interdisciplinary efforts. Nebraska Game and Parks Commission, Lancaster County Roads, Lower Platte South Natural Resources District, Nebraska Department of Natural Resources, Resource Conservation and Development, University of Nebraska Extension Service, and local residents were in attendance.

The environmental assessment was transmitted to all participating and interested agencies, groups, and individuals for review and comment in July 2003. Public meetings were held throughout the planning process to keep all interested parties informed of the study progress and to obtain public input to the plan and environmental evaluation.

Agency consultation and public participation to date have shown no unresolved conflicts with the implementation of the selected plan.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant local, regional or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the Upper Salt Creek 19–B Rehabilitation is not required.

Stephen K. Chick,

State Conservationist.

[FR Doc. E6–189 Filed 1–11–06; 8:45 am]

BILLING CODE 3410–16–P

CIVIL RIGHTS COMMISSION

Sunshine Act; Meeting

DATE AND TIME: Friday, January 20, 2006, 9:30 a.m., Commission Meeting.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda.
II. Approval of Minutes of December 16, 2005 Meeting.
III. Announcements.
IV. Commission Briefing: Native Hawaiian Government Reorganization Act.
- Introductory Remarks by Chairman.
- Speakers' Presentations.
- Questions by Commissioners and Staff Director.

V. Staff Director's Report.
VI. Program Planning.
- Voting Rights Statutory Report.
- campus Anti-Semitism.

VII. Management and Operations.
- Extension of GAO Implementation.
- July 2006 Commission Meeting Date.

VIII. State Advisory Committees.
- Working Group on SAC Reform.
- Arizona SAC Report.

IX. Briefing Report.
- Voting Rights Briefing Report.

CONTACT PERSON FOR FURTHER INFORMATION: Audrey Wright, Office of the Staff Director (202) 376–7700.

Kenneth L. Marcus,

Staff Director, Acting General Counsel.

[FR Doc. 06–357 Filed 1–10–06; 3:35 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

(Docket 1–2006)

Foreign–Trade Zone 43 Battle Creek, Michigan, Application for Subzone, Pfizer Inc, (Pharmaceutical Products), Kalamazoo, MI

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the City of Battle Creek, grantee of FTZ 43, requesting special-purpose subzone status for the manufacturing and warehousing facilities of Pfizer Inc (Pfizer), located in Kalamazoo, Michigan. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 3, 2006.

The Pfizer facilities (3,900 employees) consist of two sites on 498 acres in Kalamazoo, Michigan: Site 1 (456 acres) is located at 7171 Portage Road; and Site 2 (42 acres) is located at 2605 E. Kilgore Road. The facilities are used for the manufacturing and warehousing of pharmaceutical, consumer health care and animal health care products. Initial zone savings will come from the manufacture of Gelfoam, Rogaine, Zyvox and Revolution (HTS 3006.10, 3305.90, 3004.90, duty–free). Components and materials sourced from abroad represent some 6% of all parts consumed in manufacturing. The primary inverted tariff savings will come from the following components: aromatic butyric/valeric acids, derivatives of acyclic alcohols, heterocyclic compounds with oxygen and lactones (HTS 2905.59, 2915.60, 2932.29 and 2932.99, duty rates range from duty–free to 6.5%). The company has also indicated that future plant manufacturing could involve pharmaceutical products under the following HTS numbers: 2309, 2915, 2916, 2917, 2918, 2920, 2921, 2922, 2923, 2924, 2925, 2926, 2928, 2930, 2931, 2932, 2933, 2934, 2935, 2936, 2937, 2938, 2939, 2941, 2942, 3001, 3002, 3003, 3004, 3006, 3305, 3804, 3808, 3822, 3824, 3911, 3913, 3914, 9817. Potential pharmaceutical product components include the following categories: 0511, 1108, 1301, 1302, 1504, 1505, 1520, 1521, 1702, 2102, 2106, 2207, 2501, 2519, 2526, 2710, 2811, 2821, 2825, 2827, 2835, 2836, 2840, 2843, 2844, 2845, 2851, 2902, 2903, 2904, 2905, 2906, 2907, 2908, 2909, 2910, 2911, 2912, 2913, 2914, 2915, 2916, 2917, 2918, 2921, 2922, 2923, 2924, 2926, 2930, 2931, 2932, 2933, 2934, 2935, 2936, 2937, 2939, 2940, 2941, 2942, 3301, 3306, 3503, 3504, 3505, 3507, 3812, 3815, 3821, 3822, 3824, 3905, 3907, 3910, 3912, 3913, 3914, 3919, 3921, 3923, 4016, 4802, 4804, 4817, 4819, 4821, 4823, 4901, 4908, 4911, 5601, 7010, 7607, 8309, 9018, 9602. In addition, the application indicates that they may import products under Chapter 32 or 42 of the HTSUS, but that such products would be admitted to the subzone in domestic or privileged–foreign status.

FTZ procedures would exempt Pfizer from Customs duty payments on the foreign components used in export production. Some 35 percent of the plant's shipments are exported. On its domestic sales, Pfizer would be able to choose the duty rates during Customs entry procedures that apply to pharmaceutical products (duty–free) for the foreign inputs noted above. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB–Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is March 13, 2006. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 28, 2006).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce Export Assistance Center, 401 W. Fulton St., Suite 309–C, Grand Rapids, Michigan 49504.

Dated: January 3, 2006.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E6–237 Filed 1–11–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–533–820)

Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests by Essar Steel Ltd. (Essar), a producer/exporter of the subject merchandise, and by petitioners,[1] the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products (HRS) from India. This review covers one producer/exporter of the subject merchandise.

The Department has preliminarily determined that no dumping margin existed for the manufacturer/exporter during the POR. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results of review. We will issue the final results of review no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: January 12, 2006.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Jeffrey Pedersen, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–5193 or (202) 482–2769, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2001, the Department published in the **Federal Register** the antidumping duty order on HRS from India. *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot–Rolled Carbon Steel Flat Products from India*, 66 FR 60194 (December 3, 2001) (*Amended Final Determination*). On December 1, 2004, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the

[1] The petitioners are United States Steel Corporation (U.S. Steel) and Nucor Corporation (Nucor).

antidumping duty order on HRS from India. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 69 FR 69889 (December 1, 2004). In accordance with 19 CFR § 351.213(b)(2), on December 30, 2004, Essar requested that the Department conduct an administrative review of its sales and entries of subject merchandise into the United Stated during the POR. Additionally, in accordance with 19 CFR § 351.213(b)(1), the petitioners requested that the Department conduct a review of Essar. On January 31, 2005, the Department initiated an administrative review of Essar. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 4818 (January 31, 2005).

On January 6, 2005, the Department issued its antidumping questionnaire to Essar. On February 9, 2005, Essar requested that it be allowed to report comparison market sales for only a portion of the period of review (POR) (specifically, the 90/60 day window period surrounding the one U.S. sale made during the POR). On March 21, 2005, the Department allowed Essar to limit the reporting period for its comparison market sales to the period April 1, 2004, through November 30, 2004. See memorandum to Holly A. Kuga regarding request for limited reporting periods. In February and March 2005, Essar responded to the Department's antidumping questionnaire. The Department issued numerous supplemental questionnaires to Essar and received timely responses to each one. The petitioners submitted comments regarding Essar's questionnaire responses on May 20, 2005, and June 7, 2005.

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 245 days. On August 24, 2005, the Department extended the time limit for the preliminary results of review until January 3, 2005. *See Certain Hot–Rolled Carbon Steel Flat Products from India: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 49556 (August 24, 2005).

During November 2005, the Department conducted a verification of Essar. The Department is conducting this administrative review in accordance with section 751 of the Act.

Period of Review

The POR is December 1, 2003, through November 30, 2004.

Scope of the Order

The products covered by the antidumping duty order 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 the order.

Specifically included within the scope of the order 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 the order, 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 the order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of the order:

- Alloy HRS 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 the order 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 the order, 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 customs purposes, the written description of the merchandise under review is dispositive.

Verification

As provided in section 782(i) of the Act, the Department conducted a verification of the sales and cost information provided by Essar. The Department conducted this verification using standard verification procedures, including on–site inspection of the manufacturer's facilities, examination of relevant sales, cost, production and financial records, and selection of relevant source documentation as exhibits. The Department's verification findings are identified in the sales and cost verification memoranda dated December 27, 2005, the public versions of which are on file in the Central Records Unit (CRU), room B099 of the main Commerce building.

Date of Sale

Essar reported the invoice date for both its home market and U.S. sales to be the date of sale. Although the Department maintains a presumption that the invoice date is the date of sale (19 CFR § 351.401(i)), ''{i}f the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale.'' *See Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27349 (May 19, 1997) (Preamble). The record evidence does not indicate that the material terms of home market sales are finally established on a date other than the date of the invoice. Thus, the Department is preliminarily using the invoice date as the date of Essar's home market sales. However, with respect to Essar's U.S. sale, the Department found no evidence of changes to the material terms of sale after the contract date (*e.g.*, changes to the price, quantity, production or shipment schedules). Therefore, the Department is preliminarily using the contract date as the date of Essar's U.S. sale. This is consistent with the Department's finding in the most recently completed review in this proceeding. *See Certain Hot–Rolled Carbon Steel Flat Products from India: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 68 FR 74209 (December 23, 2003) (unchanged in the final results) (*First Hot–Rolled Review Prelim*).

Sales Outside the Ordinary Course of Trade

Essar reported that some of its home market sales during the POR were sales of overrun merchandise (*i.e.*, sales of a greater quantity of HRS than the customer ordered due to overproduction). At verification, we reviewed two types of overrun sales: (1) Sales of products on which neither Essar nor Essar's affiliate, ClickforSteel Services Limited (CFS), provide quality assurances (''as is'' sales); and (2) overproduction sold through CFS (CFS overruns). See the Essar Verification Report, dated December 27, 2005. Section 773(a)(1)(B) of the Act provides that normal value (NV) shall be based on the price at which the foreign like product is first sold, *inter alia*, in the ordinary course of trade. Section 771(15) of the Act defines ''ordinary course of trade'' as the ''conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.'' In past cases, the Department has examined certain factors to determine whether ''overrun'' sales are in the ordinary course of trade. *See*, *e.g. Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot–Rolled, Flat–Rolled, Carbon Quality Steel Products from Brazil*, 64 FR 38756, 38770 (July 19, 1999). These factors include: (1) Whether the merchandise is ''off–quality'' or produced according to unusual specifications; (2) the comparative volume of sales and the number of buyers in the comparison market; (3) the average quantity of an overrun sale compared to the average quantity of a commercial sale; and (4) price and profit differentials in the comparison market. Based on our analysis of these factors and the terms of sale, we preliminarily determine that ''as is'' sales are not ordinary as compared to Essar's other home market sales of HRS. Therefore, we preliminarily determine that the ''as is'' sales are outside the ordinary course of trade. However, for the CFS overruns, based on the same analysis, we preliminary determine that these sales were made in the ordinary course of trade. Because our analysis makes use of business proprietary information, we have included the analysis in a separate memorandum. *See* Memorandum to the File from the Team Concerning Sales Outside the Ordinary Course of Trade: Essar Steel Limited, dated concurrently with this notice.

Comparison Methodology

In order to determine whether Essar sold HRS to the United States at prices less than NV, the Department compared the export price (EP) of the U.S. sale to the monthly weighted–average NV of sales of foreign like product made in the ordinary course of trade. *See* section 777A(d)(2) of the Act; *see also* section 773(a)(1)(B)(i) of the Act. In accordance with section 771(16) of the Act, the Department considered all products within the scope of the order under review that Essar sold in the comparison market during the POR to be foreign like products for purposes of determining appropriate product comparisons to HRS sold in the United States. The Department compared the U.S. sale to sales made in the comparison market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise made in the comparison market in the ordinary course of trade, the Department compared the U.S. sale to sales of the most similar foreign like product made in the ordinary course of trade. In making product comparisons, the Department selected identical and most similar foreign like products based on the physical characteristics reported by Essar in the following order of importance: Painted or not painted; quality; carbon content; yield strength; thickness; width; cut–to-length or coil; tempered or not tempered; pickled or not pickled; edge trim; and with or without patterns in relief. Generally, where there are no appropriate sales of foreign like product to compare to a U.S. sale, we compare the price of the U.S. sale to constructed value (CV), in accordance with section 773(a)(4) of the Act. In the instant review, however, there was no need to compare the price of the U.S. sale to CV, as there were comparable sales of the foreign like product in the home market.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP sale (there were no constructed export price (CEP) sales during the POR). The NV

LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP sales, the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than the EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

In determining whether separate LOTs existed in this review, we obtained information from Essar regarding the marketing stages for the reported U.S. and comparison market sales, including a description of the selling activities performed by Essar for each channel of distribution. Generally, if the reported LOTs are the same, the functions and activities of the seller at each level should be similar. Conversely, if a party reports that LOTs are different for different groups of sales, the selling functions and activities of the seller for each group should be dissimilar.

Essar reported that, during the POR, it sold HRS through two channels of distribution in the home market and one channel of distribution in the United States. Based upon our analysis of the selling functions performed by Essar, we preliminarily determine that Essar sold foreign like product and subject merchandise at the same LOT. Because our analysis makes use of business proprietary information, we have included the analysis in a separate memorandum. *See* Memorandum to the File from the Team Concerning Level of Trade Analysis, dated concurrently with this notice.

Export Price

The Department based the price of Essar's U.S. sale of subject merchandise on EP, as defined in section 772(a) of the Act, because, prior to importation, the merchandise was sold to an unaffiliated purchaser in the United States. We calculated EP using prices charged to the unaffiliated customer in the United States. In accordance with section 772(c)(2)(A) of the Act, in calculating EP, we made deductions from the starting price, where applicable, for foreign movement expenses (including brokerage and handling and inland freight), international freight, U.S. movement expenses, U.S. duties and importer handling fees. Based on our verification findings, we revised the shipment date for the U.S. sale. For details regarding this revision, see the Essar Verification Report, dated December 27, 2005, and the Analysis Memorandum for Essar Steel Ltd., dated concurrently with this notice.

Duty Drawback

Essar claimed an adjustment for duty drawback under the Duty Free Remission Certificate (DFRC) program. The Department applies a two–pronged test to determine whether to allow a duty drawback adjustment pursuant to section 772(c)(1)(B) of the Act. Specifically, the Department allows a duty drawback adjustment if it finds that: (1) Import duties and rebates are directly linked to, and are dependent upon, one another, and (2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product. *See Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 55965, 55968 (October 30, 1996).

Essar failed to demonstrate that it received a duty drawback from the Government of India under the DFRC program. Specifically, as of June 17, 2005, Essar had not imported materials or received an exemption, under its DFRC license. *See* Essar's June 17, 2005 supplemental questionnaire response at 4. Since Essar did not provide evidence of imports of raw materials under the DFRC program, pursuant to section 772(c)(1)(B) of the Act, we have not increased U.S. price by the amount of drawback claimed by Essar.

Normal Value

After testing home market viability, whether sales to affiliates were at arm's length, and whether home market sales were at below–cost prices, we calculated NV for Essar as noted in the ''Price–to-Price Comparisons'' section of this notice.

A. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, whether the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared the aggregate volume of Essar's home market sales of the foreign like product to the aggregate volume of its U.S. sale of subject merchandise. Because the aggregate volume of Essar's home market sales of foreign like product is more than five percent of the aggregate volume of its U.S. sale of subject merchandise, we based NV on sales of the foreign like product in Essar's home market. *See* section 773(a)(1)(C) of the Act.

B. Affiliated–Party Transactions and Arm's–Length Test

Essar reported sales of the foreign like product to affiliated end–users and resellers. The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price charged to the affiliated party is comparable to the price at which sales were made to parties not affiliated with the exporter or producer, *i.e.*, sales at arm's–length. *See* 19 CFR § 351.403(c). Sales to affiliated customers for consumption in the home market that are determined not to be at arm's–length are excluded from our analysis. Pursuant to 19 CFR § 351.403(c), and in accordance with the Department's practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's–length prices. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002).

To test whether Essar's sales to its affiliates were made at arm's–length prices, the Department compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, direct selling expenses, and packing. We included in our NV calculations those sales to affiliated parties that were made at arm's length prices. For Essar's sales to affiliates that did not pass the arm's length test, we have relied on the downstream sales of foreign like product to the first unaffiliated customer.

C. Cost of Production (COP) Analysis

In the most recently completed administrative review, the Department determined that Essar sold foreign like product at prices below the cost of producing the merchandise and excluded such sales from the

calculation of NV. *See First Hot–Rolled Review Prelim* (unchanged in the final results). As a result, the Department determined that there are reasonable grounds to believe or suspect that during the instant POR, Essar sold foreign like product at prices below the cost of producing the merchandise. *See* section 773(b)(2)(A)(ii) of the Act. Therefore, the Department initiated a sales below cost inquiry with respect to Essar.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, for each unique foreign like product sold by Essar during the POR, we calculated a weighted–average COP based on the sum of Essar's materials and fabrication costs, and general and administrative expenses, including interest expenses. We relied on the costs submitted by Essar except for the following items: cost variance, material costs, energy costs, pellet costs, fixed costs, and interest expense. We adjusted material costs to reflect the import duties normally associated with imported raw material. *See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review* 68 FR 6889 (February 11, 2003). Essar did not include these duties in the reported costs because it imported the raw materials under the Duty Entitlement Passbook Scheme. Pursuant to section 773(f)(3) of the Act, we adjusted energy and pellet costs to reflect the per–unit prices that Essar's suppliers charged their unaffiliated customers during the POR (Essar is affiliated to its electricity and pellets suppliers). Pursuant to section 773(f)(2) of the Act, we increased the reported interest expense to reflect imputed interest on certain debt that Essar owed parties with which it is affiliated. This approach is consistent with the Department's practice. *See Notice of Final Results of the Eight Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination to Revoke in Part* 70 FR 71464 (November 29, 2005) and accompanying *Issues and Decision Memorandum* at Comment 10 (''It is the Department's practice to impute interest expense on affiliated party loans not granted at market interest rates.''). For details regarding these revisions, see the Essar Verification Report, dated December 27, 2005, and the Analysis Memorandum for Essar Steel Ltd., dated concurrently with this notice.

2. Test of Comparison Market Sales Prices

In order to determine whether sales were made at prices below the COP, on a product–specific basis we compared Essar's weighted–average COPs, adjusted as noted above, to the prices of its comparison market sales of foreign like product, as required under section 773(b) of the Act. In accordance with sections 773(b)(1)(A) and (B) of the Act, in determining whether to disregard comparison market sales made at prices less than the COP we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time. We compared the COP to comparison market sales prices, less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses.

3. Results of the COP Test

Pursuant to section 773(b)(1) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices less than the COP, we did not disregard any below–cost sales of that product because the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product were made at prices less than the COP during the POR, we determined such sales to have been made in ''substantial quantities'' and within an extended period of time pursuant to sections 773(b)(1)(A) of the Act. In such cases, because we used POR average costs, we also determined, in accordance with section 773(b)(1)(B) of the Act, that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time. Based on this test, we identified and disregarded certain below–cost sales by Essar.

Price–to-Price Comparisons

We calculated NVs for Essar using the prices at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same LOT as the comparison U.S. sale.

For Essar, we based NV on the prices of its sales to unaffiliated customers and those sales to affiliated parties that were made at arm's length prices in its home market, India. We made price adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In accordance with sections 773(a)(6)(A), (B), and (C) of the Act, where appropriate, we deducted from the starting price movement expenses, home market packing costs, credit expenses and other direct selling expenses and added U.S. packing costs, credit expenses, and other direct selling expenses. In addition, where applicable, pursuant to 19 CFR § 351.410 (e), we made a reasonable allowance for other selling expenses where commissions were paid in only one of the markets under consideration. Based on our verification findings, we revised gross unit price, returns, rebates, quality claims, other credit note adjustments, credit expenses, indirect selling expenses, and brokerage and handling expenses reported by Essar. For details regarding these revisions, see the Essar Verification Report, dated December 27, 2005, and the Analysis Memorandum for Essar Steel Ltd., dated concurrently with this notice.

Currency Conversion

Pursuant to section 773A(a) of the Act, we converted amounts expressed in foreign currencies into U.S. dollar amounts based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we have preliminarily determined that the following weighted–average dumping margin exists for the period December 1, 2003, through November 30, 2004:

Manufacturer/Exporter	Margin (percent)
Essar Steel Limited	0.00

Public Comment

Within 10 days of publicly announcing the preliminary results of this review, we will disclose to interested parties any calculations performed in connection with the preliminary results. *See* 19 CFR § 351.224(b). Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. *See* 19 CFR § 351.310(c). If requested, a hearing will be held 44 days after the date of publication of this notice in the **Federal Register**, or the first business day thereafter. Interested parties are invited to comment on the preliminary results of this review. The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice in the **Federal Register**. Also, interested parties may file rebuttal briefs, limited to issues raised in the case briefs. The Department will consider rebuttal briefs filed not later

than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we request that parties submitting written comments provide the Department with a diskette containing an electronic copy of the public version of such comments. Unless the deadline for issuing the final results of review is extended, the Department will issue the final results of this administrative review, including the results of its analysis of issues raised in the written comments, within 120 days of publication of the preliminary results in the **Federal Register**.

Assessment Rates

Upon completion of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR § 351.212(b)(1), we calculated an importer–specific assessment rate for Essar's subject merchandise. If the importer–specific assessment rate is above de minimis, we will instruct CBP to assess the importer–specific rate uniformly on all entries made during the POR. The Department will issue appropriate assessment instructions directly to the CBP within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct CBP to assess the resulting assessment rate against the actual entered customs values for the subject merchandise on the importer entries during the review period.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Essar will be the rate established in the final results of this review, except if the rate is less than 0.5 percent, and therefore de minimis, the cash deposit will be zero; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 38.72 percent, which is the ''all others'' rate established in the LTFV investigation. *See Amended Final Determination*. These cash deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR § 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 27, 2006.

Stephen J. Claeys,

Assistant Secretary for Import Administration.

[FR Doc. E6–238 Filed 1–11–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–122–838)

Certain Softwood Lumber Products from Canada: Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 12, 2006.

FOR FURTHER INFORMATION CONTACT: Constance Handley or David Layton, at (202) 482–0631 or (202) 482–0371, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 2005, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on certain softwood lumber products from Canada, covering the period May 1, 2004, through April 30, 2005. *See Notice of Initiation of Antidumping Duty Administrative Review*, 70 FR 37749. The preliminary results are currently due no later than January 31, 2006. The review covers over four hundred producers/exporters of subject merchandise to the United States, of which eight are being individually examined.

Extension of Time Limit for Preliminary Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested.

We determine that it is not practicable to complete the preliminary results of this review within the original time limit due to a number of complex issues which must be addressed prior to the issuance of those results. For the first time in this proceeding, the Department employed a sampling methodology in selecting respondents. In order to obtain necessary information and to afford parties opportunities to comment on the Department's selection methodology, the Department did not conduct its respondent selection sampling procedure until November 23, 2005. See section 777A(b) of the Act (where the Department determines to limit the selection of respondents by sampling, the Department ''shall, to the greatest extent possible, consult with the exporters and producers regarding the method used to select exporters, producers or types of products''). Consequently, the Department requires additional time to analyze the parties' questionnaire responses, including the complex corporate structures and affiliations of the eight respondents in this review, issue any necessary supplemental questionnaires and conduct verifications.

Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review until no later than

May 31, 2006. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This notice of extension of the time limit is published in accordance with 751(a)(3)(A) of the Act.

Dated: January 5, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–239 Filed 1–11–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Tufts University, Notice of Decision on Application, for Duty–Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 05–044. Applicant: Tufts University, Somerville, MA. Instrument: Low Temperature Scanning Tunneling Microscope. Manufacturer: Omicron Nanotechnology, Germany. Intended Use: See notice at 70 FR 61603, October 25, 2005.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: stable imaging at temperatures down to 4 Kelvin with low thermal drift rates (<1 angstrom per hour) and low rms vibration amplitudes (< 0.005 angstrom in a 300 Hz bandwidth). It also has the capability of depositing molecules on the sample in the microscope stage at temperatures down to 4 Kelvin and tip retraction and return to the same area after deposition of molecules. Advice received from: A university research laboratory for advanced microstructures and devices (comparable case). It knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. E6–235 Filed 1–11–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty–Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 05–061. Applicant: University of Michigan, 2355 Bonisteel Boulevard, Ann Arbor, MI 48109–2104. Instrument: Application Specific Integrated Circuit. Manufacturer: Ideas ASA, Norway. Intended Use: The instrument is intended to be used as a compatible accessory for a unique 3-dimensional position sensitive CdZnTe semiconductor gamma–ray spectrometer. The article consists of a multi-channel charge sensing amplifier with very low noise of about 300 electrons rms for which three iterations have been developed in collaboration with Ideas ASA. The systems can get energy and 3D position information for not only single-interaction events, but for multiple-interaction events by using electron drift times. Excellent energy resolution for both single-interaction events (0.8% FWHM at 662 keV) and multiple-interaction events (1.3% FWHM at 662 keV) has been achieved. A new scalable detector array system with plug–in electronics is required for further development of the spectrometer. Application accepted by Commissioner of Customs: December 27, 20005.

Docket Number: 05–062. Applicant: University of Texas Medical Branch at Galveston, 301 University Boulevard, Galveston, TX 77555. Instrument: Electron Microscope, Model JEM–2200FS. Manufacturer: JEOL, Ltd., Japan. Intended Use: The instrument is intended to be used to examine and study:

(1) Biological macromolecules, cellular organelles and viruses
(2) Three dimensional structure
(3) Electron Microscope imaging at cryogenic temperatures
(4) Structure–functional relationship to pathologic potential
(5) Low electron radiation dose imaging of frozen–hydrated viruses to preserve structure.

Application accepted by Commissioner of Customs: December 27, 2005.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. E6–236 Filed 1–11–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Notice Requesting Comments on Intellectual Property Protection at Trade Events

Authority: 15 U.S.C. 4721, 4724; 22 U.S.C. 2452(a)(3); Pub. L. 86–14 (73 Stat. 18); Pub. L. 91–269 (84 Stat. 272).

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice requesting comments on intellectual property protection at trade events.

SUMMARY: The U.S. Department of Commerce requests comments from interested parties regarding issues related to Intellectual Property Rights (IPR) protection at trade events, including policies and current practices, and problems of infringement.

DATES: Comments should be received within 30 days from the date this notice appears in the **Federal Register**. Comments received after 30 days will be considered to the extent practicable.

ADDRESSES: The U.S. Department of Commerce, Room 2118, HCHB, 14th Street and Constitution Avenue, NW., Washington, DC 20230, Attn: Donald Huber; or e-mail to: *dhuber@mail.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Donald Huber at Tel: 202–482–2525; e-mail: *dhuber@mail.doc.gov.*

SUPPLEMENTARY INFORMATION: Secretary of Commerce Carlos M. Gutierrez

recently unveiled several new programs to fight intellectual property theft under the Administration's Strategy Targeting Organized Piracy (STOP!) initiative. As one component of this initiative, the Commerce Department is considering what steps to take to strengthen awareness and protection of IPR at Commerce-supported trade events, including trade fairs, expositions, and shows, both internationally and domestically. Specifically, the Department is considering to require, as a condition of its support for a trade event, that the organizer adopt a reasonable IPR policy and that the exhibitors agree to abide by such a policy and to attest that they have the necessary authority for their use of intellectual property at the event. (Commerce programs include the Trade Fair Certification Program and the International Buyer Program.)

In order to determine how best to strengthen IPR awareness and protection at trade events, the Department seeks input from trade events organizers and other interested parties to assist in assessing the breadth of the IPR protection problem at trade events generally; current private sector policies and practices regarding IPR protection at trade events; and what additional actions might be taken to address IPR problems.

The Department is particularly interested in:

1. The frequency and nature of IPR infringement incidents that they believe occur at trade events, including specific instances where they have experienced problems with IPR violations at a trade event;

2. any measures or written policies that trade events organizers currently implement pertaining to IPR protection; and

3. the benefits, and burdens, of the Department initiating reasonable IPR policies at trade events that it supports.

In particular, Commerce is interested in learning about existing private sector IPR protection policies or procedures used for trade events, including the nature of those policies; whether those policies apply to exhibitors, attendees, or both; and how such policies are enforced (e.g., organizer action or recourse to traditional legal remedies). Submission of a copy of any IPR policies or statements, whether in promotional literature and in exhibitor or attendee contracts, would be very useful to Commerce agencies in considering the need for and content of a policy that might apply to DOC-sponsored trade events.

Comments should be submitted in accordance with the information above. Comments received will be made available to the public. Commentators should not send confidential or proprietary information in response to this notice, as DOC may not be able to protect it from public disclosure.

Dated: January 4, 2006.

Donald L. Huber,

Acting Executive Director, Global Trade Programs, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce.

[FR Doc. E6–208 Filed 1–11–06; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Membership Solicitation

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of membership solicitation for Hydrographic Services Review Panel.

SUMMARY: This notice responds to the Hydrographic Services Improvement Act Amendments of 2002, Public Law 107–372, which requires the Under Secretary of Commerce for Oceans and Atmosphere to solicit nominations for membership on the Hydrographic Services Review Panel (the Panel). This advisory committee will advise the Under Secretary on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, (the Act) and such other appropriate matters as the Under Secretary refers to the Panel for review and advice.

DATES: Resumes should be sent to the address, e-mail, or fax specified and must be received by March 1, 2006.

ADDRESSES: Director, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Silver Spring, MD 20910, fax: 301–713–4019, e-mail: *Hydroservices.panel@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Captain Roger Parsons, Director, Office of Coast Survey, NOS/NOAA, 301–713–2770 x134, fax 301–713–4019, e-mail: *Roger.L.Parsons@noaa.gov.*

SUPPLEMENTARY INFORMATION: Under 33 U.S.C. 883a, *et seq.*, NOAA's National Ocean Service (NOS) is responsible for providing nautical charts and related information for safe navigation. NOS collects and compiles hydrographic, tidal and current, geodetic, and a variety of other data in order to fulfill this responsibility. The Hydrographic Services Review Panel provides advice on topics such as ''NOAA's Hydrographic Survey Priorities,'' technologies relating to operations, research and development, and dissemination of data pertaining to:

(a) Hydrographic surveying;
(b) Nautical charting;
(c) Water level measurements;
(d) Current measurements;
(e) Geodetic measurements; and
(f) Geospatial measurements.

The Panel comprises fifteen voting members appointed by the Under Secretary in accordance with section 105 of the Act. Members are selected on a standardized basis, in accordance with applicable Department of Commerce guidance. The Co-Director of the Joint Hydrographic Center and two other employees of the National Oceanic and Atmospheric Administration serve as nonvoting members of the Panel. The Director, Office of Coast Survey, serves as the Designated Federal Official (DFO). This solicitation is to obtain candidates to replace five of the voting members whose original three-year appointments expire in late 2006.

The voting members of the Panel are individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more disciplines relating to hydrographic surveying, tides, currents, geodetic and geospatial measurements, marine transportation, port administration, vessel pilotage, and coastal and fishery management. An individual may not be appointed as a voting member of the Panel if the individual is a full-time officer or employee of the United States. Any voting member of the Panel who is an applicant for, or beneficiary of, (as determined by the Under Secretary) any assistance under the Act shall disclose to the Panel that relationship, and may not vote on any matter pertaining to that assistance.

Voting members of the Panel serve for a term of four years. Members serve at the discretion of the Under Secretary and are subject to government ethics standards. Any individual appointed to a partial or full term may be reappointed for one additional full term. A voting member may serve until his or her successor has taken office. The Panel selects one voting member to serve as the Chair and another to serve as the Vice Chair. The Vice Chair acts as Chair in the absence or incapacity of the Chair but will not automatically become the Chair if the Chair resigns.

At a minimum, meetings occur biannually, and at the call of the Chair or upon the request of a majority of the voting members or of the Under

Secretary. Voting members receive compensation at a rate established by the Under Secretary, not to exceed the maximum daily rate payable under section 5376 of title 5, United States Code, when actually engaged in the performance of duties for such Panel and shall be reimbursed for actual and reasonable expenses incurred in the performance of such duties.

Dated: December 23, 2005.

Captain Roger L. Parsons,

Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E6–169 Filed 1–11–06; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by January 4, 2006.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: January 4, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Hurricane Relief Program.

Abstract: Formula grant applications are needed to identify those SEAs that are eligible applicants under the Hurricane Relief Program, and to obtain counts by State of students displaced by Hurricanes Katrina and Rita. The counts will be used to make formula payments to the SEAs to enable them to make formula payments to eligible LEAs and certain BIA and non-public schools that are educating displaced students including homeless children and youth.

Additional Information: This request for an emergency clearance is to collect extremely time-critical student data and related information in applications from State educational agencies (SEAs) that have local education agencies (LEAs) and Bureau of Indian Affairs (BIA) schools serving students displaced by Hurricanes Katrina and Rita. LEAs will also collect information from the parents of displaced nonpublic school children. This expedited collection is a direct result of an emergency initiative that Congress passed on December 22 and its purpose is to provide immediate aid for the costs related to the education of these displaced students for the 2005–2006 school year, including homeless children and youth. The data collected will be used by ED to make four Emergency Impact Aid formula grant payments to applicant SEAs based on quarterly student counts reported by LEAs. The SEAs will make four formula grant payments to applicant LEAs and BIA schools based on the quarterly student counts that they report to the SEAs, and LEAs in turn will be responsible for making payments to accounts for nonpublic school children. In addition, the first quarterly student count will be used to determine eligibility and payments for displaced homeless children and youth. Due to the urgency of distributing this application form and collecting the required information from interested participants, we are requesting an OMB emergency clearance of the Emergency Impact Aid application.

Frequency: Quarterly.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; individuals or household.

Reporting and Recordkeeping Hour Burden: Responses—13,200. *Burden Hours*—28,100.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2959. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *IC DocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *IC DocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–191 Filed 1–11–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 13, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 4, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.

Title: Lender's Application Process (LAP).

Frequency: On Occasion.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 58.

Burden Hours: 9.

Abstract: The Lender's Application Process is submitted by lenders who are eligible for reimbursement of interest and special allowance, as well as Federal Insured Student Loan (FISL) claims payment, under the Federal Family Education Loan Program. The information will be used by ED to update Lender Indentification Numbers (LID's) lenders names, addresses with 9 digit zip codes and other pertinent information.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2916. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *IC_DocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *IC_DocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–192 Filed 1–11–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.938B and 84.938C]

Grants and Cooperative Agreements; Availability

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice announcing availability of funds and application deadline for the Assistance for Homeless Youth program and the Emergency Impact Aid for Displaced Students program under sections 106 and 107 of the Hurricane Education Recovery Act, Division B, Title IV of Public Law 109–148.

SUMMARY: Under the Emergency Impact Aid for Displaced Students (Emergency Impact Aid) program (section 107 of the Hurricane Education Recovery Act, Division B, Title IV of Pub. L. 109–148 (the Act)), we will award grants to eligible State educational agencies (SEAs) to enable them to make emergency impact aid payments to eligible local educational agencies (LEAs) and eligible BIA-funded schools for the cost of educating public and nonpublic school students displaced by Hurricanes Katrina or Rita during school year 2005–2006. Under the Assistance for Homeless Youth program (section 106 of the Act), we will award grants to eligible SEAs to enable them to provide financial assistance to LEAs serving homeless children and youth displaced by Hurricanes Katrina or Rita in order to address the educational and related needs of these students in a manner consistent with section 723 of the McKinney-Vento Homeless Assistance Act.

An SEA will not apply separately for funding under the Emergency Impact Aid and Assistance for Homeless Youth programs. Rather, an SEA will submit a single application that covers both programs. The data that the SEA provides in its application will be used to determine allocations under both the Emergency Impact Aid program and the Assistance for Homeless Youth program. In this notice, we announce the availability of funds under the two programs and establish the deadline for submission of the single SEA grant application.

SEA Application Deadline: February 2, 2006.

SUPPLEMENTARY INFORMATION: There is available to SEAs under the Emergency Impact Aid program a total of $645 million and under the Assistance for Homeless Youth program a total of $5 million. We will use the data on the numbers of displaced public and nonpublic students that the Department is collecting under this application to determine the amount of funding that an SEA receives under the Emergency Impact Aid program.

Under the Assistance for Homeless Youth program, the Department is authorized to disburse funding to SEAs based on demonstrated need, as determined by the Secretary. The Secretary believes that the data that we are collecting under this application provides a reasonable and appropriate basis not only for allocating funds under the Emergency Impact Aid program, but also for determining the relative needs of SEAs for funding for public school students under the Assistance for

Homeless Youth program. Therefore, in order to minimize the burden on SEAs, we will use data on the numbers of displaced public school students that the Department is collecting under this application to make allocations under the Assistance for Homeless Youth program.

Available Funds under the Emergency Impact Aid program: $645,000,000.

Available Funds under the Assistance for Homeless Youth program: $5,000,000.

Period of Fund Availability under the Emergency Impact Aid program: SEAs, LEAs, and BIA-funded schools must obligate funds received under section 107 of the Act by July 31, 2006. The SEA must return to the Department any funds that are not obligated by SEAs, LEAs, or BIA-funded schools by this deadline.

Period of Fund Availability under the Assistance for Homeless Youth program: LEAs have until September 30, 2007 to obligate funds received under section 106 of the Act. We strongly encourage SEAs to make these funds available to LEAs at the earliest possible date. Furthermore, we strongly encourage LEAs that receive assistance under this program to obligate the funds in a timely fashion to address the immediate needs of homeless students displaced by Hurricanes Katrina or Rita.

LEA Application Deadline under the Emergency Impact Aid program: For the Emergency Impact Aid program, the Act requires LEAs to apply to their SEAs for funds no later than 14 days after the date of publication of this notice (*i.e.*, no later than January 26, 2006.

LEA Application Deadline under the Assistance for Homeless Youth program: There is no statutory deadline for LEA applications under this program. Rather, each SEA that receives funding under the Assistance for Homeless Youth program will set a reasonable deadline for the submission of LEA applications. The SEA will distribute funds to LEAs based on demonstrated need, for the purposes of carrying out section 723 of the McKinney-Vento Homeless Assistance Act.

Student Enrollment Data: In the application for SEA funding, we request quarterly data on the numbers of displaced students enrolled in public, nonpublic, and BIA-funded schools as of four different count dates. SEAs will report separate counts of students without disabilities and students with disabilities. SEAs are required to submit data for the first quarterly count in the initial applications. The Department encourages SEAs to provide enrollment data for the first two quarters of the 2005–2006 school year (*i.e.*, the two quarters that will have passed as of the date the SEA applications are due) in the initial applications. SEAs and LEAs that meet the initial deadlines may provide enrollment data for the subsequent quarters of the 2005–2006 school year at later dates.

We will use the enrollment data that are included in the SEA application to make initial payments under the Emergency Impact Aid program. In addition, we intend to use a portion of this data to make allocations under the Assistance for Homeless Youth program. Specifically, we intend to use the data on displaced public school students during the first two quarters, as reported in the SEA applications, to make final allocations under the Assistance for Homeless Youth program.

We also are aware that it may take some time for SEAs and LEAs to count, retroactively for the first and second quarters of the 2005–2006 school year, all students who may have now moved to other States or districts. Therefore, SEAs and LEAs that meet these specified timelines may make upward or downward revisions to their initial child counts in the event that they collect more satisfactory data that were not available at the time of their initial application submission. If the Secretary determines that an SEA has received an initial payment that is less than or in excess of what it should have received under the Emergency Impact Aid program for any quarter, the Secretary will make appropriate upward or downward revisions to subsequent payments that the SEA is eligible to receive this year. If the SEA is not eligible for subsequent payments, the SEA must promptly refund the amount of any overpayment to the Secretary. SEAs must submit any application amendments affecting allocations under the Emergency Impact Aid program to the Department no later than April 30, 2006.

Given the much lower funding level under the Assistance to Homeless Youth program, however, we do not intend to make multiple payments under that program or to use revised data to make adjustments to allocations under the program.

Other Requirements: LEAs must make Emergency Impact Aid payments to accounts on behalf of displaced nonpublic school students within 14 calendar days of receiving payments from the SEAs.

The Secretary may solicit from any applicant at any time during the respective periods of availability additional information needed to process an application for either program. In addition, all displaced public school students included in the counts in the SEA application must participate in State accountability systems consistent with the guidance letter to States from Secretary Margaret Spellings on September 29, 2005. (*http://www.ed.gov/policy/elsec/guid/secletter/050929.html*)

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed program requirements. Section 437(d)(2) of the General Education Provisions Act (20 U.S.C. 1232(d)(2)), however, allows the Secretary to exempt from rulemaking requirements regulations where the Secretary determines that conducting rulemaking will cause extreme hardship to the intended beneficiaries of the program or programs affected by the regulations.

The Secretary has determined that conducting rulemaking for the Assistance for Homeless Youth and Emergency Impact Aid programs, including the procedures permitting SEAs and LEAs to amend their applications to submit revised student count data and allowing for upward or downward adjustment of subsequent payments under the Emergency Impact Aid program and the procedures for awarding funds under the Assistance for Homeless Youth program, would cause extreme hardship to the beneficiaries of these programs for several significant reasons. The Act was signed into law on December 30, 2005, and specifies very tight timelines that SEAs and LEAs must meet to receive assistance under the Emergency Impact Aid program. Specifically, the Act requires the collection and submission of extremely time-critical student data and related information in applications from SEAs that will reflect data from LEAs, BIA-funded schools, and parents of displaced nonpublic school children. The Emergency Impact Aid program's purpose is to provide immediate aid for the costs related to the education of these displaced students for the 2005–2006 school year, and the Act further requires that the recipients obligate all funds by the end of 2005–2006 school year.

Furthermore, SEAs and LEAs throughout the country have tremendous needs and expenses related to educating homeless students displaced by Hurricanes Katrina and Rita. It is essential, therefore, that the Department also award funding under the Assistance for Homeless Youth program at the earliest possible date. Therefore, in order to avoid further

harm and hardship to applicants under either program and make timely grant awards, the Secretary is waiving rulemaking for these one-time programs under the Act.

Electronic Submission of Applications: An eligible SEA that seeks funding under the Assistance for Homeless Youth program and the Emergency Impact Aid program, as authorized under sections 106 and 107 of the Act, must submit its application to the Department on or before February 2, 2006, no later than 4:30 p.m., Washington, DC time. You must submit your initial application electronically using the Department's Electronic Grant Application System (e-Application) available through the Department's e-Grants system. You may not e-mail an electronic copy of a grant application to us.

You can access the electronic application for the Assistance for Homeless Youth and Emergency Impact Aid programs at: *http://e-grants.ed.gov.*

Once you access this site, you will receive specific instructions regarding the information to include in your application. The regular hours of operation of the e-Application Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight, Saturday (Washington, DC time). Please note that the system is unavailable on Sundays.

FOR FURTHER INFORMATION CONTACT: For the Emergency Impact Aid program: Ms. Catherine Schagh, Director, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6244. Telephone: (202) 260–3858 or via the Internet: *Impact.Aid@ed.gov.* For the Assistance for Homeless Youth program: Mr. Gary Rutkin, Program Officer, Homeless Children and Youth Program, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6244. Telephone: (202) 260–4412 or via the Internet: *gary.rutkin@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339. Individuals with disabilities may obtain the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed in this section.

Electronic Access to This Document: You may view this document, as well as other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: Division B, Title IV of Pub. L. 109–148.

Dated: January 10, 2006.

Henry L. Johnson,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 06–327 Filed 1–10–06; 12:50 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education

AGENCY: A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education, U.S. Department of Education.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming public hearing with members of A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education (Commission). Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATE: Tuesday, February 7, 2006.

TIME: Tuesday, February 7, 2006: 9 a.m. to 4 p.m.

ADDRESSES: The public hearing will be held in Seattle, WA, at the Seattle Crowne Plaza, 1113 Sixth Avenue, Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Cheryl Oldham, Executive Director, A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education, 400 Maryland Avenue, SW., Washington, DC 20202–3510; telephone: (202) 205–8741.

SUPPLEMENTARY INFORMATION: The Commission is established by the Secretary of Education to begin a national dialogue about the future of higher education in this country. The purpose of this Commission is to consider how best to improve our system of higher education to ensure that our graduates are well prepared too meet our future workforce needs and are able to participate fully in the changing economy. The Commission shall consider federal, state, local and institutional roles in higher education and analyze whether the current goals of higher education are appropriate and achievable. The Commission will also focus on the increasing tuition costs and the perception of many families, particularly low-income families, that higher education is inaccessible.

The agenda for this public hearing will begin with presentations from panels of invited speakers addressing the four areas of focus for the Commission: access, accountability, affordability, and quality. After the presentations by invited speakers, there will be time reserved for comments from the public.

If you are interested in participating in the public comment period to present comments to the Commission, you are requested to reserve time on the agenda of the meeting by email or phone. Please include your name, the organization you represent if appropriate, and a brief description of the issue you would like to present. Participants will be allowed approximately three to five minutes to present their comments, depending on the number of individuals who reserve time on the agenda. At the meeting, participants are also encouraged to submit four written copies of their comments. Persons interested in making comments are encourage to address the following issues and questions:

(1) How accessible is higher education today: Is this changing?

(2) Do students have access to the institutions best suited to their needs and abilities:

(3) What is the real cost of educating college students? How fast is it rising?

(4) What is the true price of a college education?

(5) What is the quality of higher education in America?

(6) How well are universities meeting specific national needs?

Given the expected number of individuals interested in providing comments at the meeting, reservations for presenting comments should be made as soon as possible. Persons who are unable to obtain reservations to speak during the meetings are encouraged to submit written comments. Written comments will be accepted at the meeting site or may be mailed to the Commission at the address listed above.

Individuals who will need accommodations for a disability in order

to attend the meeting (*e.g.*, interpreting services, assisting listening devices, or materials in alternative format) should notify Carrie Marsh at (202) 205–8741 no later than January 23, 2006. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Individuals interested in attending the meeting must register in advance because of limited space issues. Please contact Carrie Marsh at (202) 205–8741 or by e-mail at *Carrie.Marsh@ed.gov.*

Opportunities for public comment are available through the Commission's Web site at *http://www.ed.gov/about/bdscomm/list/hiedfuture/index.html.* Records are kept of all Commission proceedings and are available for public inspection at the staff office for the Commission from the hours of 9 a.m. to 5 p.m.

Dated: January 5, 2006.

Margaret Spellings,

Secretary, U.S. Department of Education.

[FR Doc. 06–256 Filed 1–11–06; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education

AGENCY: A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education, U.S. Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education (Commission). The notice also describes the functions of the Commission. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES: Thursday, February 2, 2006, and Friday, February 3, 2006.

TIME: February 2, 2006: 1 p.m. to 6 p.m.; February 3, 2006: 8:30 a.m. to 1 p.m.

ADDRESSES: The Commission will meet in San Diego, CA, at Paradise Point Resort, 1404 Vacation Road, San Diego, CA.

FOR FURTHER INFORMATION CONTACT: Cheryl Oldham, Executive Director, A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education, 400 Maryland Avenue, SW., Washington, DC 20202–3510; telephone: (202) 205–8741.

SUPPLEMENTARY INFORMATION: The Commission is established by the Secretary of Education to begin a national dialogue about the future of higher education in this country. The purpose of this Commission is to consider how best to improve our system of higher education to ensure that our graduates are well prepared to meet our future workforce needs and are able to participate fully in the changing economy. The Commission shall consider federal, state, local and institutional roles in higher education and analyze whether the current goals of higher education are appropriate and achievable. The Commission will also focus on the increasing tuition costs and the perception of many families, particularly low-income families, that higher education is inaccessible.

The agenda for this third meeting will include panel presentations discussing five areas of innovation. The five areas are: innovation and the economy, innovative national and international models for delivery, innovative teaching and learning strategies, innovative financing, and innovative public/private sector models. There will also be a panel presentation of nontraditional college students. A written report to the Secretary is due by August 1, 2006.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or materials in alternative format) should notify Carrie Marsh at (202) 205–8741 no later than January 23, 2006. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Individuals interested in attending the meeting must register in advance because of limited space issues. Please contact Carrie Marsh at (202) 205–8741 or by e-mail at *Carrie.Marsh@ed.gov.*

Opportunities for public comment are available through the Commission's Web site at *http://www.ed.gov/about/bdscomm/list/hiedfuture/index.html.* Records are kept of all Commission proceedings and are available for public inspection at the staff office for the Commission from the hours of 9 a.m. to 5 p.m.

Dated: January 5, 2006.

Margaret Spellings,

Secretary, U.S. Department of Education.

[FR Doc. 06–257 Filed 1–11–06; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of the acceptance of Title X claims for reimbursement in fiscal year (FY) 2006 and the acceptance of plans for subsequent remedial action.

SUMMARY: This Notice announces the Department of Energy (DOE) acceptance of claims in FY 2006 from eligible active uranium and thorium processing sites for reimbursement under Title X of the Energy Policy Act of 1992. For FY 2006, Congress has appropriated approximately $20 million for reimbursement of certain costs of remedial action at these sites. The approved amount of claims submitted during FY 2005 and unpaid approved balances for claims submitted in FY 2004 will be paid by April 28, 2006, subject to the availability of funds. If the available funds are less than the total approved claims, these payments will be prorated, if necessary, based on the amount of available FY 2006 appropriations, unpaid approved claim balances (approximately $0.45 million), and claims received in May 2005 (approximately $22 million).

This also provides notice of the continuing DOE acceptance of plans for subsequent decontamination, decommissioning, reclamation, and other remedial action (Plans for Subsequent Remedial Action). If Title X licensees expect to incur remedial action costs for remedial action after December 31, 2007, licensees must submit a Plan for Subsequent Remedial Action during calendar year (CY) 2005 or 2006, and DOE must approve a Plan submitted by a licensee by the end of CY 2007, if the costs incurred after CY 2007 are to be eligible for reimbursement.

DATES: The closing date for the submission of claims in FY 2006 is May 1, 2006. These new claims will be processed for payment by April 27, 2007, together with unpaid approved claim balances from prior years, based on the availability of funds from congressional appropriations. Plans for Subsequent Remedial Action must be submitted no later than December 31, 2006.

ADDRESSES: Claims and Plans for Subsequent Remedial Action should be forwarded by certified or registered mail, return receipt requested, to the U.S. Department of Energy, 19901

Germantown Rd., EM–12/CLF, Germantown, MD 20874–1290, or by express mail to the U.S. Department of Energy, 19901 Germantown Rd., EM–12/CLF, Germantown, MD. All claims should be addressed to the attention of Mr. David Mathes. Three copies of the claim should be included with each submission.

FOR FURTHER INFORMATION CONTACT: Contact David Mathes at (301) 903–7222 of the U.S. Department of Energy, Office of Environmental Management, Office of Commercial Disposition Options.

SUPPLEMENTARY INFORMATION: DOE published a final rule under 10 CFR part 765 in the **Federal Register** on May 23, 1994, (59 FR 26714) to carry out the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Public Law 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. DOE amended the final rule on June 3, 2003, (68 FR 32955) to adopt several technical and administrative amendments (e.g., statutory increases in the reimbursement ceilings). Title X requires DOE to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. To be reimbursable, costs of remedial action must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement must be supported by reasonable documentation as determined by DOE in accordance with 10 CFR part 765. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

Authority: Section 1001–1004 of Public Law 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

Issued in Washington DC on this 30th of December, 2005.

David E. Mathes,

Office of Commercial Disposition Options, Office of Logistics and Waste Disposition Enhancements.

[FR Doc. E6–218 Filed 1–11–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years the information collection packages listed at the end of this notice. Comments are invited on: (a) Whether the extended information collections are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget review and approval of these information collections; they also will become a matter of public record.

DATES: Comments regarding these proposed information collections must be received on or before March 13, 2006. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to: Jeffrey Martus, IM–11/Germantown Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290 or by fax at 301–903–9061 or by e-mail at *Jeffrey.martus@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jeffrey Martus at the address listed above in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: The information collection packages listed in this notice for public comment include the following:

1. *(1) OMB No.:* 1910–0300. *(2) Package Title:* Environment, Safety and Health. *(3) Type of Review:* Renewal. *(4) Purpose:* This information is required to ensure that environment, safety, and health resources and requirements are managed efficiently and effectively and to exercise management oversight of DOE contractors. *(5) Respondents:* 11,344. *(6) Estimated Number of Burden Hours:* 269,475.

2. *(1) OMB No.:* 1910–0500. *(2) Package Title:* Financial Management. *(3) Type of Review:* Renewal. *(4) Purpose:* This information is required by the Department to ensure that financial management resources and requirements are managed efficiently and effectively and to exercise management oversight of DOE contractors. *(5) Respondents:* 12,626. *(6) Estimated Number of Burden Hours:* 152,704.

3. *(1) OMB No.:* 1910–5101. *(2) Package Title:* U.S. Dept. of Energy: Annual Alternative Fuel Vehicle Acquisition Report for State Government & Alternative Fuel Provider Fleets. *(3) Type of Review:* Renewal. *(4) Purpose:* This collection is critical to ensure the Government has sufficient information to ensure that covered fleets are complying with annual reporting and acquisition requirements under the Alternative Fuel Transportation Program. *(5) Respondents:* 310. *(6) Estimated Number of Burden Hours:* 1,550.

4. *(1) OMB No.:* 1910–5102. *(2) Package Title:* Make-or-Buy Plans. *(3) Type of Review:* Renewal. *(4) Purpose:* This information is required by the Department to ensure the Department's management and operations are sub-contracting in the most cost-effective and efficient manner and to exercise management and oversight of DOE contractors. *(5) Respondents:* 36. *(6) Estimated Number of Burden Hours:* 5,350.

5. *(1) OMB No.:* 1910–5111. *(2) Package Title:* Purchasing by DOE Management and Operating Contractors from Contractor Affiliated Sources. *(3) Type of Review:* Renewal. *(4) Purpose:* This information is critical to ensure the Government has sufficient information to judge the degree to which awardees meet the terms of their agreement and ensure that improper organization conflicts are not created. *(5) Respondents:* 20. *(6) Estimated Number of Burden Hours:* 100.

6. *(1) OMB No.* 1910–5121. *(2) Package Title:* End-Use Certificate. *(3)*

Type of Review: Renewal. *(4) Purpose:* This information is required to ensure that respondents acquiring High Risk Property are responsible, not debarred bidders, Specially Designated Nationals or Blocked Persons, or have not violated U.S. export laws and to advise them of compliance with export laws and regulations. *(5) Respondents:* 5,000. *(6) Estimated Number of Burden Hours:* 1,650.

Statutory Authority: Department of Energy Organization Act, Public Law 95–91.

Issued in Washington, DC on December 30, 2005.

Sharon A. Evelin,

Director, Records Management Division, Office of the Chief Information Officer.

[FR Doc. E6–220 Filed 1–11–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Fernald. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Saturday, January 21, 2006, 8:30 a.m.–12:30 p.m.

ADDRESSES: Crosby Township Senior Center, 8910 Willey Road, Harrison, Ohio 45030.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, The Perspectives Group, Inc., 1055 North Fairfax Street, Suite 204, Alexandria, VA 22314, at (703) 837–1197, or e-mail: *djsarno@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

8:30 a.m. Call to Order
8:35 a.m. Updates and Announcements
8:45 a.m. Stewardship Needs and Responsibilities
10:00 a.m. Break
10:15 a.m. Friends of Fernald Group
10:45 a.m. Fernald History Activities
11:45 a.m. Fernald Citizens' Advisory Board Calendar and 2006 Activities
12:15 a.m. Public Comment
12:30 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on January 5, 2006.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–219 Filed 1–11–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Hydrogen Production Cost Independent Review

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Request for information and notice of independent review.

SUMMARY: The Department of Energy (DOE) today gives notice of a request for information and an independent progress assessment by the DOE Hydrogen Program in meeting research and development (R&D) cost goals for production of hydrogen using distributed natural gas reforming technology. A review panel is being assembled by the National Renewable Energy Laboratory (NREL) Hydrogen Program Systems Integrator to review the current state of distributed natural gas reforming technology and costs. Based on the findings of the panel, the Systems Integrator will submit a written report to DOE on or before April 1, 2006. Position papers regarding the cost of hydrogen production via distributed natural gas reforming will be accepted by the Systems Integrator for consideration by the review panel. In addition, the panel may hear presentations from submitters as part of the assessment.

DATES: Written position papers for consideration by the review panel regarding this topic must be received by February 1, 2006. The NREL Systems Integrator must receive requests to speak before the review panel no later than February 15, 2006. Attendees at the review panel will be limited to the presenter(s), the independent review panel, NREL Systems Integrator, and DOE representatives.

ADDRESSES: Written position papers regarding the topic and requests to speak before the review panel are welcomed. Please submit 2 hardcopies of the position paper to: NREL Systems Integrator, U.S. Department of Energy, National Renewable Energy Laboratory, 1617 Cole Boulevard, Mail Stop 1732, Golden, CO 80401–3393, Attn: Dale Gardner. Requests to present before the panel should be sent to Mr. Gardner via e-mail to *dale_gardner@nrel.gov* or Phone (303) 275–3020.

FOR FURTHER INFORMATION CONTACT:

Independent review panel and process questions—Mr. Dale Gardner, U.S. Department of Energy, National Renewable Energy Laboratory, 1617 Cole Boulevard, Mail Stop 1732, Golden, CO 80401–3393, Attn: Dale Gardner, Phone (303) 275–3020, e-mail *dale_gardner@nrel.gov*.

Distributed natural gas reforming technology questions—Mr. Pete Devlin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–2H, Attn: Pete Devlin, 1000 Independence Avenue, SW., Washington, DC 20585–0121, Phone: (202) 586–4905, e-mail *peter.devlin@ee.doe.gov*.

SUPPLEMENTARY INFORMATION: The mission of DOE's Hydrogen, Fuel Cells and Infrastructure Technologies Program is to research, develop and validate fuel cell and hydrogen production, delivery, and storage technologies such that hydrogen from diverse domestic resources will be used in a clean, safe, reliable and affordable manner in fuel cell vehicles; central

station electric power production; distributed thermal electric; and combined heat and power applications. The President's Hydrogen Fuel Initiative accelerates research, development and demonstration of hydrogen production, delivery and storage technologies to support an industry commercialization decision on the hydrogen economy by 2015. The FreedomCAR and Fuel Partnership is working toward an industry commercialization decision on hydrogen fuel cell vehicles by 2015.

The transition to a hydrogen economy will take decades. During this transition, it is anticipated that a primary source of hydrogen for use in transportation by light duty fuel cell vehicles will be the distributed reforming of hydrogen from natural gas. This method is anticipated because (1) reforming is already a mature technology for some applications, (2) it conceivably can be cost competitive with other fuels and technologies in the transition timeframe, (3) the natural gas feedstock is accessable and dispersed, and (4) distributed production avoids a large scale hydrogen delivery/distribution infrastructures during the transition period. The following table shows the DOE cost goal status and targets over time for this production method. As calendar year 2005 comes to an end, an assessment of progress toward the $3.00/gge H_2 target is needed.

TABLE 3.1.2.—TECHNICAL TARGETS: DISTRIBUTED PRODUCTION OF HYDROGEN FROM NATURAL GAS [A B]

Characteristics	Units	Calendar year		
		2003 [c] status	2005 [d] target	2010 [d] target
Total Hydrogen Cost	$/gge H_2	5.00	3.00	2.50

(See *http://www.eere.energy.gov/hydrogenandfuelcells/mypp/pdfs/production.pdf,* page 3–10, for complete table and footnotes).

DOE has access to the results of R&D and demonstration projects in this technology area that it has funded to date, but additional information is requested from industry, academia, associations, and entities who are otherwise involved in aspects of distributed natural gas reforming. Position papers are limited to 10 pages maximum. A Cost Data Table is being assembled to help determine the current state of distributed natural gas reforming technologies. This table must be included in the position papers and/or presentations. The table can be downloaded from the DOE Hydrogen Program Web site at *http://www.hydrogen.energy.gov/ docs/ natural_gas_cost_sheet.xls.* At a minimum, a submitter (position paper, presentation, or both) should *provide this table filled out to the maximum extent possible.* DOE recognizes that some submitters may not be able to complete all fields. For example, a company that develops only a subsystem/component of a reformer will only be able to address those table elements involved in that subsystem/ component technology. Briefing materials should be forwarded to the NREL Systems Integrator for consideration as a presentation to the review panel. The review panel will meet during the February 15 through March 15 time frame to hear presentations that include data to support the presenter's position.

If confidential/proprietary information is provided in position papers or presentations, it must be clearly marked as such by the submitter. The independent review panel will be screened for conflicts of interest and each member will have completed confidentiality agreements to protect any information submitted. In addition, all materials will be returned to the submitter when the assessment is complete. The final assessment by the panel will be publicly available and will not contain any information which is identified by a submitter as confidential or proprietary.

For more information about the DOE Hydrogen Program and related hydrogen production activities visit the program's Web site at *http://www.hydrogen.energy.gov.*

Issued in Golden, CO on January 3, 2005.

Andrea K. Lucero,

Acting Procurement Director, Golden Field Office.

[FR Doc. 06–265 Filed 1–11–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–155–000]

ANR Storage Company; Notice of Tariff Filing

December 30, 2005.

Take notice that on December 23, 2005, ANR Storage Company (ANR Storage), 1001 Louisiana, Houston, Texas 77002, tendered for filing the following tariff sheets for inclusion in ANR Storage's FERC Gas Tariff, Original Volume No. 1:

Third Revised Sheet No. 0
Second Revised Sheet No. 28
Second Revised Sheet No. 54
Second Revised Sheet No. 127
Third Revised Sheet No. 128
Fifth Revised Sheet No. 147
Second Revised Sheet No. 148
Second Revised Sheet No. 156

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''Filing'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–185 Filed 1–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC06–52–000]

Cadillac Renewable Energy LLC, NRG Cadillac Inc., Seville Energy, LLC; Notice of Filing

December 30, 2005.

Take notice that on December 23, 2005, Cadillac Renewable Energy LLC, NRG Cadillac Inc. and Seville Energy, LLC (Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization of a indirect disposition of jurisdictional facilities.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicants. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 13, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–179 Filed 1–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC06–53–000]

El Paso Marketing, LP., Notice of Filing

December 30, 2005.

Take notice that on December 23, 2005, El Paso Marketing, L.P. (EPM) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby El Paso Marketing will transfer all of its ownership interests in certain power sale contracts to Morgan Stanley Capital Group Inc. Applicant requests confidential treatment of Exhibit I, pursuant to 18 CFR 388.112 of the Commission's regulations.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 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 to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll-free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 13, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–180 Filed 1–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–156–000]

Florida Gas Transmission Company; Notice of Filing

December 30, 2005.

Take notice that on December 28, 2005, Florida Gas Transmission Company (FGT) submitted for filing pursuant to section 19.1 of the general terms and conditions of its FERC Gas Tariff, Third Revised Volume No. 1, schedules detailing certain information related to it Cash-Out Mechanism, Fuel Resolution Mechanism and Balancing Tools charges for the accounting months October 2004 through September 2005. FGT further states that no tariff changes are proposed.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–177 Filed 1–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–153–000]

Overthrust Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 30, 2005.

Take notice that on December 23, 2005, Overthrust Pipeline Company (Overthrust) submitted for filing and acceptance an original and five copies its FERC Gas Tariff, First Revised Volume No. 1–A to be effective January 23, 2006.

Overthrust states that copies of the filing have been served upon Overthrust's customers and the public service commissions of Utah and Wyoming.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–183 Filed 1–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–408–000]

PJM Interconnection, L.L.C.; Notice of Filing

January 4, 2006.

Take notice that on December 28, 2005, PJM Interconnection, L.L.C. (PJM) submitted for filing an unexecuted interconnection service agreement (ISA) among PJM; GSG, LLC; and Commonwealth Edison Company, designated as Original Service Agreement No. 1406. PJM requests a waiver of the Commission's 60-day notice requirement to permit a December 23, 2005 effective date for the ISA, and asks the Commission for expedited action and a shortened comment period.

PJM states that copies of this filing were served upon the parties to the ISA and the state regulatory commissions within the PJM region.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 9, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–203 Filed 1–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–154–000]

Questar Southern Trails Pipeline Company; Notice of Tariff Filing

December 30, 2005.

Take notice that on December 23, 2005, Questar Southern Trails Pipeline Company (Southern Trails) submitted for filing the following tariff sheets to Original Volume No. 1 of its FERC Gas Tariff to be effective January 23, 2006.

Original Volume No. 1

Sixth Revised Sheet No. 1
First Revised Sheet Nos. 10 and 11
Second Revised Sheet No. 12
First Revised Sheet No. 20
Second Revised Sheet No. 21
Sixth Revised Sheet No. 30
First Revised Sheet No. 38
Second Revised Sheet No. 41
First Revised Sheet Nos. 43, 44, 47, 49, 50 and 51
Second Revised Sheet Nos. 57, 61 and 76
First Revised Sheet Nos. 85, 88 and 97
Second Revised Sheet No. 108
First Revised Sheet No. 109

Southern Trails states that a copy of this filing has been served upon its customers and the Public Service Commissions of Utah, New Mexico, Arizona, and California.

Any person desiring to protest this filing must file in accordance with Rule

211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–184 Filed 1–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL06–35–000; EL06–36–000]

Gregory R. Swecker v. Midland Power Cooperative and Grand Junction Utilities; Notice of Complaints

December 30, 2005.

Take notice that on December 27, 2005, Gregory R. Swecker filed two complaints for enforcement of Public Utilities Regulatory Policies Act of 1978 (PURPA) against Midland Power Cooperative and Grand Junction Utilities.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 17, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–181 Filed 1–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–388–000, CP06–1–000]

Southern Natural Gas Company; Florida Gas Transmission Company; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Cypress Pipeline Project and Phase VII Expansion Project

December 30, 2005.

The staff of the Federal Energy Regulatory Commission (Commission or FERC) has prepared a draft environmental impact statement (EIS) on the natural gas pipeline facilities proposed by Southern Natural Gas Company (Southern) and Florida Gas Transmission Company (FGT) in the above-referenced dockets. Southern's Cypress Pipeline Project would be located in various counties in southern Georgia and northern Florida. FGT's Phase VII Expansion Project (FGT Expansion Project) would be located in various counties in northern and central Florida.

The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act. The FERC staff concludes that the proposed projects, with the appropriate mitigation measures as recommended, would have limited adverse environmental impact.

The U.S. Army Corps of Engineers (COE) is participating as a cooperating agency in the preparation of the EIS because the projects would require permits pursuant to section 404 of the Clean Water Act (33 United States Code (USC) 1344) and section 10 of the Rivers and Harbors Act (33 U.S.C. 403). The COE would adopt the EIS per Title 40 Code of Federal Regulations (CFR) part 1506.3 if, after an independent review of the document, it concludes that its comments and suggestions have been satisfied.

The draft EIS addresses the potential environmental effects of the construction and operation of the following facilities:

Cypress Pipeline Project

- About 166.6 miles of new 24-inch-diameter mainline pipeline (mainline) in Effingham, Chatham, Bryan, Liberty, Long, McIntosh, Glynn, Camden, and Charlton Counties Georgia, and Nassau, Duval, and Clay Counties, Florida;
- About 9.8 miles of new 30-inch-diameter pipeline loop (loop) [1] in Chatham and Effingham Counties, Georgia;
- About 0.1 mile of 12-inch-diameter lateral pipeline in Duval County, Florida;
- Three new 10,350 horsepower (hp) gas-turbine-driven compressor stations in Liberty and Glynn Counties, Georgia, and in Nassau County, Florida;
- Four new meter stations in Glynn County, Georgia, and in Nassau, Duval, and Clay Counties, Florida;
- Modifications at two existing meter stations in Chatham and Cobb Counties, Georgia, and expansion of one meter station in Effingham County, Georgia;
- 16 new block valves including 14 associated with the new mainline and two associated with the new loop; and
- Four new pig [2] launcher/receiver facilities, including two in Effingham County, Georgia, one in Glynn County,

[1] A loop is a segment of pipeline that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

[2] A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

Georgia, and one in Clay County, Florida, each collocated with new or existing meter stations or new compressor station sites.

Southern proposes to construct its pipeline facilities in three phases. Construction of Phase I would begin in October, 2006 and be in service by May, 2007. Construction of Phase II would begin in fall 2008 and be in service by May, 2009. Construction of Phase III would begin in fall 2009 and be in service by May, 2010.

FGT Phase VII Expansion Project

- About 32.6 miles of new 36-inch-diameter pipeline in three separate loops in Gilchrist, Levy, and Hernando Counties, Florida;
- Replacement and upgrades to existing compressors for a net increase of about 7,800 hp at FGT's Compressor Station no. 26 in Citrus County, Florida;
- Replacement of an existing compressor to add about 2,000 hp at FGT's existing Compressor Station no. 24 in Gilchrist County, Florida;
- Miscellaneous modifications and upgrades to existing compressors with no increases in hp at FGT's Compressor Station nos. 16, 27, and 17 in Bradford, Hillsborough, and Marion Counties, Florida, respectively;
- A new interconnection with Southern's new mainline in Clay County, Florida;
- Modifications to five existing metering and/or regulation stations in Clay, Polk, Bradford, and Duval Counties, Florida; and
- New remote blowdown piping associated with the new pipeline loops at two locations in Levy County and two locations in Hernando County, Florida.

FGT proposes to construct its pipeline facilities in two phases. Construction of Phase I would begin in October, 2006 and be in service by May, 2007. Phase II is planned to begin in October, 2008 and be in service by May, 2009.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS may do so. To ensure consideration of your comments on the proposal in the final EIS, it is important that we receive your comments before the date specified below. Please carefully follow these instructions so that your comments are properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426;
- Label one copy of your comments for the attention of the Gas Branch 1, PJ11.1.
- Reference Docket Nos. CP05–388–000 and/or CP06–1–000 on the original and both copies; and
- Mail your comments so that they will be received in Washington, DC on or before February 20, 2006.

The Commission encourages electronic filing of comments, interventions, or protests of this proceeding. See Title 18 Code of Federal Regulations (CFR) part 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''eFiling'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments, you will need to create an account by clicking on ''Sign-up'' under ''New User.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

In addition to or in lieu of sending written comments, the FERC invites you to attend the public comment meetings the staff will conduct in the project area to receive comments on the draft EIS. All meetings will begin at 7 p.m., and are scheduled as follows:

Date	Location
Monday, February 6, 2006	Bloomingdale Community Center, 202 East Moore Street, Bloomingdale, Georgia 31302.
Tuesday, February 7, 2006	Embassy Suites, 500 Mall Boulevard, Glynn Place Mall, Brunswick, Georgia 31525.
Wednesday, February 8, 2006	Holiday Inn, 6802 Commonwealth Ave., Jacksonville, Florida 32244.
Thursday, February 9, 2006	Best Western Weeky Wachee, Highway 19 and Highway 50, Brooksville, FL 34601.

Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS. Transcripts of the meetings will be prepared.

After the comments are reviewed, any significant new issues are investigated, and modifications are made to the draft EIS, a final EIS will be published and distributed by the FERC staff. The final EIS will contain the staff's responses to timely comments received on the draft EIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Only intervenors have the right to seek rehearing of the Commission's decision.

Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above.[3] You do not need intervenor status to have your comments considered.

The draft EIS has been placed in the public files of the FERC and the COE and is available for public inspection at:

Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE, Room 2A, Washington, DC 20426, (202) 502–8371.

U.S. Army Corps of Engineers, Jacksonville District, 701 San Marco Boulevard, Jacksonville, Florida 32207, (904) 232–1472.

A limited number of copies are available from the FERC's Public Reference Room identified above. In addition, copies of the draft EIS have been mailed to Federal, state, and local government agencies; elected officials; Native American tribes; local libraries and newspapers; intervenors in the FERC's proceeding; individuals who provided scoping comments; and affected landowners and individuals who requested the draft EIS.

To reduce printing and mailing costs for the final EIS, the FERC will be issuing that document in both CD and hard-copy formats. In a separate mailing, the parties on the current mailing list for the draft EIS will be sent a postcard providing an opportunity for them to select which format of the final EIS they wish to receive. The FERC is strongly encouraging the use of the CD format in their publication of large documents.

[3] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number,'' excluding the last three digits in the Docket Number field (i.e., CP05–388 and/or CP06–1), and follow the instructions. You may also search using the phrase ''Cypress Pipeline Project'' or ''FGT Phase VII Expansion Project'' in the ''Text Search'' field. For assistance with access to eLibrary, the helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Information concerning the involvement of the COE is available from Jon Soderberg at 904–232–1472.

Magalie R. Salas,

Secretary.

[FR Doc. E6–186 Filed 1–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF06–9–000]

Overthrust Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Overthrust Expansion Project and Request for Comments on Environmental Issues

December 30, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Overthrust Expansion Project involving construction and operation of facilities by Overthrust Pipeline Company (Overthrust) in Uinta and Lincoln Counties, Wyoming. The project would consist of approximately 28 miles of 36-inch-diameter pipeline and ancilliary facilities that would connect Overthrust's existing pipeline with an existing Kern River Transmission Company (Kern River) pipeline. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process that the Commission will use to gather environmental input from the public and interested agencies on the project. Your input will help determine which issues need to be evaluated in the EA. Please note that the scoping period will close on January 30, 2006. Details on how to submit comments are provided in the Public Participation section of this notice.

The FERC will be the lead federal agency for the preparation of the EA. The document will satisfy the requirements of the National Environmental Policy Act (NEPA). The Overthrust Expansion Project is in the preliminary design state. At this time, no formal application has been filed with the FERC. A docket number (PF06–9–000) has been established to place information filed by Overthrust, and related documents issued by the Commission, into the public record. Once a formal application is filed with the FERC, a new docket number will be established.

This notice is being sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

With this notice, we [1] are asking other 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 EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need to Know?'' was attached to the project notice Overthrust provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Overthrust is seeking authority to construct and operate a new 36-inch-diameter pipeline, approximately 28 miles long, to be located adjacent to other existing pipeline facilities. The proposed pipeline would extend from Overthrust's existing pipeline in Uinta, Wyoming to a Kern River interconnect located at Opal Market Center in Lincoln, Wyoming and would transport up to 550,000 dekatherms of natural gas per day (Dth/d). Overthrust also proposes to construct interconnect facilities and other ancillary facilities along the proposed route including at the existing Blacks Fork Processing Plant and the Roberson Creek delivery point.

The proposed pipeline would cross land owned by five private and public landowners, the public landowners being the Bureau of Land Management (BLM) and the State of Wyoming.

A general overview map of the major project facilities is provided in Appendix 1.[2]

The EA Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This

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[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Office of Energy Projects.

[2] The appendix referenced in this notice is not being printed in the **Federal Register**. A copy of this notice is available on the Commission's website at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First St., NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the end of this notice. Copies of the appendix were sent to all those receiving this notice in the mail.

process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, we are requesting public comments on the scope of the issues that should be addressed in the EA. We will consider all comments received during scoping in the preparation of the EA.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies; elected officials; environmental and public interest groups; other interested parties; affected landowners; Native American tribes; libraries, and newspapers; and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

At this time no formal application has been filed with the FERC. For this project, the FERC staff has initiated its NEPA review prior to receiving the application. The purpose of the Commission's Pre-Filing Process is to involve interested stakeholders early in project planning and to identify and resolve issues before an application is filed with the FERC.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the proposal. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Branch 1, DG2E; and
- Reference Docket No. PF06–9–000 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC on or before January 30, 2006.

We will include all comments that we receive within a reasonable time frame in our environmental analysis of the project. To expedite our receipt and consideration of your comments, the Commission strongly encourages electronic submission of any comments or interventions or protests to this proceeding. See Title 18 Code of Federal Regulations (CFR) 385.2001(a)(1)(iii) and the instructions on the Commission's website at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can submit comments, you will need to create a free account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a Comment on Filing.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208 FERC or on the FERC Internet Web Site (*http://www.ferc.gov*) using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.*, PF06–9). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–182 Filed 1–11–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2005–0001; FRL–8009–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; General Administrative Requirements for Assistance Programs (Renewal), EPA ICR Number 0938.11, OMB Control Number 2030–0020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 30501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on December 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 13, 2006.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OARM–2005–0001, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: William G. Hedling, Office of Grants and Debarment, Grants Administration Division, Mail Code 3903R, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–5377; fax number: (202) 565–2468; e-mail address: *Hedling.William@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the

procedures prescribed in 5 CFR 1320.12. On July 19, 2005, (70 FR 41398), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA had established a public docket for this ICR under Docket No. EPA–HQ–OARM–2005–001, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available at *http://www.regulations.gov.* Use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

An comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statue. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *http://www.regulations.gov.* The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statue, is not included in the official public docket, and will not be available for public viewing in *http://www.regulations.gov.* For further information about the electronic docket go to *http://www.regulations.gov.*

Title: General Administrative Requirements for Assistance Programs (Renewal).

Abstract: The information is collected from applicants/recipients of EPA assistance to monitor adherence to the programmatic and administrative requirements of the Agency's financial assistance program. It is used to make awards, pay recipients, and collect information on how Federal funds are being spent. EPA needs this information to meet its Federal stewardship responsibilities. This ICR renewal requests authorization for the collection of information under EPA's General Regulation for Assistance Programs, which establishes minimum management requirements for all recipients of EPA grants or cooperative agreements (assistance agreements). Recipients must respond to these information requests to obtain and/or retain a benefit (Federal funds). 40 CFR part 30, ''Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' includes the management requirements for potential grantees from non-profit organizations. 40 CFR part 31, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' includes the management responsibilities for potential State and local government grantees. These regulations include only those provisions mandated by statute, required by OMB Circulars, or added by EPA to ensure sound and effective financial assistance management. The OMB 83–I Form associated with this ICR combines all of these requirements under OMB Control Number 2030–0020. The information required by these regulations will be used by EPA award officials to make assistance awards and assistance payments and to verify that the recipient is using Federal funds appropriately to comply with OMB Circulars A–21, A–87, A–102, A–110, A–122, A–128, and A–133, which set forth the pre-award, post-award, and after-the-grant requirements.

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 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 18 hours per respondent. 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.

Respondents/Affected Entities: Institutions of higher education, hospitals, and other not-for-profit institutions; State, local, and Indian tribal governments.

Estimated Number of Respondents: 6,105.

Frequency of Response: On occasion, quarterly, and annually.

Estimated Total Annual Hour Burden: 108,887.

Estimated Total Annual Cost: $4,852,000, includes $0 annualized capital or O&M costs and $4,852,000 annual labor costs.

Changes in the Estimates: There is a decrease of 67,682 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease has occurred for several reasons, and includes a program change decease of 65,287 hours and an adjustment decrease of 2,395 hours. EPA removed five forms (EPA Forms: 5700–20A, 5700–20B, 5700–30, 5700–49 and 5700–52A) and added three forms (''Lobbying Cost Certificate for Indirect Costs,'' NCER Form 5, and NCER Form 3212). These programs changes resulted in an overall decrease of 65,287 hours. In addition EPA made several adjustments to its burden and respondent assumptions, which resulted in an overall decrease of 2,395 hours.

Dated: December 12, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 06–267 Filed 1–11–06; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8020–8]

Proposed CERCLA Administrative Cost Recovery Settlement; Lee County Housing Authority

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C.

9622(i), notice is hereby given of eight proposed administrative settlements for recovery of past response costs concerning the New Buffalo site in New Buffalo, Michigan, with the following settling parties: Bechstein Construction Company; Champion Environmental Services, Inc.; Community School District 200; Lee County Housing Authority; Loyola University of Chicago; Loyola University Medical Center; North Central College; and Northern Illinois University. The settlements with Community School District 200, Lee County Housing Authority, Loyola University of Chicago, Loyola University Medical Center, North Central College, and Northern Illinois University require each of the settling parties to pay $3,000 to the Hazardous Substance Superfund.

The settlement with Bechstein Construction Company requires it to pay $4,000 to the Hazardous Substance Superfund. The settlement with Champion Environmental Services, Inc., requires it to pay $5,000 to the Hazardous Substance Superfund. Each settlement includes a covenant not to sue the settling party under section 107(a) of CERCLA, 42 U.S.C. 9607(a), and provides the settling party with protection from contribution actions or claims as provided by sections 113(f) and 112(h)(4) of CERCLA, 42 U.S.C. 9613(f) and 9622(h)(4), for past response costs at the site. For 30 days following the date of publication of this notice, the Agency will receive written comments relating to the settlements. The Agency will consider all comments received and may modify or withdraw its consent to any of the settlements if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at U.S. EPA's Region 5 Office at 77 West Jackson Boulevard, Chicago, Illinois 60604 and the New Buffalo Township Public Library, 33 North Thompson Street, New Buffalo, Michigan 49117.

DATES: Comments must be submitted on or before February 13, 2006.

ADDRESSES: The proposed settlements are available for public inspection at U.S. EPA's Region 5 Record Center, 7th Floor, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of any of the proposed settlements may be obtained from Ann Coyle, Associate Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–2248. Comments should reference the New Buffalo site, New Buffalo, Michigan, the name of the settling party, and the EPA Docket Number, which is stamped on the first page of each settlement agreement, and should be addressed to Ann Coyle, Associate Regional Counsel, 77 West Jackson Boulevard (C–14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ann Coyle, Associate Regional Counsel, 77 West Jackson Boulevard (C–14J), Chicago, Illinois 60604, telephone (312) 886–2248.

Dated: December 20, 2005.

Richard Karl,

Director, Superfund Division.

[FR Doc. E6–226 Filed 1–11–06; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

DATE AND TIME: Wednesday, January 18, 2006, 9 a.m. Eastern Time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session:

1. Announcement of Notation Votes, and

2. Modification of EEOC Order 120—Boundaries of the Baltimore Field Office.

Note: In accordance with the Sunshine Act, the meeting will open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Acting Executive Officer on (202) 663–4070.

Dated: January 10, 2006.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 06–358 Filed 1–10–06; 3:35 pm]

BILLING CODE 6570–06–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Proposed Principles for Federal Support of Graduate and Postdoctoral Education and Training in Science and Engineering; Extension of Comment Period

AGENCY: Executive Office of the President, Office of Science and Technology Policy (OSTP).

ACTION: Extension of comment period.

SUMMARY: This document extends the comment period for "Proposed Principles for Federal Support of Graduate and Postdoctoral Education and Training in Science and Engineering" published in the **Federal Register** on November 16, 2005.

The proposed principles are intended to increase collaboration and consistency within the Federal agencies in support of graduate and postdoctoral education and training in science and engineering. Principles are:

- Federal Support of Graduate and Postdoctoral Education and Training Is a Critical Investment in the Future;
- The Federal Investment Portfolio Must Broadly Support Science and Engineering Disciplines;
- Graduate Students and Postdoctoral Scholars Must Receive Quality Education and Training;
- Federal Contributions toward Graduate and Postdoctoral Education and Training are Provided in Partnership with Academic and Other Non-Federal Institutions;
- Graduate Students and Postdoctoral Scholars Should Be Adequately Supported to Encourage Their Pursuit of Science and Engineering Careers; and
- Federal Agencies Should Collaborate in Areas of Common Interest.

DATES AND ADDRESSES: Date to receive comments has been extended to January 31, 2006. *Electronic comments may be submitted to: MWeiss@ostp.eop.gov.* Please include in the subject line the words "National Science and Technology Council (NSTC) Education and Workforce Development Comments." Please put the full body of your comments in the text of the electronic message and as an attachment. Be certain to include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. A return message will acknowledge receipt of your comments.

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice, please call Mark Weiss, Office of Science and Technology Policy, (202)

456–6129; e-mail *MWeiss@ostp.eop.gov* or fax (202) 456–6027.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

On November 16, 2005 (70 FR 69563) The Office of Science and Technology Policy published a notice soliciting comments on the Proposed Principals for Federal Support of Graduate and Postgraduate Education and Training in Science and Engineering. That notice requested comments by January 16, 2006. This notice extends that comment period to January 31, 2006.

Input on any aspect of the proposed principles or the proposed process for interagency coordination is encouraged. The following questions indicate particular areas for comment:

(a) Are there topics or issues not addressed in the principles that should be? If so, please explain.

(b) Are there additional approaches or strategies to achieve the objectives and promote interagency collaboration? If so, please explain.

M. David Hodge,

Acting Assistant Director for Budget and Administration.

[FR Doc. 06–300 Filed 1–11–06; 8:45 am]

BILLING CODE 3710–W4–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2747]

Petitions for Reconsideration of Action in Rulemaking Proceeding

December 29, 2005.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by January 27, 2006. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of the California Public Utilities Commission for Delegated Authority to Implement Specialized Transitional Overlays (CC Docket No. 99–200).

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–245 Filed 1–11–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act, Meetings

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, January 10, 2006. Meeting closed to the public. This meeting was cancelled.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, January 12, 2006, 10 a.m. Meeting open to the public. This meeting was cancelled.

DATE AND TIME: Tuesday, January 17, 2006, at 2 p.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g; Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.; Matters concerning participation in civil actions or proceedings or arbitration; Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, January 19, 2006, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes; Election of Vice Chairman; Final Audit Report on CWA COPE Political Contributions Committee; *Advisory Opinion 2005–20:* Pillsbury Winthrop Shaw Pittman by Ms. Kathryn E. Donovan; Final Rules and Explanation and Justification for the Definition of ''Agent''; Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biersack, Press Officer. Telephone: 202–694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 06–347 Filed 1–10–06; 2:37 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 25, 2006.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. The Dorothy Mawn Family Children's Trust, Woburn, Massachusetts, and Mary Elizabeth Mawn–Ferullo, and Russell A. Mawn, Vestavia Hills, Alabama, as trustees; to acquire voting shares of Northern Bancorp, Inc., Woburn, Massachusetts, and thereby indirectly acquire voting shares of Northern Bank and Trust Company, Woburn, Massachusetts.

Board of Governors of the Federal Reserve System, January 5, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–201 Filed 1–11–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their

views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 27, 2006.

Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Citizens Bankshares of Springhill, Inc., ESOP, Springhill, Louisiana, and Argent Trust, a division of National Independent Trust Co., Trustee, West Monroe, Louisiana; to retain ownership and control shares of Citizens Bankshares of Springhill, Inc., Springhill, Louisiana, and indirectly retain voting shares of Citizens Bank & Trust Company, Springhill, Louisiana.

Board of Governors of the Federal Reserve System, January 9, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–225 Filed 1–11–06; 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 Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 3, 2006.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Castle Creek Capital Partners III, L.P., Castle Creek Capital III LLC; Eggemeyer Capital LLC; and Ruh Capital LLC, all of Rancho Santa Fe, California; to become bank holding companies by acquiring 89 percent of the voting shares of LDF, Inc., and thereby indirectly acquire voting shares of Labe Bank, both of Chicago, Illinois.

Board of Governors of the Federal Reserve System, January 5, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–199 Filed 1–11–06; 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 Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 3, 2006.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Watford City Bancshares, Inc., Watford City, North Dakota; to acquire 100 percent of the voting shares of Elgin Bancshares, Inc., Elgin, North Dakota, and thereby indirectly acquire voting shares of Farmers State Bank, Elgin, North Dakota.

Board of Governors of the Federal Reserve System, January 4, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–202 Filed 1–11–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications

must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 6, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Capitol Bancorp Ltd., Lansing, Michigan; to acquire 51 percent of the votng shares of Bank of Valdosta, Valdosta, Georgia (in organization).

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Gregg Bancshares, Inc., Nixa, Missouri; to become a bank holding company by acquiring 97.4 percent of the voting shares of Glasgow Savings Bank, Glasgow, Missouri.

Board of Governors of the Federal Reserve System, January 9, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–224 Filed 1–11–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 3, 2006.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Castle Creek Capital III LLC; Castle Creek Capital Partners, III, L.P.; Eggemeyer Capital LLC; and Ruh Capital LLC, all of Rancho Santa Fe, California; to acquire 24.9 percent of the voting shares of Atlanta Bancorporation, Inc., Alpharetta, Georgia, and thereby indirectly acquire voting shares of Gibsonville Community Bank, Gibsonville, North Carolina, and thereby engage *de novo* in operating a state savings bank, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 5, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–200 Filed 1–11–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of December 13, 2005

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on December 13, 2005.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee, in the immediate future, seeks conditions in reserve markets consistent with increasing the federal funds rate to an average of around 4¼ percent.

The vote encompassed approval of the paragraph below for inclusion in the statement to be released shortly after the meeting:

''The Committee perceives that, with appropriate monetary policy action, the upside and downside risks to the attainment of both sustainable growth and price stability should be kept roughly equal. With underlying inflation expected to be contained, the Committee believes that policy accommodation can be removed at a pace that is likely to be measured. Nonetheless, the Committee will respond to changes in economic prospects as needed to fulfill its obligation to maintain price stability.''

By order of the Federal Open Market Committee, January 5, 2006.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. E6–187 Filed 1–11–06; 8:45 am]

BILLING CODE 6210–01–P

[1] Copies of the Minutes of the Federal Open Market Committee Meeting on December 13, 2005, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

GENERAL SERVICES ADMINISTRATION

2006 Travel and Relocation Innovation Award

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA)

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) is announcing the 2006 Travel and Relocation Innovation Award. The purpose of the award is to recognize the professionals of travel and/or relocation management.

FOR FURTHER INFORMATION CONTACT: Visit the National Travel Forum 2006 (NTF 2006) Web site at *http://www.nationaltravelforum.org* and click on ''Awards''or contact Jane Groat, Office of Travel, Transportation, and Asset Management (MT), General Services Administration, Washington, DC 20405, (202) 501–4318, *jane.groat@gsa.gov.*

SUPPLEMENTARY INFORMATION: The Federal Travel Regulation is contained in 41 Code of Federal Regulations (CFR), Chapters 300 through 304, and implements statutory requirements and Executive branch policies for travel by Federal civilian employees and others authorized to travel at Government expense.

The General Services Administration (GSA), sponsor of the Interagency Travel Management Committee (ITMC) and the National Travel Forum 2006 (NTF 2006), announces a new travel award to recognize and honor excellence in Federal travel and relocation. This award, available to all Federal employees, will honor individuals and/or teams. In addition to cash awards, one or more entries may receive the Honorable Mention Award. Entries must be received no later than March 31, 2006.

Announcement and presentation of winners will be at GSA's National Travel Forum 2006 (June 26–29, 2006 in Los Angeles, CA).

Dated: January 6, 2006.

Patrick F. McConnell,

Acting Director, Travel Management Policy.

[FR Doc. E6–168 Filed 1–11–06; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics (Edmund D. Pellegrino, MD, Chairman) will hold its twenty-third meeting, at which, among other things, it will continue the discussion on ethical issues relating to children. Subjects discussed at past Council meetings (though not on the agenda for the present one) include: Cloning, assisted reproduction, reproductive genetics, IVF, ICSI, PGD, sex selection, inheritable genetic modification, patentability of human organisms, neuroscience, aging retardation, lifespan-extension, and organ procurement for transplantation. Publications issued by the Council to date include: Human Cloning and Human Dignity: An Ethical Inquiry (July 2002); Beyond Therapy: Biotechnology and the Pursuit of Happiness (October 2003); Being Human: Readings from the President's Council on Bioethics (December 2003); Monitoring Stem Cell Research (January 2004), Reproduction and Responsibility: The Regulation of New Biotechnologies (March 2004), Alternative Sources of Human Pluripotent Stem Cells: A White Paper (May 2005), and Taking Care: Ethical Caregiving in Our Aging Society (September 2005).

DATES: The meeting will take place Thursday, February 2, 2006, from 9 a.m. to 5:15 p.m. e.t. and Friday, February 3, 2006, from 8:30 a.m. to 12:30 p.m. e.t.

ADDRESSES: The Madison, 15th and M Streets, NW., Washington, DC 20005. Phone 202–862–1600.

Agenda: The meeting agenda will be posted at *http://www.bioethics.gov*.

Public Comments: The Council encourages public input, either in person or in writing. At this meeting, interested members of the public may address the Council, beginning at 11:30 a.m., on Friday, February 3. Comments are limited to no more than five minutes per speaker or organization. As a courtesy, please inform Ms. Diane Gianelli, Director of Communications, in advance of your intention to make a public statement, and give your name and affiliation. To submit a written statement, mail or e-mail it to Ms. Gianelli at one of the addresses given below.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Gianelli, Director of Communications, The President's Council on Bioethics, Suite 700, 1801 Pennsylvania Avenue, Washington, DC 20006. Telephone: 202/296–4669. E-mail: *info@bioethics.gov*. Web site: *http://www.bioethics.gov*.

Dated: January 6, 2006.

F. Daniel Davis,

Executive Director, The President's Council on Bioethics.

[FR Doc. 06–276 Filed 1–11–06; 8:45 am]

BILLING CODE 4154–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–0278]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–4766 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Hospital Ambulatory Medical Care Survey (NHAMCS) 2007–2008 [OMB No. 0920–0278)—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Hospital Ambulatory Medical Care Survey (NHAMCS) has been conducted annually since 1992. The purpose of NHAMCS is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United States. Ambulatory services are rendered in a wide variety of settings, including physicians' offices and hospital outpatient and emergency departments. The target universe of the NHAMCS is in-person visits made to outpatient departments (OPDs) and emergency departments (EDs) of non-Federal, short-stay hospitals (hospitals with an average length of stay of less than 30 days) or those whose specialty is general (medical or surgical) or children's general.

NHAMCS was initiated to complement the National Ambulatory Medical Care Survey (NAMCS, OMB No. 0920–0234) which provides similar data concerning patient visits to physicians' offices. NAMCS and NHAMCS are the principal sources of data on approximately 90 percent of ambulatory care provided in the United States.

NHAMCS provides a range of baseline data on the characteristics of the users and providers of ambulatory medical care. Data collected include patients' demographic characteristics, reason(s) for visit, physicians' diagnosis(es), diagnostic services, medications, and disposition. These data, together with trend data, may be used to monitor the effects of change in the health care system, for the planning of health services, improving medical education, determining health care work force needs, and assessing the health status of the population. In addition, a Cervical Cancer Screening Supplement (CCSS) will be added to collect information on cervical cancer screening practices from hospital OPD clinics. It will allow the CDC/National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) to evaluate cervical cancer screening methods and the use of HPV tests.

Users of NHAMCS data include, but are not limited to, congressional offices, Federal agencies, state and local governments, schools of public health, colleges and universities, private industry, nonprofit foundations, professional associations, clinicians, researchers, administrators, and health planners. NCHS is seeking OMB approval to extend this survey for an additional three years. There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Hospital induction	490	1	55/60	449
ED induction	400	1	1	400
OPD induction	250	4	1	1,000
ED Patient record form	400	100	5/60	3,333
OPD Patient record form	250	200	5/60	4,167
CCSS	250	1	15/60	63
Total				9,412

Dated: January 5, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–210 Filed 1–11–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–0234]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–4766 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Ambulatory Medical Care Survey (NAMCS) 2007–2008 (OMB No. 0920–0234)—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

The NAMCS was conducted annually from 1973 to 1981, again in 1985, and resumed as an annual survey in 1989. The purpose of NAMCS is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United States. Ambulatory services are rendered in a wide variety of settings, including physicians' offices and hospital outpatient and emergency departments. The NAMCS target population consists of all office visits made by ambulatory patients to non-Federal office-based physicians (excluding those in the specialties of anesthesiology, radiology, and pathology) who are engaged in direct patient care. For the first time in 2006, physicians and mid-level providers (*i.e.*, nurse practitioners, physician assistants, and nurse midwives) practicing in community health centers (CHCs) were added to the NAMCS sample, and these data will continue to be collected in 2007–2008. To complement NAMCS data, NCHS initiated the National Hospital Ambulatory Medical Care Survey (NHAMCS, OMB No. 0920–0278) to provide data concerning patient visits to hospital outpatient and emergency departments.

The NAMCS provides a range of baseline data on the characteristics of the users and providers of ambulatory medical care. Data collected include the patients' demographic characteristics, reason(s) for visit, physicians' diagnosis(es), diagnostic services, medications, and visit disposition. In addition, a Cervical Cancer Screening Supplement (CCSS) will continue to be a key focus in 2007–2008. The CCSS collects information on cervical cancer screening practices performed by selected physician specialties. It will allow the CDC/National Center for Chronic Disease Prevention and Health Promotion to evaluate cervical cancer screening methods and the use of human papillomavirus tests.

Users of NAMCS data include, but are not limited to, congressional offices, Federal agencies, state and local governments, schools of public health, colleges and universities, private industry, nonprofit foundations, professional associations, clinicians, researchers, administrators, and health planners. NCHS is seeking OMB approval to extend this survey for an additional three years. There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs)	Total burden hours
Office-based physicians:				
Induction Interview	3,350	1	28/60	1,563
Patient Record Form	2,513	30	4/60	5,026
CCSS	712	1	15/60	178
Community Health Center:				
Induction Interview—Directors	104	1	20/60	35
Induction Interview—Providers	312	1	35/60	182
Patient Record Form	312	30	5/60	780
CCSS	312	1	15/60	78
Total				7,842

Dated: January 5, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–211 Filed 1–11–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 2004P–0406 and 2004P–0407]

Determination That Celestone Soluspan (Betamethasone Sodium Phosphate and Betamethasone Acetate) Injection and Celestone (Betamethasone Sodium Phosphate) Injection Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its determination that two drug products—Celestone Soluspan (betamethasone sodium phosphate and betamethasone acetate) injection and Celestone (betamethasone sodium phosphate) injection—were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for betamethasone sodium phosphate and betamethasone acetate injection and betamethasone sodium phosphate injection if all other legal and regulatory requirements are met. However, in considering whether to file an ANDA for betamethasone sodium phosphate and betamethasone acetate injection, future applicants are advised that Celestone Soluspan injection may not be commercially available because, under a consent decree between FDA and the manufacturer, it is being made available in certain instances of medical necessity only. The reasons for its unavailability are not safety or effectiveness considerations associated with the drug product in general, but specific to the manufacturer. An ANDA applicant who is unable to obtain Celestone Soluspan injection for bioequivalence testing must contact the Office of Generic Drugs for a determination of what is necessary to show bioavailability and same therapeutic effect. If the reference listed drug (RLD) product becomes commercially available prior to ANDA approval, the ANDA applicant will need to show bioequivalence to the RLD product.

FOR FURTHER INFORMATION CONTACT: Carol E. Drew, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1))). FDA may not approve an ANDA that does not refer to a listed drug.

On September 7, 2004, Hikma Farmaceutica (Portugal) LDA submitted two citizen petitions (Docket Nos. 2004P–0406/CP1 and 2004P–0407/CP1) to FDA under 21 CFR 10.30 requesting that the agency determine whether Celestone Soluspan (betamethasone sodium phosphate and betamethasone acetate) injection equivalent to 6 milligrams (mg) base/milliliter (mL) (NDA 14–602) and Celestone (betamethasone sodium phosphate) injection equivalent to 3 mg base/mL (NDA 17–561), both manufactured by Schering-Plough Corp. (Schering), were withdrawn from sale for reasons of safety or effectiveness. Celestone Soluspan injection and Celestone injection are corticosteroids used for their anti-inflammatory effects in disorders of many organ systems. Schering ceased manufacture of Celestone injection in March 2004, and it was moved from the prescription drug product list to the ''Discontinued Drug Product List'' section of the Orange Book.

Schering has not discontinued manufacture of Celestone Soluspan injection; however, as a result of a May 2002 consent decree addressing manufacturing concerns, Schering's manufacture and distribution of Celestone Soluspan injection has been limited to providing the drug for certain medically necessary uses under a limited distribution program. Celestone Soluspan injection is being distributed as medically necessary for the following uses: (1) Neonatal use (fetal lung maturation), (2) epidural route for the management of pain due to radiculopathy in patients not responsive to systemic drug therapy and other adjunctive therapies, and (3) intra-articular and soft tissue injections for synovitis of osteoarthritis, acute gouty arthritis, nonspecific tenosynovitis, and acute and subacute bursitis. Information regarding the current distribution for Celestone Soluspan injection by Schering can be found on FDA's Drug Shortage Web site: *http://www.fda.gov/cder/drug/shortages/celestone.htm*.

FDA has reviewed its records and, under § 314.161, has determined that Celestone Soluspan (betamethasone sodium phosphate and betamethasone acetate) injection and Celestone (betamethasone sodium phosphate) injection were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list betamethasone sodium phosphate in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to betamethasone sodium phosphate may be approved by the agency. ANDAs that refer to betamethasone sodium phosphate and betamethasone acetate injection also may be approved by the agency; however, FDA recommends that in considering whether to file an ANDA for this drug product, future applicants be advised that the RLD may not be commercially available because it is being made available in certain instances of medical necessity only. An ANDA applicant who is unable to obtain Celestone Soluspan injection for bioequivalence testing must contact the Office of Generic Drugs for a determination of what showing is necessary to satisfy the requirements of section 505(j)(2)(A)(iv) of the act. If an ANDA is approved without a showing of bioequivalence, the approved product will not be granted an AB rating in the Orange Book. Future applicants for betamethasone sodium phosphate and betamethasone acetate injection are advised that if the RLD product becomes commercially available prior to ANDA approval, the ANDA applicant will need to show bioequivalence to the RLD product.

Dated: January 4, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–178 Filed 1–11–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA–225–05–8006]

Memorandum of Understanding Between the United States Food and Drug Administration Department of Health and Human Services and the Australian Pesticides and Veterinary Medicines Authority, Australia

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the United States Food and Drug Administration, Department of Health and Human Services and the Australian Pesticides and Veterinary Medicines Authority (APVMA), Australia. This MOU is intended to establish an information-sharing arrangement between APVMA and FDA. The Participants intend to strengthen the exchange of knowledge and expertise to enhance the efficiency and effectiveness of their respective roles. This MOU focuses on cooperation in relations to the operational aspects of animal drug regulation and is not intended to cover broader government regulatory policy or to cover areas not falling under the common jurisdictional purview of the Participants.

DATES: The agreement became effective October 20, 2005.

FOR FURTHER INFORMATION CONTACT: Matthew E. Eckel, Office of International Programs, Food and Drug Administration, 5600 Fishers Lane (HFG–1), Rockville MD, 20857, 301–827–4480, FAX 301–480–0716.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: January 4, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

MEMORANDUM OF UNDERSTANDING BETWEEN THE

UNITED STATES FOOD AND DRUG ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES

AND THE

AUSTRALIAN PESTICIDES AND VETERINARY MEDICINES AUTHORITY AUSTRALIA

U.S. Food and Drug Administration

I. PREAMBLE

Whereas the United States Food and Drug Administration (USFDA), Department of Health and Human Services, and the Australian Pesticides and Veterinary Medicines Authority (APVMA), Australia, hereinafter "the Participants," are responsible for the regulation of animal drugs in their respective countries;

Noting that the Participants have a strong record of cooperation in various international fora to advance the effective regulation of animal drugs and a history of ad hoc direct cooperation on technical regulatory matters;

Acknowledging that the Participants recognize that there is mutual advantage to increasing the scope of, and strengthening the framework for, such cooperation; and

Recognizing that APVMA (a statutory authority established under the *Australian Agricultural and Veterinary Chemicals Code Act 1994 (the Code Act)*) and the USFDA (under authority of the U.S. Federal Food, Drug, and Cosmetic Act 1938 and its amendments) have similar approaches to regulation of veterinary medicines (animal drugs) in the broad sense and at the practical level in relation to the type of data required by both organizations;

The Participants have reached the following Understanding.

II. PURPOSE

This Memorandum of Understanding (MOU) is intended to establish an information-sharing arrangement between APVMA and USFDA. The Participants intend to strengthen the exchange of knowledge and expertise to enhance the efficiency and effectiveness of their respective roles. This MOU focuses on cooperation in relation to the operational aspects of animal drug regulation and is not intended to cover broader government regulatory policy or to cover areas not falling under the common jurisdictional purview of the Participants.

III. SCOPE

1. The Participants may exchange information on risk assessment and risk management options with respect to animal drugs that are approved in each country and may work concurrently, and exchange information, to conduct scientific risk assessments.

2. The exchange of information and cooperative action between the Participants is intended to relate to veterinary drug regulatory matters of mutual interest, with a focus on the following modes of cooperation:

   (i) Developing a system for early information exchange on upcoming animal drug issues that may impact on Australia and the United States. This may involve exchange of information on routine issues and agency initiatives that may be of mutual interest such as the quality of animal drugs, issues of public health concern, risk reduction, minor uses, and efficiency and process measures;

(ii) Promoting scientific discussions among technical staffs in cooperative efforts, including visits by scientists from one Participant to the other;

(iii) Meeting on the margins of existing international fora, as appropriate, to discuss matters of mutual interest;

(iv) Promoting discussion of new animal drugs under evaluation and existing animal drugs under re-evaluation and, as appropriate, exchanging assessment reports prepared for animal drugs of common interest; and

(v) Exchanging information and experience in relation to information technology, particularly in the area of electronic data submission and templates.

IV. CONFIDENTIALITY

Information exchanged under this MOU may include non-public information exempt from public disclosure under the laws and regulations of the United States or Australia. Information that is not appropriate for public dissemination is only to be shared according to the procedures and policies of the Participants and as permitted by their respective laws. Neither USFDA nor APVMA are to share trade secret information without the consent of the owner. USFDA and APVMA may also obtain the consent of the owner or individual prior to sharing other types of information. With regard to any non-public information that may be provided to APVMA by the USFDA or to the USFDA by APVMA, such transmissions are to be made in accordance with the specific signed confidentiality commitments and other requirements of the Participants.

V. COOPERATIVE ACTIVITIES

Any exchange of information or other activity under this MOU is to be performed in accordance with applicable laws and regulations.

1. The Participants intend to meet as appropriate to develop and implement specific areas of cooperation and to update existing protocols to ensure they are consistent with the intent and principles contained within this MOU.

2. The Participants may, as warranted by particular circumstances and if possible within their respective resources, form Working Groups to address specific issues bearing on the successful implementation of this MOU.

3. The Participants may meet via teleconference or videoconference to develop and implement a work program governing specific areas of cooperation and to update existing understandings to ensure that they are consistent with the intent and principles contained within this MOU.

VI. FUNDING OF COOPERATION

Each Participant intends to cover its own costs and recognizes the other's responsibility to fund and carry out its own activities subject to, and to the extent made possible by, the availability of appropriated funds, personnel, and other resources.

VII. CONTACT POINTS

1. The officers responsible for the administration of this MOU are:

(i) Dr. Roland Smith
Chief Executive Officer
Australian Pesticides and Veterinary Medicines Authority
22 Brisbane Avenue
BARTON ACT 2600
(PO Box E240 KINGSTON ACT 2604)
AUSTRALIA
Tel: 61-2-62724277
Fax: 61-2-62723195

(ii) Dr. Stephen Sundlof, Director
Center for Veterinary Medicine,
U.S. Food and Drug Administration
7519 Standish Place, HFV-1
Rockville, MD 20855
UNITED STATES OF AMERICA
Tel: 1-301- 827-2950
Fax: 1-301-827-4401

2. The officers responsible for the day-to-day operations under this MOU are:

(i) Mr. Martin Holmes
Program Manager Veterinary Medicines
Australian Pesticides and Veterinary Medicines Authority
22 Brisbane Avenue
BARTON ACT 2600
(PO Box E240 KINGSTON ACT 2604)
AUSTRALIA
Tel: 61-2-62723471
Fax: 61-2-62723195

(ii) Mr. Russell Campbell Jr.
Associate Director for International Policy
Office of International Programs
U.S. Food and Drug Administration
5600 Fishers Lane, HFG-1
Room 15-A-55
Rockville MD, 20857
UNITED STATES OF AMERICA
Tel: 1-301-827-4480
Fax: 1-301-480-0716

VIII. FINAL PROVISIONS

Cooperation under this MOU commences upon signature by both Participants and is effective for a period of five (5) years from that date. It may be extended for additional five-year periods by mutual written agreement of the Participants. The MOU should be evaluated at least once in every five-year period by the Participants.

The Participants may amend this document by mutual written consent. This non-binding document may be terminated upon notice. Termination of this MOU should not affect the completion of cooperative activities that may have been formalized prior to termination.

The Participants do not intend this MOU to create legally binding obligations between them under international or other law.

Any disagreement regarding the interpretation or implementation of this MOU is to be resolved by consultation between the Participants and is not to be referred to an international tribunal or third party settlement.

Nothing in this MOU limits or otherwise affects the rights or obligations of the United States of America or of Australia under the Agreement establishing the World Trade Organization and its Annexes, including the Agreement on the Application of Sanitary and Phytosanitary Measures, or the rights and obligations under the Australia – United States Free Trade Agreement, or any other agreement of the Participants.

IN WITNESS WHEREOF the undersigned have signed this MOU.

For the United States Food and Drug Administration
Department of Health and Human Services:

Lester M. Crawford, D.V.M., Ph.D.
Commissioner of Food and Drugs
Food and Drug Administration
Department of Health and Human Services
UNITED STATES OF AMERICA

Date: SEP 23 2005

Place: Rockville, Maryland

For the Australian Pesticides and Veterinary
Medicines Authority:

Roland Smith, Ph.D.
Chief Executive Officer
Australian Pesticides and Veterinary Medicines
Authority
AUSTRALIA

Date: 20 October 2005

Place: Canberra, Australia

[FR Doc. 06–251 Filed 1–11–06; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–05–8008]

Protocol Regarding the Sharing of the Phonetic and Orthographic Computer Analysis Tool to Support Review and Evaluate Proprietary Names of Therapeutic Products Between the Food and Drug Administration Department of Health and Human Services of the United States of America and Health Products and Food Branch, Health Canada of Canada

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a protocol regarding the sharing of the Phonetic and Orthographic Computer Analysis Tool to support review and evaluate proprietary names of therapeutic products between FDA and the Health Products and Food Branch, Health Canada of Canada (the Protocol). This Protocol is intended to enable, enhance, and strengthen the exchange of information about computerized software programs developed by FDA to minimize medication errors due to similar proprietary names of therapeutic products (Phonetic and Orthographic Computer Analysis).

DATES: The Protocol became effective December 1, 2005.

FOR FURTHER INFORMATION CONTACT: Matthew E. Eckel, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480, FAX: 301–480–0716.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(a) and (c), which states that all written agreements and understandings signed by FDA and other departments, agencies, and organizations shall be published in the **Federal Register**, except those agreements and memoranda of understanding between FDA and State or local government agencies that are cooperative work-sharing agreements, the agency is publishing notice of this Protocol.

Dated: January 4, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

PROTOCOL
REGARDING THE SHARING OF THE PHONETIC AND ORTHOGRAPHIC COMPUTER ANALYSIS TOOL TO SUPPORT REVIEW AND EVALUATE PROPRIETARY NAMES OF THERAPEUTIC PRODUCTS

BETWEEN THE
FOOD AND DRUG ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES
OF THE UNITED STATES OF AMERICA

AND THE
HEALTH PRODUCTS AND FOOD BRANCH
HEALTH CANADA
OF CANADA

I. PURPOSE

The Food and Drug Administration, Department of Health and Human Services of the United States of America (USFDA) and the Health Products and Food Branch, Health Canada of Canada (Canada HPFB) (collectively, "the Participants") intend this Protocol to implement section II.J of the Memorandum of Understanding between the Food and Drug Administration Department of Health and Human Services of the United States of America and the Health Products and Food Branch Health Canada of Canada Regarding Sharing and Exchange of Information about Therapeutic Products signed on November 18th, 2003 (MOU).

This Protocol is intended to enable, enhance and strengthen the exchange of information about computerized software programs developed by USFDA to minimize medication errors due to similar proprietary names of therapeutic products (Phonetic and Orthographic Computer Analysis (POCA)).

II. PROCEDURES

USFDA intends to:

1. provide Canada HPFB a CD copy of the POCA program.
2. provide Canada HPFB written documentation of the POCA program.
3. provide Canada HPFB all future modules (e.g., Spanish module) and enhancements of the POCA program.
4. develop a web-based version of POCA for use by the public, if possible.
5. cooperate with Canada HPFB to make POCA available with a French module.

Canada HPFB intends to:

1. provide USFDA all future modules (e.g., French module) and enhancements of the POCA program.
2. acknowledge the rights and ownership of POCA by USFDA in all references to POCA by Canada HPFB.

III. CONFIDENTIALITY

Any nonpublic information exchanged under this Protocol is subject to the Confidentiality Commitment, Statement of Legal Authority and Commitment from Health Canada Not to Publicly Disclose Non-Public Information Shared by the U.S. Food and Drug Administration, U.S. Department of Health and Human Services, signed November 18, 2003.

IV. SOURCE OF FUNDING

Each Participant to this Protocol is responsible for funding and carrying out its own activities. All activities undertaken pursuant to this protocol are to be conducted in accordance with the laws and regulations of the United Sates and Canada and are subject to the availability of appropriated funds, personnel, and other resources. Technical issues (e.g., installation, system failures) are the sole responsibility of the Participant receiving the information.

V. DURATION AND PROCESS

Implementation of the Protocol commences upon signature of the Participants and continues in effect for a period of ten (10) years. After an initial period of operation of one year, the Participants intend to jointly review the Agreement and make adjustments as necessary. This Protocol may be modified by mutual consent of the Participants or terminated by either Participant upon 30-days' written notification to the other Participant. The Protocol may be extended for additional 10-year periods, with periodic reviews as needed and as decided by the Participants in the interim.

The Participants intend to establish a mechanism for regular bilateral meetings for the development of plans for joint work.

This Protocol does not modify existing cooperative activities nor does it preclude entering into separate arrangements for special programs that can be handled more efficiently and expeditiously by such arrangements.

Nothing in this Protocol is intended to diminish or otherwise affect the authority of either Participant to carry out its regulatory responsibilities and programs.

Signed at Ottawa, Ontario, Canada on the 1st day of December in duplicate in the English language.

FOR THE FOOD AND DRUG ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES
OF THE UNITED STATES OF AMERICA

Murray M. Lumpkin, M.D.
Deputy Commissioner (International and Special Programs)

FOR THE HEALTH PRODUCTS AND FOOD BRANCH
HEALTH CANADA
OF CANADA

Diane C. Gorman
Assistant Deputy Minister

[FR Doc. 06–252 Filed 1–11–06; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0386 (formerly Docket No. 03D–0386)]

Guidance for Industry on Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical CGMP.'' The guidance describes a formal, two-tiered dispute resolution process intended to resolve disputes of scientific and technical issues relating to current good manufacturing practice (CGMP) that arise during FDA inspections of pharmaceutical manufacturers.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852–1448; or Communications Staff (HFV–12), Center for Veterinary Medicine, 7519 Standish Pl., Rockville, MD 20855.

The guidance may also be obtained by mail by calling the Center for Biologics Evaluation and Research at 1–800–835–4709 or 301–827–1800. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 28052. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Edward M. Sherwood, Center for Drug Evaluation and Research (HFD–3), Food and Drug Administration, White Oak 21, rm. 3528, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–1605.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical CGMP.'' The guidance was developed as part of the FDA initiative ''Pharmaceutical CGMPs for the 21st Century: A Risk-Based Approach,'' which was announced in August 2002. The initiative focuses on FDA's current CGMP program and covers the manufacture of veterinary and human drugs, including human biological drug products.

The agency formed the Dispute Resolution Working Group comprising representatives from the Office of Regulatory Affairs (ORA), the Center for Drug Evaluation and Research (CDER), the Center for Biologics Evaluation and Research (CBER), and the Center for Veterinary Medicine (CVM). The working group met weekly on issues related to the dispute resolution process

and met with stakeholders in December 2002 to seek their input.

The guidance was initiated in response to industry's request for a formal dispute resolution process to resolve differences related to scientific and technical issues that arise between investigators and pharmaceutical manufacturers during FDA inspections. In addition to encouraging manufacturers to use currently available dispute resolution processes, the guidance describes a formal two-tiered dispute resolution process that provides a mechanism for requesting review and decision on issues that arise during inspections.

On September 5, 2003 (68 FR 52777), the FDA announced the availability of the draft version of this guidance. The public comment period closed on March 5, 2004. A number of comments were received, which the agency considered carefully as it finalized the guidance and made appropriate changes. The agency conducted a pilot program with industry for a 12-month period. During that time, the agency received one Tier 1 request for dispute resolution and it was resolved. In addition, FDA met with representatives from industry trade associations in September 2004, near the end of the pilot period, to discuss the draft guidance and receive input.

Most of the changes to the guidance were made to clarify statements in the draft guidance. The following changes in the final guidance are noteworthy: (1) The time period for manufacturers to ask for clarification of a disputed scientific or technical issue was extended from 10 to 30 days; (2) if a request for formal dispute resolution reaches the agency's Dispute Resolution Panel and is considered appropriate for review, the panel will schedule a meeting to discuss the issue within 90 days of the request instead of the indefinite time period indicated in the draft guidance; (3) the guidance directs manufacturers to the Center for Devices and Radiological Health for disputes involving combination products when medical device components are the focus of the dispute, but clarifies that disputes solely involving medical devices are outside the scope of this guidance; and (4) the guidance clarifies that, during the dispute resolution process, a manufacturer may include relevant information that was not presented during the inspection, if FDA determines that a reasonable explanation was given on why the information was not presented during the inspection.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on formal dispute resolution: scientific and technical issues related to pharmaceutical CGMP. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. The Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in this guidance was approved under OMB control number 0910–0563.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance document at the following *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm* or *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/cvm/guidance/guidance.html*.

Dated: January 4, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–233 Filed 1–11–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Migrant Health.

Dates and Times: January 30, 2006, 9 a.m. to 5 p.m. January 31, 2006, 9 a.m. to 5 p.m.

Place: 5600 Fishers Lane, Conference Room C, 3rd Floor, Rockville, Maryland 20857.

Status: The meeting will be open to the public.

Agenda: The agenda includes an overview of the Council's general business activities. The Council will also develop recommendations to the Secretary of Health and Human Services. Finally, the Council will hear presentations from experts on farmworker issues, including the status of farmworker health at the local and national level.

Agenda items are subject to change as priorities indicate.

For Further Information Contact: Anyone requiring information regarding the Council should contact Gladys Cate, Office of Minority and Special Populations, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 594–0367.

Dated: January 5, 2006.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–171 Filed 1–11–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the

information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Screening, Brief Intervention, Brief Treatment and Referral to Treatment (SBIRT) Cross-Site Evaluation—New

SAMHSA's Center for Substance Abuse Treatment (CSAT) is conducting a cross-site external evaluation of the impact of programs of screening, brief intervention (BI), brief treatment (BT) and referral to treatment on patients presenting at various health care delivery units with a continuum of severity of substance use. CSAT's SBIRT program is a cooperative agreement grant program designed to help six States and one Tribal Council expand the continuum of care available for substance misuse and use disorders. The program includes screening, BI, BT and referrals for persons at risk for dependence on alcohol or drugs. The primary purpose of the evaluation is to study the extent to which the modified models of SBIRT being implemented by the grantees expand the continuum of care available for treatment of substance use disorders.

A survey will be used to collect data from patients at the participating grantee health care delivery units at baseline using a computer-assisted personal interview (CAPI) and at a six-month follow-up primarily via computer-assisted telephone interviewing (CATI). A second survey will be administered to practitioners who are delivering SBIRT services using CAPI. The patient survey is composed of questions on substance use behaviors and other outcome measures such as productivity, absenteeism, health status, arrests and accidents. The practitioner survey is designed to evaluate the implementation of proposed SBIRT models by measuring their penetration and practitioners' willingness to adopt. Furthermore, the survey will document moderating factors related to practitioner and health care delivery unit characteristics.

TOTAL BURDEN HOURS FOR THE CROSS-SITE PATIENT SURVEY

Instrument/activity	Number of respondents	Number of responses per respondent	Average burden per response	Total burden hours per collection
Cross-Site Patient Survey:				
Baseline Data Collection	10,500	1	.25	2,625
6-Month Follow-up Data Collection (80% of baseline)	8,400	1	.25	2,100
Cross-Site Practitioner Survey	270	1	.25	67.5
Total	19,170			4,793

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, 1 Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 4, 2006.

Anna Marsh,

Director, Office of Program Services.

[FR Doc. E6–209 Filed 1–11–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed extension of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning reimbursement of claims submitted for fighting fires on Federal property.

SUPPLEMENTARY INFORMATION: The collection of information is necessary in order to reimburse fire services for claims submitted for fighting fires on property that is under jurisdiction of the United States. Section II of the Federal Fire Prevention and Control Act of 1974, implemented under 44 CFR part 151, provides that each fire service that engages in the fighting of a fire on property which is under the jurisdiction of the United States and who has a mutual aid agreement in effect between claimant and the [1] Federal Emergency Management Agency (FEMA) for the property upon which the fire occurred, may file a claim with FEMA for the amount of direct expense and direct losses incurred by such fire services as a result of fighting fires.

Collection of Information

Title: Reimbursement for Cost of Fighting Fire on Federal Property.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0014.

Abstract: The Federal Emergency Management Agency (FEMA) Director; the Administrator of the United States Fire Administration (USFA); and the United States Treasury will use the information to ensure proper expenditure of Federal funds. Once a claim is received, a copy of FEMA determination and the claim is forwarded to the Treasury Department. The Treasury Department will pay for fire services or its parent jurisdiction for any moneys in the treasury subject to reimbursement, to the Federal department or agency under whose jurisdiction the fire occurred.

Affected Public: Business or Other For-Profit, Not For-Profit Institutions, and State, Local or Tribal Government.

Estimated Total Annual Burden Hours:

[1] The Reimbursement for Cost of Fighting Fire on Federal Property program is currently being transferred to the newly created Preparedness Directorate of the Department of Homeland Security. During this transition FEMA, also part of the Department of Homeland Security, will continue to support this program as the new Directorate stands up. Ultimately this data collection will be transferred to the Preparedness Directorate.

ANNUAL BURDEN HOURS

Information collection activities	Number of respondents (A)	Frequency of responses (B)	Burden hours per respondent (C)	Annual responses (AxB)	Total annual burden hours (AxBxC)
Claims Information	4	On Occasion	1.5	16	24
Total	4		1.5	16	24

Estimated Cost: The annualized cost burden for Fire Chiefs to complete and process a claim is estimated to be $15,288 annually.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments must be submitted on or before February 13, 2006.

ADDRESSES: Interested persons should submit written comments to Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Tim Ganley, Fire Program Specialist, U.S. Fire Administration, (301) 447–1358 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: January 4, 2006.

Darcy Bingham,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E6–212 Filed 1–11–06; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–080–05–1310-DB]

Notice of Availability of a Draft Environmental Impact Statement for the Chapita Wells-Stagecoach Area Natural Gas Development Project, Uintah County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Under the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act of 1976 (FLPMA) and associated regulations, the Bureau of Land Management (BLM) announces the availability of a Draft Environmental Impact Statement (DEIS) that evaluates, analyzes, and discloses to the public direct, indirect, and cumulative environmental impacts of a proposal to develop natural gas in Uintah County, Utah.

DATES: The DEIS will be available for review for 45 calendar days following the date that the Environmental Protection Agency publishes its NOA in the **Federal Register**. The BLM can best use comments and resource information submitted within this 45-day review period.

ADDRESSES: Written comments may be mailed directly or delivered to the BLM at: CWSA DEIS, Bureau of Land Management, Vernal Field Office, 170 South 500 East, Vernal, UT 84078. Comments may be submitted by facsimile to the Vernal Field Office at 435–781–4410. At this time BLM is unable to accept electronic comments. A copy of the DEIS has been sent to the affected Federal, State, and local government agencies, Native American Tribes and to interested parties. Copies of the DEIS are available for public inspection at the address listed above and the Bureau of Land Management Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, UT 84101.

FOR FURTHER INFORMATION CONTACT: Stephanie Howard, Project Manager, BLM Vernal Field Office, 170 South 500 East, Vernal, UT 84078. Ms. Howard may also be reached at 435–781–4400.

SUPPLEMENTARY INFORMATION: In response to a proposal submitted by EOG Resources, Inc., (EOG), the BLM published in the October 1, 2004, **Federal Register** a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS).

The Chapita Wells-Stagecoach Area (CWSA) involves approximately 31,870 acres located in Townships 8 through 10 South, Ranges 22 and 23 East, Salt Lake Base Meridian, about 30 miles south of Vernal, Uintah County, Utah. The DEIS analyzes a proposal by EOG to fully develop Federal natural gas resources in the Chapita Wells and the Stagecoach Units, in addition to non-unitized lands in the project area. The Company's proposal includes drilling a total of up to 627 new wells and constructing associated ancillary transportation and transmission facilities within the project area. Of the planned wells, 473 wells would be new locations and 154 wells would be twinned, drilled from existing locations. Of the 31,870 acres within the project area, about 71% is Federal lands administered by the BLM; 21% is owned by the Ute Tribe and/or its allottees and administered by the BIA; 6% is owned by the State of Utah and administered by the Utah State School and Institutional Trust Lands Administration; and 2% is privately owned. The proposed life of the project is 40 years, with the majority of the drilling and development activities to occur within the first 7 years following approval of the BLM's Record of Decision.

As set out in the NOI, EOG proposes to fully develop its existing leases within the Chapita Wells-Stagecoach Area. As of March 2004, the CWSA contained 325 gas-producing wells, about 121 miles of roads and 115 miles of pipeline. An additional 100 wells, 12 miles of access road, and 18.5 miles of pipelines were approved by EA No. UT–080–1999–32, *Environmental Assessment, Chapita Wells Unit Infill Development, Uintah County, Utah.* Currently no oil wells or produced water disposal wells occur in the CWSA. The new gas wells would be

drilled to the Green River, Wasatch, Mesaverde, Mancos ''B'', and possibly, other formations. EOG's proposal is based on 40-acre spacing; although some pilot 20-acre locations may be drilled to the Mesaverde Group to help in determining whether development on 40-acre spacing can reasonably provide for optimum recovery. The Proposed Action incorporates standard operating procedures and applicant-committed best management practices currently employed on BLM-administered public lands in the Uintah Basin that mitigate impacts to the environment.

The DEIS describes in detail and analyzes the impacts of EOG's Proposed Action and the No Action Alternative. Seven additional alternatives were considered but eliminated from detailed analysis. The following is a summary of the alternatives:

1. *Proposed Action*—Up to 627 new gas wells at 40-acre spacing, including up to 66 new locations drilled on 20-acre spacing, would be drilled to the Green River, Wasatch, Mesaverde Group (including the Blackhawk), Mancos Shale, and possibly, other formations. About 99 miles of new roads and 104.5 miles of pipelines would be constructed to support this proposed development. At this time the Proposed Action is the BLM's preferred alternative.

2. *No Action Alternative*—The proposed natural gas development on Federal lands would not be implemented; however, natural gas development would continue to occur under the authority of the 1985 Book Cliffs RMP, the 1999 Chapita Wells EA, and on non-Federal lands within the project area.

3. *Alternatives Considered, but Eliminated from Further Analysis*—

a. One pad per well.

b. No new development.

c. Directional drilling.

d. No new development in the White River Corridor and floodplains.

e. White River Protection.

f. Decreased density.

g. Best Management Practices (BMP).

The public is encouraged to comment on any of these alternatives.

The BLM welcomes your comments on the Chapita Wells-Stagecoach Area DEIS. The BLM asks that those submitting comments make them as specific as possible with reference to chapters, page numbers, and paragraphs in the DEIS document. Comments that contain only opinions or preferences will not receive a formal response; however, they will be considered, and included, as part of the BLM decision-making process. The most useful comments will contain new technical or scientific information, identify data gaps in the impact analysis, or will provide technical or scientific rationale for opinions or preferences. It is BLM's practice to make comments, including the names and street addresses of each respondent, available for public review at the BLM office listed above during business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except for Federal holidays. Your comments may be published as part of the EIS process. Individual respondents may request confidentiality. If you wish to withhold your name or street address, or both, from public review, or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by law. BLM will not consider anonymous comments. All submissions from organizations or businesses will be made available for public inspection in their entirety.

William Stringer,

Vernal Field Manager.

[FR Doc. E6–251 Filed 1–11–06; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

30 Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, The Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C., Chapter 3507) and 5 CFR part 1320, Reporting and Record keeping Requirements, the National Park Service invites public comments on a submitted request to the Office of Management and Budget (OMB) to approve an extension of a currently approved collection (OMB #1024–1018).

The primary purpose of the Information Collection Request is to nominate properties for listing in the National Register of Historic Places, the official list of the Nation's cultural resources worthy of preservation, which public law requires that the Secretary of the Interior maintain and expand. Properties are listed in the National Register upon nomination by State Historic Preservation Officers and Federal Preservation Officers. Law also requires Federal agencies to request determinations of eligibility for property under their jurisdiction or affected by their programs and projects. The forms provide the historic documentation on which decisions for listing and eligibility are based.

DATES: Public comments will be accepted on or before February 13, 2006.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1024–0018), Office of Information and Regulatory Affairs, OMB, by fax at 202/395–6566, or by electronic mail at *oira_docket@omb.eop.gov*. Please also mail or hand carry a copy of your comments to Beth L. Savage, Managing Editor, National Register of Historic Places, National Park Service, 1849 C Street, NW., #2280, Washington, DC 20240. All comments will be a matter of public record.

SUPPLEMENTARY INFORMATION:

Title: 36 CFR parts 60 and 63, National Register of Historic Places Registration Form, Continuation Sheet, Multiple Property Documentation Forms (aka MPS).

Form: NPS 10–900, 10–900–a, 10–900–b.

OMB Control Number: 1024–0018.

Type of Request: Extension of a currently approved collection.

Expiration Date: December 31, 2005.

Description of need: The National Historic Preservation Act requires the Secretary of the Interior to maintain and expand the National Register of Historic Places, and to establish criteria and guidelines for including properties in the National Register. The National Register of Historic Places Registration Form documents properties nominated for listing in the National Register and demonstrates that they meet the criteria established for inclusion. The documentation is used to assist in preserving and protecting the properties and for heritage education and interpretation.

National Register properties must be considered in the planning for Federal or federally assisted projects. National Register listing is required for eligibility for the federal rehabilitation tax incentives. Comments are invited on: (1) The need for information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Description of respondents: The affected public are State, tribal, and local governments, businesses, non-profit organizations, and individuals.

Nominations to the National Register of Historic Places are voluntary.

Estimated annual reporting burden: 52,824 hours, broken down as follows: 196 nominations submitted under existing MPS @ 18 hrs. each = 3,528; 1,186 newly proposed individual nominations @ 36 hrs. each = 42,696; 55 newly proposed MPS @ 120 hrs. each = 6,600.

Estimated average burden hours per response: Depending on which form is used, the average burden hours per response may vary considerably because of many complex factors. In general, to fulfill minimum program requirements describing the nominated property and demonstrating its eligibility under the criteria, the average burden hours range from 18 hours for a nomination proposed under an existing Multiple Property Submission (MPS), to 36 hours for a newly proposed individual nomination, to 120 hours for a newly proposed MPS. Continuation sheets (10–900–a) are used for additional information for both the individual nomination form and the multiple property form, as needed. As such, the calculation of average burden hours per response for the continuation sheets has been included in the average calculations above for the nomination form (10–900) and the multiple property form (10–900–b).

Estimated average number of respondents: 1,513.

Estimated frequency of response: 1,513 annually.

Dated: December 14, 2005.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 06–275 Filed 1–11–06; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention to Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C., Chapter 3507) and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) invites public comments on an extension of a currently approved information collection (OMB #1024–0009).

DATES: Public comments on this notice will be accepted on or before March 13, 2006 to be assured of consideration.

ADDRESSES: Send comments to: Michael J. Auer, Heritage Preservation Services, National Park Service, 1849 C St., NW., Org. code 2255, Washington, DC 20240. E-mail: *michael_auer@nps.gov*.

To Request Copies of the Document Contact: Michael J. Auer, at the above address. The information collection may also be viewed on-line at: *http://www.cr.nps.gov/hps/tps/tax/hpcappl.htm*.

FOR FURTHER INFORMATION CONTACT: Michael J. Auer, 202–354–2031.

SUPPLEMENTARY INFORMATION:

Title: Historic Preservation Certification Application.

OMB Number: 1024–0009.

Expiration Date of Approval: July 31, 2006.

Type of Request: Extension of a currently approved information collection.

Description of need: Section 47 of the Internal Revenue Code requires that the Secretary of the Interior certify to the Secretary of the Treasury upon application by owners of historic properties for Federal tax benefits: (a) The historic character of the property, and (b) that the rehabilitation work is consistent with that historic character. The NPS administers the program with the Internal Revenue Service. NPS uses the Historic Preservation Certification Application to evaluate the condition and historic significance of buildings undergoing rehabilitation for continued use, and to evaluate whether the rehabilitation work meets the Secretary of the Interior's Standards for Rehabilitation. NPS specifically requests comments on: (1) The need for information including whether the information has practical utility; (2) the accuracy of the reporting burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Description of respondents: Individuals or households, businesses or other for-profit entities. Application for Historic Preservation Certifications is voluntary.

Estimated annual reporting burden: 42,000 hours.

Estimated average burden hours per response: 14.0 hours.

Estimated average number of respondents: 3,000 annually.

Estimate frequency of response: 3,000 annually.

Dated: December 19, 2005.

Leonard E. Stowe,

National Park Service Information and Collection Clearance Officer.

[FR Doc. E6–230 Filed 1–11–06; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability

AGENCY: National Park Service, Interior.

SUMMARY: National Park Service (NPS) has prepared a Final Environmental Impact Statement (EIS) for Acadia National Park, Schoodic General Management Plan Amendment, which is now available from the NPS.

ADDRESSES: Request for copies should be sent to Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609.

FOR FURTHER INFORMATION CONTACT: Superintendent at 207–288–8703.

SUPPLEMENTARY INFORMATION: The NPS prepared a Draft General Management Plan Amendment (GMPA)/Draft EIS for Acadia National Park, Maine, pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969. The draft was made available for public review for 60 days (September–November 2004), during which time the NPS distributed over 160 copies of the plan. Also, the full text and graphics were posted on the park's NPS Planning Web sites. NPS received 14 comment letters and 50 people participated in a public meeting held October 20, 2004. Oral and written comments were considered by the NPS and informed the preparation of the final environmental impact statement. The consensus of the public comment was that the NPS was pursuing the correct path for Acadia National Park in Alternative C, the preferred alternative. An abbreviated format is used for the final EIS because changes to the Draft GMPA/Draft EIS are confined primarily to factual corrections and explanations as to why comments do not warrant further agency response. Use of this format is in compliance with the 1978 regulations (40 CFR 1503.4(c)) for the National Environmental Policy Act.

DATES: The National Park Service will execute a Record of Decision no sooner than 30 days following publication by the Environmental Protection Agency of

its notice of the availability of the final EIS.

Mary A. Bomar,

Regional Director, Northeast Region.

[FR Doc. 06–272 Filed 1–11–06; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Stream Management Plan, Abbreviated Final Environmental Impact Statement, Herbert Hoover National Historic Site, IA

AGENCY: National Park Service, Interior.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, the National Park Service (NPS) announces the availability of the stream management plan, abbreviated final environmental impact statement (EIS) for Herbert Hoover National Historic Site, Iowa.

DATES: The final EIS will be made available for a 30-day period, following the publishing of the notice of availability in the **Federal Register** by the Environmental Protection Agency.

ADDRESSES: Requests for copies should be sent to Superintendent, Herbert Hoover National Historic Site, P.O. Box 607, West Branch, Iowa 52358.

FOR FURTHER INFORMATION CONTACT: Herbert Hoover National Historic Site Superintendent at (319) 643–2541.

SUPPLEMENTARY INFORMATION: The NPS prepared a draft stream management plan/draft EIS for Herbert Hoover National Historic Site, Iowa, pursuant to section 102(c) of the NEPA of 1969. The draft was made available for public review for 60 days (September-November 2005). The NPS distributed full hard copy versions of the draft, and made the draft EIS available on the Web and at area libraries. Two public presentation sessions, attended by 35 participants, were held for the public to discuss and comment on the draft. No written comments were received from the public. The consensus of the public during the presentations was that the NPS would pursue the correct path for the park by following alternative E, the preferred alternative. Comments from public agencies did not require NPS to add other alternatives, significantly alter existing alternatives, or make changes to the impact analysis of the effects of any alternative. Thus, an abbreviated format is used for the responses to comments in the final EIS, in compliance with the implementing regulations (40 CFR 1503.4[c]) for the NEPA, and the NPS Director's Order 12: Conservation planning, environmental impact analysis, and decision-making.

Dated: December 6, 2005.

Ernest Quintana,

Regional Director, Midwest Region.

[FR Doc. E6–232 Filed 1–11–06; 8:45 am]

BILLING CODE 4312–94–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of the National Park Service (NPS) Subsistence Resource Commission (SRC) Meetings Within the Alaska Region

AGENCY: National Park Service, Interior.

SUMMARY: The National Park Service (NPS) announces the SRC meeting schedule for the following NPS areas: Denali National Park, Aniakchak National Monument, Lake Clark National Park, Wrangell-St. Elias National Park, Cape Krusenstern National Monument and Kobuk Valley National Park. The purpose of each meeting is to develop and continue work on subsistence hunting program recommendations and other related subsistence management issues. Each meeting is open to the public and will have time allocated for public testimony. The public is welcomed to present written or oral comments to the SRC.

The NPS SRC program is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act. Draft meeting minutes will be available upon request from each Superintendent for public inspection approximately six weeks after each meeting.

DATES: The Denali National Park SRC meeting will be held from 9 a.m. to 5 p.m. on Friday, February 10, 2006.

Location: The Denali NP & P meeting will be held the Cantwell Community Hall in Cantwell, AK.

For Further Information Contact: Paul Anderson, Superintendent and Scott Hayden, Subsistence Manager, Denali National Park and Preserve, SRC P.O. Box 9, McKinley Park, AK 99755, telephone: (907) 683–2294 and (907) 683–9544. E-mail: *Scott_Hayden@nps.gov*.

Date: The Aniakchak National Monument SRC meeting will be held from 12:30 p.m. to 4 p.m., Monday, February 13, 2006.

Location: The meeting will be held at the Chignik Lake Subsistence Office.

For Further Information Contact: Mary McBurney, Subsistence Manager, Aniakchak National Monument and Preserve, c/o Katmai National Park & Preserve, P.O. Box 7, King Salmon, AK 99614, telephone: (907) 271–3751. Fax: (907) 271–3707. E-mail: *Mary_McBurney@nps.gov*.

Date: The Lake Clark National Park SRC meeting will be held from 12:30 p.m. to 4 p.m., Thursday, February 16, 2006.

Location: The meeting will be held in Pedro Bay, AK.

For Further Information Contact: Mary McBurney, Subsistence Manager, Lake Clark National Park and Preserve, 4230 University Drive, Suite 311, Anchorage, AK 99508, telephone: (907) 271–3751. Fax: (907) 271–3707. E-mail: *Mary_McBurney@nps.gov*.

Date: The Wrangell-St. Elias National Park SRC meeting will be held from 9 a.m. to 5 p.m., Wednesday, February 22 and 9 a.m. to 5 p.m., Thursday, February 23, 2006,

Location: The meeting will be held at the Caribou Restaurant, Glennallen, AK.

For Further Information Contact: Barbara Cellarius, Subsistence Manager/ Cultural Anthropologist, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, AK 99573, telephone: (907) 822–7236 or (907) 822–5234. Fax: (907) 822–7259. E-mail: *Barbara_Cellarius@nps.gov*.

Date: The Cape Krusenstern National Monument SRC meeting will be held from 9 a.m. to approximately 5 p.m., Wednesday, March 1, 2006 and the Kobuk Valley National Park SRC meeting will be held from 9 a.m. to approximately 5 p.m., Thursday, March 2, 2006.

Location: The meetings will be held at the U.S. Fish and Wildlife Service Office in Kotzebue, Alaska.

For Further Information Contact: Ken Adkisson, Subsistence Program Manager, Western Arctic National Parklands, P.O. 1029, Kotzebue, AK 99752, telephone (907) 443-2522 or Willie Goodwin, Subsistence Manager at (907) 442–3890.

SUPPLEMENTARY INFORMATION: SRC meeting locations and dates may need to be changed based on weather or local circumstances. If meeting dates and locations are changed notice of each meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates.

The agendas for each meeting include the following:

1. Call to order (SRC Chair)
2. SRC Roll Call and Confirmation of Quorum
3. SRC Chair and Superintendent's Welcome and Introductions

4. Review and Approve Agenda
5. Review and adopt minutes from last meeting
6. Status of SRC Membership—If Needed, Election of Chair and Vice Chair
7. Commission Member Reports
8. Superintendent and NPS Staff Reports
9. Federal Subsistence Board Update
   a. Wildlife Proposals
   b. Fisheries Proposals
   c. Rural Determinations
10. Board of Game and Board of Fisheries Update
11. New Business
12. Agency and Public Comments
13. SRC Work Session. Prepare correspondence and hunting program recommendations.
14. Set time and place of next SRC meeting

Adjournment

Marcia Blaszak,

Director, Alaska Region.

[FR Doc. E6–229 Filed 1–11–06; 8:45 am]

BILLING CODE 4312–HE–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Draft Site Progress Report to the World Heritage Committee, Yellowstone National Park

AGENCY: National Park Service, Interior.

SUMMARY: Pursuant to the Decision adopted by the 27th Session of the World Heritage Committee (Document: WHC–03/27.COM/7A.12) accepted by the United States Government, the National Park Service (NPS) announces the publication for comment of a Draft Site Progress Report to the World Heritage Committee for Yellowstone National Park, Wyoming, Idaho and Montana.

DATES: There will be a 15-day public review period for comments on this document. Comments must be received on or before January 27, 2006.

ADDRESSES: The Draft Site Report is posted on the park's Web site at: *http://www.nps.gov/yell/publications/worldheritage/index.htm.*

Copies are also available by writing to Suzanne Lewis, Superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, WY 82190–0168; by telephoning 307–344–2002; by sending an e-mail message to *yell_world_heritage@nps.gov*; or by picking up a copy in person at the park's headquarters in Mammoth Hot Springs, Wyoming, 82190.

FOR FURTHER INFORMATION CONTACT: Suzanne Lewis, Superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, WY 82190–0168, or by calling 307–344–2002.

A. Public Comment Solicitation

Persons wishing to comment may do so by any one of several methods. They may mail comments to Suzanne Lewis, Superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, WY 82190–0168. They also may comment via e-mail to *yell_world_heritage@nps.gov* (include name and return address in the e-mail message). Finally, they may hand-deliver comments to park headquarters in Mammoth Hot Springs, Wyoming 82190.

The NPS practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identify, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not 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.

Dated: December 21, 2005.

Paul Hoffman,

Deputy Assistant Secretary Fish and Wildlife and Parks.

[FR Doc. E6–231 Filed 1–11–06; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[DES–05–59]

Long-Term Miscellaneous Purposes Contract, Eddy County, NM

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability and Notice of Public Meeting for the Long-Term Miscellaneous Purposes Contract Draft Environmental Impact Statement, Eddy County, New Mexico.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) and the New Mexico Interstate Stream Commission (NMISC), as joint lead agencies, have prepared a draft environmental impact statement (DEIS) on the execution of a long-term contract based upon the 1920 Sale of Water for Miscellaneous Purposes Act (long-term miscellaneous purposes contract) with the Carlsbad Irrigation District (CID), New Mexico, and the subsequent conversion and delivery of the full amount of irrigation water addressed in the contract and any related contracts. Reclamation is the lead federal agency and the NMISC is a joint lead agency for NEPA compliance on the proposed federal action.

DATES: A 60-day public review period commences with the publication of this notice. Written comments on the DEIS should be submitted no later than Monday, March 13, 2006, to Ms. Marsha Carra, Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE., Suite 100, Albuquerque, New Mexico 87102.

Reclamation will conduct a public meeting to obtain input on the DEIS. The meeting will be held at the following time and location:

- *Wednesday, February 8, 2006*—7 to 9 p.m., Best Western Stevens Inn, Room Nos. 2 and 3, 1829 South Canal Street, Carlsbad, New Mexico.

ADDRESSES: Copies of the DEIS are available for public inspection and review at the following locations:

- Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 7220, Salt Lake City, Utah 84138–1102.
- Bureau of Reclamation, Albuquerque Area Office, Attention: Marsha Carra, 555 Broadway NE., Suite 100, Albuquerque, New Mexico 87102.
- New Mexico Interstate Stream Commission, Attention: Elisa Sims, 230 West Manhattan Avenue, 2nd Floor, Santa Fe, New Mexico 87501.
- Carlsbad Public Library, 101 South Halagueno Street, Carlsbad, New Mexico 88221.
- Carlsbad Irrigation District, 201 South Canal Street, Carlsbad, New Mexico 88220.

The DEIS is also available on the Internet at the following Web address: *http://www.usbr.gov/uc/albuq/envdocs/index.html.* In addition, interested parties may contact Ms. Aleta Powers, ERO Resources Corporation, 1842 Clarkson Street, Denver, Colorado 80218; telephone (303) 830–1188; e-mail: *apowers@eroresources.com.*

FOR FURTHER INFORMATION CONTACT: Ms. Marsha Carra, Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE., Suite 100, Albuquerque, New Mexico 87102; telephone (505) 462–

3602; facsimile (505) 462–3797; e-mail: *mcarra@uc.usbr.gov* or Elisa Sims, New Mexico Interstate Stream Commission, P.O. Box 25102, Santa Fe, New Mexico 87504–5102; telephone (505) 827–3918; e-mail: *elisa.sims@state.nm.us.*

SUPPLEMENTARY INFORMATION: The purpose of Reclamation's proposed federal action is to allow the NMISC to use Carlsbad Project water (Project water) for purposes other than irrigation, specifically for delivery to Texas. As a member of CID, the NMISC needs to use Project water for purposes other than irrigation to maintain long-term compliance with the Pecos River Compact and the United States Supreme Court Amended Decree in *Texas* v. *New Mexico.* Project water is available for lease to the NMISC under a Contingent Water Contract where: (1) Willing lessors temporarily forego irrigation of their lands in an irrigation season (fallowed land water) or (2) allotted water is not delivered to farms by October 31 of a given year (undelivered allotment water). The long-term miscellaneous purposes contract would replace a 1999 short-term contract that Reclamation currently has with the CID that allows the NMISC to use Project water for miscellaneous purposes.

Between 1987 and the present, New Mexico has satisfied its water delivery obligations to Texas under the Pecos River Compact (Compact) and Amended Decree. In some years, New Mexico has over-delivered water to the state line and in other years it has under-delivered. New Mexico has been able to satisfy its Compact obligations in large part because of its leasing program and the fallowing of irrigated land within CID. The leasing program within CID has operated under an existing short-term miscellaneous purposes contract since 1992, which allows irrigation water to be delivered to the state line on behalf of the NMISC.

The State of New Mexico *ex rel.* the State Engineer, NMISC, Reclamation, CID, and the Pecos Valley Artesian Conservancy District entered into a Settlement Agreement on March 25, 2003, that resolves litigation, implements a plan to ensure delivery of water to the CID and New Mexico-Texas state line, and settles many water management issues on the Pecos River. An ad hoc committee comprised of water users in the Pecos River Basin was formed to develop a solution for long-term compliance with the Pecos River Compact and Amended Decree, resulting in the Settlement Agreement. In addition, the implementation of the Settlement Agreement is contingent upon fulfilling certain requirements, including the execution of a long-term miscellaneous purposes contract.

On February 28, 2003, Reclamation published a notice in the **Federal Register** stating plans to execute a contract with the CID that would allow the NMISC to use water allotted for up to 6,000 acres, or other available Project water, for purposes other than irrigation. These 6,000 acres, plus 164 acres that the NMISC currently owns within the boundaries of the CID, would be fallowed under this contract. Execution of this contract would not preclude future use of the water for irrigation purposes on lands owned by the NMISC. The Commissioner of Reclamation has granted approval to negotiate and execute a long-term miscellaneous purposes contract, pursuant to authority provided by the Sale of Water for Miscellaneous Purposes Act of February 25, 1920, whereby the NMISC would be limited to using or leasing a maximum of 50,000 acre-feet of Project water per year.

The two alternatives analyzed in the draft EIS are the Proposed Action Alternative which is the execution of a long-term miscellaneous purposes contract and approval of any related third-party contracts, and the No Action Alternative. The draft EIS assesses the potential effects that the two alternatives may have on biological, hydrologic, and cultural resources; social and economic settings; and Indian trust assets as well as any potential disproportionate effects on minority or low-income communities (environmental justice). The draft EIS also evaluates the effects of the alternatives on the State of New Mexico's ability to meet annual state line delivery obligations associated with the Pecos River Compact and Amended Decree.

After the 60-day waiting period, Reclamation will complete a final environmental impact statement (FEIS). Responses to comments received from organizations and individuals on the DEIS will be addressed in the FEIS.

Public Disclosure

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. 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 disclosure in their entirety.

Dated: November 7, 2005.

Darryl Beckmann,

Deputy Regional Director—UC Region, Bureau of Reclamation.

[FR Doc. 06–187 Filed 1–11–06; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–309–A and B and 731–TA–696 (Second Review)]

Pure and Alloy Magnesium From Canada and Pure Magnesium From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the countervailing duty orders on pure and alloy magnesium from Canada and the antidumping duty order on pure magnesium from China.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty orders on pure and alloy magnesium from Canada and revocation of the antidumping duty order on pure magnesium from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. With respect to Investigations Nos. 701–TA–309–A and B, the Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* January 4, 2006.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179 or *fred.fischer@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility

impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On October 4, 2005, the Commission determined that responses to its notice of institution of the five-year reviews concerning pure and alloy magnesium from Canada were such that full reviews pursuant to section 751(c)(5) of the Act should proceed notwithstanding its finding that the respondent interested party group response to its notice of institution was inadequate (70 FR 60108, October 14, 2005).[1] On December 5, 2005, the Commission determined that circumstances warranted conducting a full review of the order concerning pure magnesium from China, pursuant to section 751(c)(5) of the Act, notwithstanding its finding that the respondent interested party group response to its notice of institution was inadequate (70 F.R. 75483, December 20, 2005).[2] A record of the Commissioners' votes, the Commission's statements on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service lists. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notices of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain public service lists containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notices of institution of the reviews need not reapply for such access. Separate service lists will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the reviews will be placed in the nonpublic record on March 31, 2006, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on April 25, 2006, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 18, 2006. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held (if necessary) at 9:30 a.m. on April 20, 2006, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions. Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 11, 2006. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 4, 2006; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before May 4, 2006. On May 26, 2006, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 31, 2006, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 5, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–193 Filed 1–11–06; 8:45 am]

BILLING CODE 7020–02–P

[1] Commissioner Jennifer A. Hillman dissenting.

[2] Chairman Stephen Koplan and Commissioner Jennifer A. Hillman dissenting.

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Office of Trade Agreement Implementation; North American Agreement on Labor Cooperation; Notice of Determination Regarding Review of U.S. Submission #2005–03

AGENCY: Bureau of International Labor Affairs, U.S. Department of Labor.

ACTION: Notice.

SUMMARY: The Office of Trade Agreement Implementation (OTAI) gives notice that on January 6, 2006, U.S. Submission #2005–03 was accepted for review pursuant to Article 16(3) of the North American Agreement on Labor Cooperation (NAALC). The submission was filed with the OTAI on October 14, 2005, by The Progressive Union of Workers of the Textile Industry, the Manufacturing, Cutting and Confection of Fabric and Garments in General and Related and Similar Industries in the Mexican Republic, a member of the ''Vanguardia Obrera'' Workers Federation of the Revolutionary Confederation of Workers and Peasants (FTVO–CROC), with the support of the U.S. Labor Education in the Americas Project and the Washington Office on Latin America. The submitters allege that the Government of Mexico has failed to fulfill its obligations under the NAALC to effectively enforce its labor laws in connection with freedom of association and the right to organize, the right to bargain collectively, the right to strike, prohibition of forced labor, labor protection for children and young persons, elimination of employment discrimination, prevention of occupational injuries and illnesses, compensation in cases of occupational injuries and illnesses, and minimum employment standards related to events at a textile plant operated by Rubie's de Mexico, S. de R.L. de C.V., in the municipality of Tepeji del Rio, State of Hidalgo, Mexico.

Article 16(3) of the NAALC provides for the review of labor law matters in Canada and Mexico by the National Administrative Office (NAO), which was redesignated as the OTAI in a Federal Register Notice issued on December 23, 2004 (69 FR 77128 (2004)). The objectives of the review of the submission will be to gather information to assist the OTAI to better understand and publicly report on the Government of Mexico's compliance with the obligations set forth in the NAALC.

EFFECTIVE DATE: January 6, 2006.

FOR FURTHER INFORMATION CONTACT: Peter Accolla, Acting Director, Office of Trade Agreement Implementation, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5205, Washington, DC 20210. Telephone: (202) 693–4900 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On October 14, 2005, U.S. Submission #2005–03 was filed by The Progressive Union of Workers of the Textile Industry, the Manufacturing, Cutting and Confection of Fabric and Garments in General and Related and Similar Industries in the Mexican Republic, a member of the ''Vanguardia Obrera'' Workers Federation of the Revolutionary Confederation of Workers and Peasants (FTVO–CROC), with the support of the U.S. Labor Education in the Americas Project, and the Washington Office on Latin America under the NAALC concerning the enforcement of labor laws by the Government of Mexico. The submission focuses on events at a textile plant operated by Rubie's de Mexico, S. de R.L. de C.V., in the municipality of Tepeji del Rio, State of Hidalgo, Mexico.

The submitters allege that the Government of Mexico has failed to fulfill its obligations under the NAALC to effectively enforce its labor law under Article 3 in connection with freedom of association and protection of the right to organize, the right to bargain collectively, the right to strike, prohibition of forced labor, labor protections for children and young persons, minimum employment standards, elimination of employment discrimination, prevention of occupational injuries and illnesses, and compensation in cases of occupational injuries and illnesses, and under Article 5 with respect to fair, equitable and transparent labor tribunal proceedings.

The submission focuses on the submitter's attempts to organize a union at a plant operated by Rubie's de Mexico, S. de R.L. de C.V., in the municipality of Tepeji del Rio, State of Hidalgo, alleging that Mexico's Federal Conciliation and Arbitration Board No. 6 and Local Conciliation and Arbitration Board No. 51 failed to provide workers with fair, equitable and transparent proceedings to enforce their right to form a union to represent the workers in collective bargaining. Allegations also include failure on the part of state and federal authorities to provide effective onsite inspections and remedies for labor law violations concerning forced labor, minimum wage, overtime pay, prevention of discrimination, occupational safety and health, and child labor. Finally, the submitters assert that the actions and/or inaction by the Government of Mexico represent a pattern of non-enforcement of its labor laws.

The Procedural Guidelines for the OTAI, published in the **Federal Register** on April 7, 1994, 59 FR 16660, specify that, in general, the Secretary of the NAO shall accept a submission for review if it raises issues relevant to labor law matters in Canada or Mexico and if a review would further the objectives of the NAALC.

U.S. Submission #2005–03, which alleges that Mexico has failed to effectively enforce its labor law under NAALC Articles 3 and 5, relates to labor law matters in Mexico. A review would further the objectives of the NAALC, as set out in Article 1 of the NAALC, among them improving working conditions and living standards in each Party's territory, promoting the NAALC's labor principles, and encouraging publication and exchange of information, data development, and coordination to enhance mutually beneficial understanding of the laws and institutions governing labor in each Party's territory. Accordingly, this submission has been accepted for review under Section G of the OTAI Procedural Guidelines.

The OTAI's decision is not intended to indicate any determination as to the validity or accuracy of the allegations contained in the submission. The objectives of the review will be to gather information to assist the OTAI to better understand and publicly report on the issues of freedom of association and protection of the right to organize, the right to bargain collectively, the right to strike, prohibition of forced labor, labor protections for children and young persons, minimum employment standards, elimination of employment discrimination, prevention of occupational injuries and illnesses, and compensation in cases of occupational injuries and illnesses, including the Government of Mexico's compliance with the obligations agreed to under Articles 3 and 5 of the NAALC. The review will be completed, and a public report issued, within 120 days, or 180 days if circumstances require an extension of time, as set out in the Procedural Guidelines of the OTAI.

Signed at Washington, DC on January 6, 2006.

Peter Accolla,

Acting Director, Office of Trade Agreement Implementation.

[FR Doc. E6–228 Filed 1–11–06; 8:45 am]

BILLING CODE 4510–28–P

OFFICE OF MANAGEMENT AND BUDGET

Executive Office of the President; Acquisition Advisory Panel; Notification of Upcoming Meetings of the Acquisition Advisory Panel

January 9, 2006.

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Cancellation and Announcement of a Federal Advisory Committee Meeting.

SUMMARY: The Office of Management and Budget is issuing this notice to advise the public that the January 19, 2006 public meeting of the Acquisition Advisory Panel (AAP or ''Panel'') established in accordance with the Services Acquisition Reform Act (SARA) of 2003 has been cancelled and replaced with a January 31, 2006 public meeting.

DATES: The meeting being cancelled by this notice is the January 19, 2006 meeting and a new meeting is announced for January 31, 2006, beginning at 9 a.m. eastern time and ending no later than 5 p.m.

ADDRESSES: The January 31, 2006 meeting will be held at the Federal Deposit Insurance Corporation (FDIC), Basement auditorium, 801 17th Street NW., Washington, DC 20434. The public is asked to pre-register one week in advance for all meetings due to security and/or seating limitations (see below for information on pre-registration).

FOR FURTHER INFORMATION: Members of the public wishing further information concerning this notice or the Panel itself, or to pre-register for the meeting, should contact Laura Auletta, Designated Federal Officer (DFO), at: *laura.auletta@gsa.gov*, phone/voice mail (202) 208–7279, or mail at: General Services Administration, 1800 F. Street, NW., Room 4006, Washington, DC, 20405. Members of the public wishing to reserve speaking time must contact Anne Terry, AAP Senior Staff Analyst, *in writing* at: *anne.terry@gsa.gov*, by FAX at 202–501–3341, or mail at the address given above for the DFO, no later than one week prior to the meeting at which they wish to speak.

SUPPLEMENTARY INFORMATION:

(a) *Background:* The purpose of the Panel is to provide independent advice and recommendations to the Office of Federal Procurement Policy and Congress pursuant to Section 1423 of the Services Acquisition Reform Act of 2003. The Panel's statutory charter is to review Federal contracting laws, regulations, and governmentwide policies, including the use of commercial practices, performance-based contracting, performance of acquisition functions across agency lines of responsibility, and governmentwide contracts. Interested parties are invited to attend the meetings. Opportunity for public comments will be provided at the January 31, 2006 meeting. The Panel has been extended from one year to 18 months by the National Defense Authorization Act for Fiscal Year 2006. Therefore, additional public meetings are anticipated and will be announced in the **Federal Register**.

January 31, 2006 Meeting. The preliminary recommendations of one or more selected working groups, established at the February 28, 2005 and May 17, 2005 public meetings of the AAP (see *http://www.acqnet.gov/aap* for a list of working groups), will be discussed by the full Panel during this meeting. The Panel may also hear from some additional invited speakers. The Panel welcomes oral public comments at this meeting and has reserved one hour for this purpose. Members of the public wishing to address the Panel during the meeting must contact Anne Terry, *in writing*, as soon as possible to reserve time (see contact information above).

(b) *Posting of Draft Reports and Preliminary Findings and Recommendations:* Members of the public are encouraged to regularly visit the Panel's Web site at *http://www.acqnet.gov/aap* for draft reports (under ''Working Group Reports'') and preliminary findings and recommendations (under ''Meeting Materials'' or ''Meeting Minutes''). Currently, the working groups are staggering the posting of various sections of their draft reports.

(c) *Availability of Materials for the Meetings:* Please see the Panel's Web site for any available materials, including draft agendas and minutes (*http://www.acqnet.gov/aap*). Questions/issues of particular interest to the Panel are also available to the public on this web site on its front page, including ''Questions for Government Buying Agencies,'' ''Questions for Contractors that Sell Commercial Goods or Services to the Government,'' ''Questions for Commercial Organizations,'' and an issue raised by one Panel member regarding the rules of interpretation and performance of contracts and liabilities of the parties entitled ''Proposal for Public Comment.'' The Panel encourages the public to address any of these questions/issues when presenting either oral public comments or written statements to the Panel.

(d) *Procedures for Providing Public Comments:* It is the policy of the Panel to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Panel Staff expects that public statements presented at Panel meetings will be focused on the Panel's statutory charter and working group topics, and not be repetitive of previously submitted oral or written statements, and that comments will be relevant to the issues under discussion.

Oral Comments: Speaking times will be confirmed by Panel staff on a ''first-come/first-served'' basis. To accommodate as many speakers as possible, oral public comments must be no longer than 10 minutes. Because Panel members may ask questions, reserved times will be approximate. Interested parties must contact Anne Terry, in writing (via mail, e-mail, or fax identified above for Ms. Terry) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Oral requests for speaking time will not be taken. Speakers are requested to bring extra copies of their comments and presentation slides for distribution to the Panel at the meeting. Speakers wishing to use a Power Point presentation must e-mail the presentation to Ms. Terry one week in advance of the meeting.

Written Comments: Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received by the Panel Staff at least one week prior to the meeting date so that the comments may be made available to the Panel for their consideration prior to the meeting. Written comments should be supplied to the DFO at the address/contact information given in this FR Notice in one of the following formats (Adobe Acrobat, WordPerfect, Word, or Rich Text files, in IBM–PC/Windows 98/2000/XP format). *Please note:* Since the Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all public presentations will be treated as public documents and will be made available for public inspection, up to and including being posted on the Panel's Web site.

(e) *Meeting Accommodations:* Individuals requiring special accommodation to access the public meetings listed above should contact Ms. Auletta at least five business days

prior to the meeting so that appropriate arrangements can be made.

Laura Auletta,

Designated Federal Officer (Executive Director), Acquisition Advisory Panel.

[FR Doc. 06–258 Filed 1–11–06; 8:45 am]

BILLING CODE 3110–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Public Hearing

January 12, 2006.

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 70, Number 246, Page 7633) on December 23, 2005. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing in conjunction with OPIC's January 19, 2006 Board of Directors meeting scheduled for 3 p.m. on January 12, 2006 has been cancelled.

FOR FURTHER INFORMATION CONTACT: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov.*

January 9, 2006.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 06–335 Filed 1–10–06; 1:20 pm]

BILLING CODE 3210–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; OPIC Annual Public Hearing

January 12, 2006.

OPIC's Sunshine Act notice of its annual public hearing was published in the **Federal Register** (Volume 70, Number 246, Pages 76333 and 76334) on December 23, 2005. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's annual public hearing scheduled for 2 p.m. on January 12, 2006 has been cancelled.

FOR FURTHER INFORMATION CONTACT: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov.*

Dated: January 9, 2006.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 06–336 Filed 1–10–06; 1:20 pm]

BILLING CODE 3210–01–M

PEACE CORPS

Proposed Agency Information Collection Activities: Career Information Consultants Waiver Form (PC–DP–969.1.2)

AGENCY: Peace Corps.

ACTION: Notice of Reinstatement of OMB Control Number 0420–0531, with changes, of a previously approved collection for which approval has expired.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Peace Corps has submitted to the Office of Management and Budget, a request for approval of Reinstatement of OMB Control Number 4020–0531, the Career Information Consultants Waiver Form (PC–DP–969.1.2). The purpose of this information collection is to gather and update contact information for individuals who volunteer to share information about their career field, their past or current employer(s), and their career and educational paths with current and returned Peace Corps Volunteers. The purpose of this notice is to allow for public comments on whether the proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and the clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. A copy of the information collection may be obtained from Ms. Tamara Webb, Peace Corps, Office of Domestic Programs, Returned Volunteer Services, 1111 20th Street, NW., Room 2132, Washington, DC 20526. Ms. Webb can be contacted by telephone at 202–692–1435 or 800–424–8580 ext 1435.

DATES: Comments must be submitted on or before March 13, 2006.

Need for and Use of this Information: The Career Information Consultants Waiver Form is used to gather contact information from individuals who have volunteered to serve as career resources for current Peace Corps Volunteers and Returned Peace Corps Volunteers. The form is distributed and collected by the Peace Corps Office of Domestic Programs, Returned Volunteer Services Division. The Returned Volunteer Services division provides transition assistance to returning and recently-returned Volunteers through the Career Information Consultants project and other career, educational, and readjustment activities. The purpose of this information collection is to gather and update contact information for the Career Information Consultants database and publication. There is no other means of obtaining the required data. The Career information Consultants project supports the need to assist returned volunteers and enhance the agency's capability to serve this population as required by Congressional legislation.

Respondents: Professionals interested in supporting current and Returned Peace Corps Volunteers.

Respondent's Obligation to Reply: Voluntary.

Burden on the Public:

a. *Annual reporting burden:* 208 hours.

b. *Annual record keeping burden:* 0 hours.

c. *Estimated average burden per response:* 5 minutes.

d. *Frequency of response:* Annually.

e. *Estimated number of likely respondents:* 2500.

f. *Estimated cost to respondents:* $0.

At this time, responses will be returned by mail.

This notice is issued in Washington, DC on December 19, 2005.

Gilbert Smith,

Associated Director for Management.

[FR Doc. 06–247 Filed 1–11–06; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Atlantis Plastics, Inc. To Withdraw Its Class A Common Stock, $.10 Par Value, From Listing and Registration on the American Stock Exchange LLC File No. 1–09487

January 5, 2006.

On March 8, 2005, Atlantis Plastics, Inc., a Florida corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of

1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its class A common stock, $.10 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The Issuer stated in its application that it is in the best interest of the Issuer to list its Security on the Nasdaq National Market (''Nasdaq'') and to withdraw the Security from listing on Amex. The Issuer stated that it believes that Nasdaq would provide a more efficient trading platform for the Security and better execution for its shareholders at lower spreads.[3]

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Florida, in which it is incorporated, and provided written notice of withdrawal to Amex.

The Issuer's application relates solely to withdrawal of the Security from listing on Amex and from registration under Section 12(b) of the Act,[4] and shall not affect its obligation to be registered under Section 12(g) of the Act.[5]

Any interested person may, on or before January 31, 2006, comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods.

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–09487 or;

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–09487. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Nancy M. Morris,

Secretary.

[FR Doc. E6–196 Filed 1–11–06; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] The Issuer supplemented its application on January 4, 2006.

[4] 15 U.S.C. 78*l*(b).

[5] 15 U.S.C. 78*l*(g).

[6] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Mercury Air Group, Inc. To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the American Stock Exchange LLC File No. 1–07134

January 5, 2006.

On December 13, 2005, Mercury Air Group, Inc., a Delaware corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

On September 16, 2005, the Board of Directors (''Board'') of the Issuer unanimously approved resolutions to withdraw the Security from listing and registration on Amex. The Issuer stated that the Board is taking such action for the following reasons: (i) To eliminate the costs of compliance with Section 404 of the Sarbanes-Oxley Act and related regulations estimated to be up to $3,000,000 through June 30, 2007 and approximately $500,000 per year thereafter; (ii) to reduce the limited time that management and other employees will have to spend to implement the Section 404 internal controls certificate provisions of the Sarbanes-Oxley Act, thus enabling them to devote more of their time and energy to the Issuer's strategy and operations.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated, and providing written notice of withdrawal to Amex.

The Issuer's application relates solely to withdrawal of the Security from listing on the Amex and from registration under Section 12(b) of the Act.[3]

Any interested person may, on or before January 31, 2006 comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods.

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–07134 or;

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–07134. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Nancy M. Morris,

Secretary.

[FR Doc. E6–195 Filed 1–11–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of NiSource Inc., To Withdraw Its Common Stock, $.01 Par Value, and the Preferred Stock Purchase Rights, From Listing and Registration on the Chicago Stock Exchange, Inc. File No. 1–09779

January 6, 2006.

On December 13, 2005, NiSource Inc., a Delaware corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value, and the preferred stock purchase rights (collectively ''Securities''), from listing and registration on the Chicago Stock Exchange, Inc. (''CHX'').

The Board of Directors (''Board'') of the Issuer approved a resolution on October 25, 2005 to withdraw the Securities from CHX and the Pacific Exchange, Inc., (''PCX''). The Issuer stated that the following reasons factored into the Board's decision to withdraw the Securities from CHX and PCX: (i) the costs and administrative burdens of complying with both CHX and PCX rules and regulations outweigh the utility to the Issuer and its shareholders of having the Securities listed on such exchange; and (ii) the Securities are listed on the New York Stock Exchange, Inc. (''NYSE'') and will continue to list on NYSE.

The Issuer stated in its application that it has complied with applicable rules of CHX by complying with all applicable laws in the State of Delaware, the state in which the Issuer is incorporated, and by providing CHX with the required documents governing the withdrawal of securities from listing and registration on CHX. The Issuer's application relates solely to the withdrawal of the Securities from listing on CHX and shall not affect their continued listing on NYSE or PCX,[3] or their obligation to be registered under section 12(b) of the Act.[4]

Any interested person may, on or before February 1, 2006, comment on the facts bearing upon whether the application has been made in accordance with the rules of CHX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–09779 or;

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–09779. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Nancy M. Morris,

Secretary.

[FR Doc. E6–213 Filed 1–11–06; 8:45 am]

BILLING CODE 8010–01–P

[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] On December 13, 2005, the Issuer filed an application with the Commission to withdraw the Securities from listing and registration on PCX. Notice of such application will be published separately.

[4] 15 U.S.C. 78*l*(b).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of NiSource Inc., To Withdraw Its Common Stock, $.01 Par Value, and the Preferred Stock Purchase Rights, From Listing and Registration on the Pacific Exchange, Inc. File No. 1–09779

January 6, 2006.

On December 13, 2005, NiSource Inc., a Delaware corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value, and the preferred stock purchase rights (collectively ''Securities''), from listing and registration on the Pacific Exchange, Inc. (''PCX'').

The Board of Directors (''Board'') of the Issuer approved a resolution on October 25, 2005 to withdraw the Securities from PCX and the Chicago Stock Exchange, Inc., (''CHX''). The Issuer stated that the following reasons factored into the Board's decision to withdraw the Securities from PCX and CHX: (i) The costs and administrative burdens of complying with both PCX and CHX rules and regulations outweigh the utility to the Issuer and its shareholders of having the Securities listed on such exchange; and (ii) the Securities are listed on the New York Stock Exchange, Inc. (''NYSE'') and will continue to list on NYSE.

The Issuer stated in its application that it has complied with applicable rules of PCX by complying with all applicable laws in the State of Delaware, the state in which the Issuer is incorporated, and by providing PCX with the required documents governing the withdrawal of securities from listing and registration on PCX. The Issuer's application relates solely to the withdrawal of the Securities from listing on PCX and shall not affect their continued listing on NYSE or CHX,[3] or their obligation to be registered under section 12(b) of the Act.[4]

Any interested person may, on or before February 1, 2006, comment on the facts bearing upon whether the application has been made in accordance with the rules of PCX, and

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] On December 13, 2005, the Issuer filed an application with the Commission to withdraw the Securities from listing and registration on CHX. Notice of such application will be published separately.

[4] 15 U.S.C. 78*l*(b).

what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–09779 or;

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE.,Washington, DC 20549–9303.

All submissions should refer to File Number 1–09779. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Nancy M. Morris,

Secretary.

[FR Doc. E6–214 Filed 1–11–06; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53059; File No. SR–Amex–2005–128]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Trading Pursuant to Unlisted Trading Privileges of the Euro Currency Trust

January 5, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 14, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 4, 2006, the Amex filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes new Amex Rules 1200B *et seq.* in order to permit trading, either by listing or pursuant to unlisted trading privileges (''UTP''), shares issued by a trust that holds a specified non-U.S. currency or currencies (''Currency Trust Shares'') and trading, pursuant to UTP, Euro Shares (''Shares'') of the Euro Currency Trust (''Trust'').

The text of the proposed rule change is available on the Exchange's Web site at (*http://www.amex.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room. The text of the proposed rule change is set forth below. Proposed new language is *italicized;* deletions are in [brackets].

* * * * *

Rule 1200B. Currency Trust Shares

(a) Applicability. The Rules in this Section (Trading of Currency Trust Shares) are applicable only to Currency Trust Shares. Except to the extent that specific Rules in this Section govern, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. Pursuant to the provisions of Article I, Section 3(i) of the Constitution, Currency Trust Shares are included within the definitions of ''security'' or ''securities'' as such terms are used in the Constitution and Rules of the Exchange.

(b) The term ''Currency Trust Shares'' for purposes of this Rule means a security that (i) that is issued by a trust that holds a specified non-U.S. currency deposited with the trust; (ii) when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non U.S. currency; and (iii) pays beneficial owners interest and other distributions on the deposited non-U.S. currency, if any, declared and paid by the trust.

** * * Commentary*

.01 A Currency Trust Share is a Trust Issued Receipt that holds a specified non-U.S. currency or currencies deposited with the trust.

.02 The Exchange requires that members and member organizations provide to all purchasers of newly issued Currency Trust Shares a prospectus for the series of Currency Trust Shares.

.03 Transactions in Currency Trust Shares will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series, as specified by the Exchange.

.04 (a) Limit Orders—Members and member organizations shall not enter orders into the Exchange's order routing system, as principal or agent, limit orders in the same trust, for the account or accounts of the same or related beneficial owner, in such a manner that the member or beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such Currency Trust Shares on a regular or continuous basis. In determining whether a member or beneficial owner effectively is operating as a market maker, the Exchange will consider, among other things, the simultaneous or near-simultaneous entry of limit orders to buy and sell the same Currency Trust Shares; the multiple acquisition and liquidation of positions in the same Currency Trust Shares during the same day; and the entry of multiple limit orders at different prices in the same Currency Trust Shares.

(b) Members and member organizations may not enter, nor permit the entry of, orders into the Exchange's order routing system if those orders are (i) created and communicated electronically without manual input (i.e., order entry by public customers or associated persons of members must involve manual input such as entering the terms of an order into an order-entry screen or manually selecting a displayed order against which an off-setting order should be sent) and (ii) eligible for execution through the Exchange's automatic execution system for Currency Trust Shares. Nothing in this paragraph, however, prohibits members from electronically communicating to the Exchange orders manually entered by customers into

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 is incorporated in this notice.

front-end communication systems (e.g., Internet gateways, on-line networks, etc.).

* * * * *

Rule 1201B. Designation of an Underlying Foreign Currency

The Exchange may trade, either by listing or pursuant to unlisted trading privileges, Currency Trust Shares that hold a specified non-U.S. currency or currencies. Each issue of a Currency Trust Share shall be designated as a separate series and shall be identified by a unique symbol.

* * * * *

Rule 1202B. Initial and Continued Listing

Currency Trust Shares will be listed and traded on the Exchange subject to application of the following criteria:

(a) Initial Listing—The Exchange will establish a minimum number of Currency Trust Shares required to be outstanding at the time of commencement of trading on the Exchange.

(b) Continued Listing—Following the initial 12-month period following the commencement of trading of the Currency Trust Shares, the Exchange may remove from listing Currency Trust Shares under any of the following circumstances:

(i) If the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Currency Trust Shares for 30 or more consecutive trading days;

(ii) If the trust has fewer than 50,000 Currency Trust Shares issued and outstanding;

(iii) If the market value of all Currency Trust Shares issued and outstanding is less than $1,000,000;

(iv) If the value of the applicable non-U.S. currency is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, trust, custodian or Exchange or the Exchange stops providing a hyperlink on its website to any such unaffiliated applicable non-U.S. currency value;

(v) If the intraday indicative value is no longer made available on at least a 15-second delayed basis; or

(vi) If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Upon termination of a trust, the Exchange requires that Currency Trust Shares issued in connection with such trust be removed from Exchange listing.

(c) Term—The stated term of the trust shall be as stated in the prospectus. However, a trust may be terminated under such earlier circumstances as may be specified in the trust prospectus.

(d) Trustee—The following requirements apply:

(i) The trustee of a trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed as co-trustee.

(ii) No change is to be made in the trustee of a listed issue without prior notice to and approval of the Exchange.

(e) Voting—Voting rights shall be as set forth in the applicable trust prospectus.

** * * Commentary*

.01 The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and/or trading of the Currency Trust Shares designated on different underlying non-specified U.S. currencies.

* * * * *

Rule 1203B. Specialist Prohibitions

Rule 175(c) shall be deemed to prohibit an equity specialist, his member organization, or any other member, limited partner, officer, or approved person thereof from acting as a market maker or functioning in any capacity involving market-making responsibilities in the applicable non-U.S. currency, options, related futures or options on futures, or any other related derivatives. However, an approved person of an equity specialist that has established and obtained Exchange approval of procedures restricting the flow of material, non-public market information between itself and the specialist member organization pursuant to Rule 193, and any member, officer, or employee associated therewith, may act in a market making capacity, other than as a specialist in Currency Trust Shares on another market center, in the applicable non-U.S. currency, options, related futures or options on futures, or any other related derivatives.

** * * Commentary*

.01 In connection with Currency Trust Shares, Commentaries .01, .02 and .07 of Rule 170 shall not apply to the trading of Currency Trust Shares for the purpose of bringing the price of Currency Trust Shares into parity with the value of the applicable non-U.S. currency on which the Currency Trust Shares are based, with the net asset value of the Currency Trust Shares or with a futures contract on the applicable non-U.S. currency on which the Currency Trust Shares are based. Such transactions must be effected in a manner that is consistent with the maintenance of a fair and orderly market and with the other requirements of this rule and the supplementary material herein.

* * * * *

Rule 1204B. Securities Accounts and Orders of Specialists

(a) The member organization acting as specialist in Currency Trust Shares is obligated to conduct all trading in Currency Trust Shares in its specialist account, subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange (See Rule 170). In addition, the member organization acting as specialist in the Currency Trust Shares must file, with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the applicable non-U.S. currency, options, related futures or options on futures, or any other related derivatives, which the member organization acting as specialist may have or over which it may exercise investment discretion. No member organization acting as specialist in the Currency Trust Shares shall trade in the applicable non-U.S. currency, options, related futures or options on futures, or any other related derivatives, in an account in which a member organization acting as specialist, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule.

(b) In addition to the existing obligations under Exchange rules regarding the production of books and records (See, e.g. Rule 31), the member organization acting as a specialist in Currency Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any member, member organization, limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the applicable non-U.S. currency, options, related futures or options on futures, or any other related derivatives, as may be requested by the Exchange.

(c) In connection with trading the applicable non-U.S. currency, options, related futures or options on futures, or any other related derivatives (including

Currency Trust Shares), the specialist registered as such in Currency Trust Shares shall not use any material nonpublic information received from any person associated with a member, member organization or employee of such person regarding trading by such person or employee in the applicable non-U.S. currency, options, related futures or options on futures, or any other related derivatives.

* * * * *

Rule 1205B. Limitation on Exchange Liability

Neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any applicable non-U.S. currency value, the current value of the applicable non-U.S. currency if required to be deposited to the trust in connection with issuance of Currency Trust Shares; net asset value; or other information relating to the purchase, redemption or trading of the Currency Trust Shares, resulting from any negligent act or omission by the Exchange or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange or its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in the applicable non-U.S. currency.

* * * * *

Original Listing Fees

Section. 140. Stock Issues—No Change.

Issues Listed Under Section 106 (Currency and Index Warrants) and Section 107 (Other Securities)—No Change.

Warrants—No Change.

Bonds—No Change.

Index Fund Shares, Trust Issued Receipts, Commodity-Based Trust Shares, *Currency Trust Shares* and Closed-End Funds—The original listing fee for Index Fund Shares listed under Rule 1000A, Trust Issued Receipts listed under Rule 1200, Commodity-Based Trust Shares listed under Rule 1200A, *Currency Trust Shares listed under Rule 1200B* and Closed-End Funds listed under section 101 of the Company Guide is $5,000 for each series or Fund, with no application processing fee.

Special Shareholder Rights Plans—No Change.

* * * * *

Annual Fees

Section. 141. Stock Issues; Issues Listed Under Sections 106 and 107; Rules 1200 (Trust Issued Receipts) and 1200A (Commodity-Based Trust Shares) and; *Rule 1200B (Currency Trust Shares;*) and Closed-End Funds.

Shares outstanding	Fees (dollars)
5,000,000 shares or less	15,000 (minimum)
5,000,001 to 10,000,000 shares	17,500
10,000,001 to 25,000,000 shares	20,000
25,000,001 to 50,000,000 shares	22,500
In excess of 50,000,000 shares	30,000 (maximum)
30,000 (maximum)	

The Board of Governors or its designee may, in its discretion, defer, waive or rebate all or any part of the applicable annual listing fee specified above excluding the fees applicable to issues listed under sections 106 and 107 and rule 1200 (Trust Issued Receipts); and Closed-End Funds.

Issues Listed Under Rule 1000A (Index Fund Shares)—No Change.

The annual fee is payable in January of each year and is based on the total number of all classes of shares (excluding treasury shares) and warrants according to information available on Exchange records as of December 31 of the preceding year. (The above fee schedule also applies to companies whose securities are admitted to unlisted trading privileges.)

In the calendar year in which a company first lists, the annual fee will be prorated to reflect only that portion of the year during which the security has been admitted to dealings and will be payable within 30 days of the date the company receives the invoice, based on the total number of outstanding shares of all classes of stock at the time of original listing.

The annual fee for issues listed under Rule 1000A (Index Fund Shares), Rule 1200 (Trust Issued Receipts), [and] Rule 1200A (Commodity-Based Trust Shares) *and Rule 1200B (Currency Trust Shares)* is based upon the number of shares of a series of Index Fund Shares, Trust Issued Receipts, [or] Commodity-Based Trust Shares *or Currency Trust Shares* outstanding at the end of each calendar year. For multiple series of Index Fund Shares issued by an open-end management investment company, [or] for multiple series of Trust Issued Receipts and/or Commodity-Based Trust Shares, *or for multiple series of Currency Trust Shares,* the annual listing fee is based on the aggregate number of shares in all series outstanding at the end of each calendar year.

The annual fee for a Closed-End Fund listed under Section 101 of the Company Guide is based upon the number of shares outstanding of such Fund at the end of each calendar year. For multiple Closed-End Funds of the same sponsor, the annual listing fee is based on the aggregate number of shares outstanding of all such Funds at the end of each calendar year.

Bond Issues—No Change.

Late Fee—No Change.

NOTE: No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in sections A, B, and C below.

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 add new Amex Rules 1200B *et. seq.* for the purpose of permitting the trading, either by listing or pursuant to UTP, of Currency Trust Shares.[4] In particular, the Exchange proposes to initially trade the Shares under proposed Amex Rule 1201B pursuant to UTP. The Commission previously approved the original listing and trading of the Shares by the New York Stock Exchange, Inc. (''NYSE'').[5]

The Shares represent beneficial ownership interests in the net assets of

[4] Currency Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the non-U.S. currency or currencies deposited into the trust. The Exchange notes that the Commission has approved the listing and trading of other securities products for which the underlying interest was not a security trading on a regulated market. *See* Securities Exchange Act Release Nos. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (approving the listing and trading of shares of the iShares COMEX Gold Trust); and 51446 (March 29, 2005), 70 FR 17272 (April 5, 2005) (approving the trading of shares of the streetTRACKS Gold Trust pursuant to UTP).

Unlike Commodity-Based Trust Shares under Amex Rule 1200A, which are shares of a trust that holds one or more physical commodities, the Currency Trust Shares are shares of a trust that holds non-U.S. currency or currencies.

[5] *See* Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR–NYSE–2005–65) (''NYSE Order'').

the Trust consisting only of euro on demand deposits in a euro-denominated, interest-bearing account, less the expenses of the Trust. According to the Trust's Registration Statement,[6] the investment objective of the Trust is for the Shares to reflect the price of the euro. The Sponsor expects that the price of a Share will fluctuate in response to fluctuations in the euro.

Amex Rules 1200B et seq. are intended to accommodate possible future listing and trading of trusts based on non-U.S. currencies in addition to the euro. For each separate and discrete Currency Trust Share, the Exchange will submit a filing pursuant to section 19(b) of the Act,[7] subject to the review and approval of the Commission. The Exchange also proposes to amend its original listing and annual listing fees in sections 140 and 141 of the Amex Company Guide (''Company Guide'') to include the Currency Trust Shares. A description of the Euro, the Foreign Exchange Industry, foreign currency regulation, trust, and the Shares is set forth in the NYSE Order.

Issuances of Shares will be made only in baskets of 50,000 Shares or multiples thereof (''Basket''). The Trust will issue and redeem the Shares on a continuous basis, by or through participants that have entered into participant agreements (each, an ''Authorized Participant'')[8] with the trustee, the Bank of New York (''Trustee''), at the net asset value (''NAV'') per Share next determined after an order to purchase a Basket is received in proper form.

When calculating NAV, the Trustee will value the euros held by the Trust on the basis of the day's announced Noon Buying Rate. If the Noon Buying Rate is not announced, the Trustee will use the most recently announced Noon Buying Rate, unless the Trustee, in consultation with the Sponsor, determines to apply an alternative basis for evaluation as a result of extraordinary circumstances. The calculation methodology for the NAV is described in more detail in the NYSE Order.

Baskets will be issued in exchange for an amount of euros (''Basket Euro Amount'') based on the combined NAV per Share of the number of Shares included in the Baskets being created. The Basket Euro Amount and NAV will be determined by the Trustee ''as promptly as practicable'' after the Federal Reserve announces the Noon Buying Rate and published on the Trust's Web site on each Business Day.[9] Authorized Participants that wish to purchase a Basket must transfer the Basket Euro Amount to the Trust in exchange for a Basket. Baskets are then separable upon issuance into the Shares that will be traded on the Amex on a UTP basis.[10]

The Shares will not be individually redeemable but will only be redeemable in Baskets. To redeem, an Authorized Participant will be required to accumulate enough Shares to constitute a Basket (*i.e.,* 50,000 Shares). Authorized Participants that wish to redeem a Basket will receive the Basket Euro Amount in exchange for each Basket surrendered. The operation of the Trust and creation and redemption process is described in more detail in the NYSE Order.

(a) Dissemination of Information About the Shares and Underlying Euro Holdings. Although the spot price of a foreign currency, such as the euro, is not disseminated over the facilities of Consolidated Tape Association (''CTA''), the last sale price for the Shares, as is the case for all equity securities traded on the Exchange, will be disseminated over the CTA. Market prices for the Shares will be available from a variety of public sources, including brokerage firms, financial information Web sites such as Bloomberg (*http://bloomberg.com/markets/currencies/eurafr_currencies.html*), CBS Market Watch (*http://finance.marketwatch.com/tools/stockresearch/globalmarkets*) and Yahoo! Finance (*http://finance.yahoo.com/currency*), and other information service providers. Many of these sites offer price quotations drawn from other published sources, and as the information is supplied free of charge, it generally is subject to time delays.

In addition, there is a considerable amount of euro price and euro market information available on public Web sites and through professional and subscription services. Current spot prices are also generally available from foreign exchange dealers. Investors may obtain on a 24-hour basis euro pricing information based on the euro spot price from various financial information service providers. The Exchange states that, like bond securities traded in the over-the-counter market with respect to which pricing information is available directly from bond dealers, current spot prices are also generally available with bid/ask spreads from foreign exchange dealers. Complete real-time data for euro futures and options prices traded on the Chicago Mercantile Exchange (''CME'') and Philadelphia Stock Exchange (''Phlx'') are also available by subscription from information service providers. The CME and Phlx also provide delayed futures and options information on current and past trading sessions and market news free of charge on their respective Web sites. There are a variety of other public Web sites that provide information on foreign currency and the euro, such as Bloomberg (*http://www.bloomberg.com/markets/currencies/ eurafr_currencies.html*), which regularly reports current foreign exchange pricing for a fee. Other service providers include CBS Market Watch (*http://www.marketwatch.com/tools/stockresearch/globalmarkets*) and Yahoo! Finance (*http://finance.yahoo.com/currency*). Many of these sites offer price quotations drawn from other published sources, and as the information is supplied free of charge, it generally is subject to time delays.[11]

The Trust's Web site at (*http://www.currencyshares.com*) (to which the Amex will provide a link) will be publicly accessible at no charge and will contain the following information: (1) The euro spot price,[12] including the bid and offer and the midpoint between the bid and offer for the euro spot price, updated every 5 to 10 seconds; (2) an intraday indicative value (''IIV'') per Share calculated by multiplying the indicative spot price of the euro by the quantity of euro backing each Share, on a 5 to 10-second delayed basis; (3) a 20-

[6] The Sponsor, on behalf of the Trust, filed the Form S–1 (the ''Registration Statement'') on June 7, 2005 and Amendment No. 4 thereto on December 6, 2005. *See* Registration No. 333–125581.

[7] 15 U.S.C. 78s(b).

[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 or an Indirect Participant and (iii) has in effect a valid Authorized Participant Agreement.

[9] Ordinarily no later than 2 p.m. (ET).

[10] Shares are separate and distinct from the underlying euro comprising the portfolio of the Trust. The Exchange expects that the number of outstanding Shares will increase and decrease as a result of in-kind deposits and withdrawals of the underlying euro.

[11] There may be incremental differences in the euro spot price among the various information service sources. While the Exchange believes the differences in the euro spot price may be relevant to those entities engaging in arbitrage or in the active daily trading of euro or foreign currency derivatives, the Exchange believes such differences are likely of less concern to individual investors intending to hold the Shares as part of a long-term investment strategy.

[12] The Trust Web site's euro spot price will be provided by The Bullion Desk (*http://www.thebulliondesk.com*). The Commission notes that the NYSE Order states that the Bullion Desk is not affiliated with the Trust, Trustee, Sponsor, Depository, Distributor, or the Exchange. In the event that the Trust's Web site should cease to provide this euro spot price information from an unaffiliated source and the intraday indicative value of the Shares, the Commission notes that NYSE will halt trading in the Shares and commence delisting proceedings for the Shares.

minute delayed basis indicative value, which is used for calculating premium/discount information; (4) premium/discount information, calculated on a 20-minute delayed basis; (5) the NAV of the Trust as calculated each Business Day; (6) accrued interest per Share; (7) the daily Noon Buying Rate; (8) the Basket Euro Amount; and (9) the last sale price of the Shares as traded in the U.S. market, subject to a 20-minute delay.

Between 12 p.m. and 2 p.m. (New York time) each business day the Trustee will calculate NAV and Basket Euro Amount based on the combined NAV per share of the number of Shares included in the Baskets being created of the shares and will post NAV on the Trust's Web site as soon as valuation of the euro held by the Trust is complete (ordinarily by 2 p.m. (New York time)). Ordinarily, it will be posted no more than 30 minutes after the Noon Buying Rate is published by the Federal Reserve Bank of New York.[13]

(b) Continued Listing and UTP Criteria. While the Exchange immediately seeks to UTP the Euro Currency Shares, the Exchange is also adopting general initial and continued listing standards applicable to all Currency Shares. In such an event, the Exchange would still file a Form 19b–4 to list such Shares. However, such continued listing standards include the following items. When the Exchange is the primary listing exchange, the Trust will be subject to the continued trading criteria under proposed Amex Rule 1202B.[14] In particular, the proposed criteria provides that the Shares may be removed from trading following the initial 12-month period from the date of commencement of trading of the Shares on the Exchange under any of the following circumstances:

- If the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of the Shares for 30 or more consecutive trading days;
- If the Trust has fewer than 50,000 Shares issued and outstanding;
- If the market value of all the Shares is less than $1,000,000;
- If the value of the euro is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Trust, custodian or the Exchange or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated euro value;
- If the IIV is no longer made available on at least a 15-second delayed basis; or
- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

In addition, the Exchange will remove Shares from listing and trading upon termination of the Trust. Unless otherwise terminated pursuant to the terms of the Depositary Trust Agreement between the Trust and Sponsor, the Trust will terminate on a specified date in 2045.

If the Exchange is only trading the Shares pursuant to UTP, then the Exchange will cease trading in the Shares if (a) the primary market stops trading the shares because of a regulatory halt similar to a halt based on Amex Rule 117 and/or a halt because dissemination of the IIV and/or the underlying value (spot price on future contract) of the applicable non-U.S. currency has ceased; or (b) the primary market delist the Shares.

(c) Trading Rules. The Exchange deems the Currency Trust 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 will be 9:30 a.m. until 4:15 p.m. ET. The Shares will trade with a minimum price variation of $0.01.

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i–v). The Exchange has designated Currency Trust Shares, including the Shares, as eligible for this treatment.[15]

Currency Trust Shares will be deemed ''Eligible Securities'', as defined in Amex Rule 230, for purposes of the Intermarket Trading System (''ITS'') Plan and therefore will be subject to the trade through provisions of Amex Rule 236, which require that members avoid initiating trade-throughs for ITS securities.

Specialist transactions in Currency Trust Shares made in connection with the creation and redemption of Currency Trust Shares will not be subject to the prohibitions of Amex Rule 190.[16] The Commission staff has provided certain exemptive and no-action relief for transactions in Currency Trust Shares from the short sale requirements of Rule 10a–1 and Regulation SHO under the Act.[17] The Exchange will issue a notice detailing the terms of the exemption or relief. In addition, the Exchange believes that Amex Commentary .12 to Amex Rule 170 exempting specialists from certain ''stabilization'' provisions in connection with Trust Issued Receipts (''TIRs'') equally apply to Currency Trust Shares.[18]

The adoption of proposed Amex Rule 1203B relating to certain specialist prohibitions will address potential conflicts of interest in connection with acting as a specialist in Currency Trust Shares. Specifically, proposed Amex Rule 1203B provides that the prohibitions in Amex Rule 175(c) apply to a specialist in Currency Trust Shares, so that the specialist or affiliated person may not act or function as a market maker in the underlying non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency. An affiliated person of the specialist consistent with Amex Rule 193 may be afforded an exemption to act in a market making capacity on another market center, other than as a specialist in the underlying non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency. In particular, proposed Amex Rule 1203B provides that an approved person of an equity specialist that has established and obtained Exchange approval for procedures restricting the flow of material, non-public market information between itself and the specialist

[13] The Commission notes that in the NYSE Order, NYSE represented that all market participants will have access to this data at the same time and, therefore, no market participant will have a time advantage in using such data.

[14] Proposed Amex Rule 1202B for trading the Shares is substantially similar to current Amex Rule 1202A relating to Commodity-Based Trust Shares.

[15] *See* Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) at note 9, regarding the Exchange's designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c).

[16] *See* Amex Commentary .05 to Rule 190.

[17] Currency Trust Shares are exempt from Rule 10a–1 under the Act permitting sales without regard to the ''tick'' requirements of Rule 10a–1 under the Act. Rule 10a–1(a)(1)(i) under the Act provides that a short sale of an exchange-traded security may not be effected (i) below the last regular-way sale price (an ''uptick'') or (ii) at such price unless such price is above the next preceding different price at which a sale was reported (a ''zero-plus tick''). No-action relief from the marking requirements of Rule 200(g) of Regulation SHO permits broker-dealers, subject to certain conditions, to mark short sales in the Euro Shares ''short,'' rather than ''short exempt.'' The SEC exempted the Shares from the short sale rule pursuant to a No-Action Letter dated December 5, 2005.

[18] *See* Securities Exchange Act Release Nos. 49087 (January 15, 2004), 69 FR 3622 (January 26, 2004) (Order); and 48800 (November 17, 2003), 68 FR 66144 (November 25, 2003) (Notice).

member organization, and any member, officer, or employee associated therewith, may act in a market making capacity, other than as a specialist in Currency Trust Shares on another market center, in the underlying non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency.

Adoption of proposed Amex Rule 1204B will also ensure that specialists handling the Currency Trust Shares provide the Exchange with all the necessary information relating to their trading in the underlying non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency. As a general matter, the Exchange has regulatory jurisdiction over its members, member organizations and approved persons of a member organization. The Exchange also has regulatory jurisdiction over any person or entity controlling a member organization as well as a subsidiary or affiliate of a member organization that is in the securities business. A subsidiary or affiliate of a member organization that does business only in non-U.S. currencies would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

(d) Information Circular. Prior to the commencement of trading, the Exchange will inform its members and member organizations in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets; (2) applicable Exchange rules including requirements of Amex Rule 411 (''Duty to Know and Approve Customers''), which impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; and (4) trading information. The Circular will also refer members to language in the Registration Statement regarding prospectus delivery requirements for the Shares. The Information Circular will also note to members their obligations regarding prospectus delivery requirements for the Shares. The Exchange notes that investors purchasing Shares directly from the Trust (by delivery of the Basket Euro Amount) will receive a prospectus. Exchange members purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Circular will reference that the Trust is subject to various fees and expenses described in the Registration Statement, and that the number of euros required to create a Basket or to be delivered upon a redemption of a Basket may gradually decrease over time in the event that the Trust is required to sell euros to pay the Trust's expenses, and that if done at a time when the price of the euro is relatively low, it could adversely affect the value of the Shares. Finally, Information Circular will also reference the fact that there is no regulated source of last sale information regarding the euro, and that the Commission has no jurisdiction over the trading of the euro.

(e) Trading Halts. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of the existence of unusual conditions or circumstances that may be detrimental to the maintenance of a fair and orderly market. In addition, trading on the Exchange in the Shares may be halted if (1) the market volatility trading halt parameters set forth in Amex Rule 117 are reached or (2) the trading of futures contracts based on the euro is halted or suspended. In addition, if the Exchange is the listing market for Currency Trust Shares, the Exchange will halt trading in the Shares if the Trust Web site (to which the Exchange will link) ceases to provide (1) the value of the euro updated at least every 15 seconds from a source not affiliated with the Sponsor, Trust, or the Exchange, or (2) the IIV per Share updated at least every 15 seconds. If the Exchange is trading the Shares pursuant to UTP, such as the Euro Currency Shares, the Exchange will cease trading the Shares if (a) the primary market stops trading the Shares because of a regulatory halt similar to Amex Rule 117 and/or a halt because dissemination of the IIV and/or underlying spot price has ceased; or (b) the primary market delists the Shares.

(f) Surveillance. The Exchange's surveillance procedures applicable to trading in the proposed Currency Trust Shares will be similar to those applicable to TIRs, Portfolio Depository Receipts and Index Fund Shares currently trading on the Exchange. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares.

2. Statutory Basis

The proposed rule change, as amended, is consistent with section 6(b) of the Act [19] in general and furthers the objectives of section 6(b)(5) [20] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. In addition, the Exchange believes that the proposal is consistent with Rule 12f–5 under the Act [21] because it deems the Fund Shares to be equity securities, thus rendering 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

The Exchanges believes that the proposed rule change, as amended, will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–128 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 20549-9303.

All submissions should refer to File Number SR–Amex–2005–128. This file

[19] 15 U.S.C. 78s(b).

[20] 15 U.S.C. 78s(b)(5).

[21] 17 CFR 240.12f–5.

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 Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–128 and should be submitted on or before February 2, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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.[22] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[23] 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.

In addition, the Commission finds that the proposal is consistent with section 12(f) of the Act,[24] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[25] The Commission notes that it previously approved the listing and trading of the Shares on the NYSE.[26] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[27] 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. Amex rules deem the Shares to be equity securities, thus trading in the Shares will be 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,[28] 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.

The Exchange will cease trading in the Shares if (a) the primary market stops trading the Shares because of a regulatory halt similar to a halt based on Amex Rule 117 and/or halt because dissemination of the IIV and/or underlying spot price has ceased; or (b) the primary market delists the Shares.

In support of this proposed rule change, the Exchange has made the following representations:

1. Amex has appropriate rules to facilitate transactions in this type of security.

2. Amex surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange.

3. Amex will distribute an Information Circular to its members prior to the commencement of trading of the Shares on the Exchange that explains the terms, characteristics, and risks of trading such shares.

4. Amex will require a member with a customer that purchases newly issued Shares on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the Information Circular.

5. Amex will cease trading in the Shares if (a) the primary market stops trading the Shares because of a regulatory halt similar to a halt based on Amex Rule 117 and/or halt because dissemination of the IIV and/or underlying spot price has ceased; or (b) the primary market delists the Shares.

This approval order is conditioned on Amex's adherence to these representations.

The Commission finds good cause for approving this proposed rule change, as amended, 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 these Shares on the NYSE is consistent with the Act.[29] The Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Shares.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–Amex–2005–128), as amended, is hereby approved on an accelerated basis.[30]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Nancy M. Morris,

Secretary.

[FR Doc. E6–216 Filed 1–11–06; 8:45 am]

BILLING CODE 8010–01–P

[22] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78*l*(f).

[25] 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.

[26] *See* NYSE Order, *supra* note 4.

[27] 17 CFR 240.12f–5.

[28] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[29] *See* NYSE Order, *supra* note 4.

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53061; File No. SR–FICC–2005–20]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Impose a Surcharge on Participants Submitting Trade Data by Batch Method

January 5, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 28, 2005, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') and on

[1] 15 U.S.C. 78s(b)(1).

December 22, 2005, amended [2] the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder [4] whereby the proposal became effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC is implementing a surcharge to be imposed on participants of its Mortgage-Backed Securities Division (''MBSD'') that submit trade data by batch submission methods.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of these statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since the inception of FICC's Real-Time Trade Matching (''RTTM'') service in 2002, the interactive submission method has grown to encompass an increasing portion of trades being submitted to FICC's MBSD.[6] The expansion of the use of the interactive trade submission method through RTTM for mortgage-backed securities is a FICC initiative because of the negative effects associated with the use of batch submission methods.[7] These negative effects include:

(a) Increased risk to the batch submitting participant as it foregoes timely achievement of trade comparison and a legally binding confirmation;

(b) increased risk to the contra side of the batch submitting participant and creation of an operational burden for the contra side in accounting for differing submission methods among its counterparties; and

(c) preclusion of FICC from laying the foundation to further reduce all participant costs through retirement of its proprietary batch trade submission program.

In order to ensure that participants use the RTTM service and submit transaction data on a timely basis and to cover the cost of batch processing, FICC will impose the following fees on participants of MBSD:

(a) Single-batch submitters will be subject to a 50 percent surcharge (with a minimum of $500) on their post discount trade recording fees as recorded on their monthly bill and

(b) multi-batch submitters will be subject to a 20 percent surcharge (with a minimum of $500) on their post discount trade recording fees as recorded on their monthly bill.

As an additional incentive for participants to switch to the interactive submission method, the minimum surcharge may be increased to $1,000 at a later date, anticipated to occur at the beginning of 2007.[8] FICC also plans to announce a date, anticipated to be December 31, 2007, after which it will no longer support batch submissions.[9]

Surcharge revenue will be paid through to individual interactive messaging submitters pro rata based upon their ratio of trade recording fees to system-wide trade recording fees. FICC reserves the right to waive the surcharge for a particular MBSD participant if it determines in its sole discretion that the participant's classification as a single or multi-batch user in a particular month is due to a non-recurring system or operational problem.

The fees will become effective April 1, 2006.

FICC believes the proposed rule change is consistent with the requirements of Section 17A of the Act [10] and the rules and regulations thereunder applicable to FICC because it encourages FICC's participants to communicate with the clearing corporation in a manner that will promote the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have an impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [11] and Rule 19b–4(f)(2) [12] thereunder because the rule establishes a due, fee, or other charge. At any time within sixty days of the filing of the amended proposed rule change,[13] 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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *mailto:rule-comments@sec.gov.* Please include File Number SR–FICC–2005–20 on the subject line.

[2] The amendment clarified an ambiguity in the proposed rule text.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Commission has modified the text of the summaries prepared by FICC.

[6] As of May 2005, 35 percent of MBSD participants use the interactive submission method. The activity of these participants encompassed 80 percent of total par and 74 percent of total sides of transactions processed.

[7] See Securities Exchange Act Release No. 45563 (Mar. 14, 2002), 67 FR 13389 (Mar. 22, 2002) [File No. SR–MBSCC–2001–02].

[8] FICC will file a proposed rule change with the Commission and will notify its MBSD participants by Important Notice prior to implementing any such fee increase.

[9] FICC will file a proposed rule change with the Commission and will notify its MBSD participants by Important Notice prior to implementing this policy.

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] For purposes of calculating the sixty day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers the period to commence on the date on which the last amendment to the proposed rule change was filed with the Commission. 15 U.S.C. 78s(b)(3)(C).

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–FICC–2005–20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.ficc.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2005–20 and should be submitted on or before February 2, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. E6–215 Filed 1–11–06; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53073; File No. SR–NYSE–2005–77]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, 4 and 5 Relating to the Exchange's Business Combination with Archipelago Holdings, Inc.

January 6, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended, (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 3, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 1, 2005, the Exchange filed Amendment No. 1 to the proposed rule change. The Exchange filed Amendment No. 2 to the proposed rule change on December 12, 2005, and withdrew Amendment No. 2 on December 12, 2005. On December 12, 2005, the Exchange filed Amendment No. 3.[3] The Exchange filed Amendment No. 4 to the proposed rule change on December 21, 2005, and withdrew Amendment No. 4 on December 21, 2005. On December 21, 2005, the Exchange filed Amendment No. 5.[4]

The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is submitting this rule filing, as amended, (''Proposed Rule Change'') in connection with its proposed merger (''Merger'') with Archipelago Holdings, Inc., a Delaware corporation (''Archipelago''), as a result of which the businesses of the NYSE and Archipelago will be held under a single, publicly traded holding company named NYSE Group, Inc. (''NYSE Group''). Following the Merger, the NYSE's current businesses and assets will be held in three separate entities affiliated with NYSE Group—New York Stock Exchange LLC, NYSE Market, Inc. (''NYSE Market''), and NYSE Regulation, Inc. (''NYSE Regulation'').

To effect the Merger, the NYSE proposes that the organizational documents of NYSE Group and its subsidiaries as in effect immediately prior to the effective time of the Merger will be amended and restated. In addition, the NYSE proposes that New York Stock Exchange LLC, NYSE Regulation and NYSE Market will enter into a delegation agreement, and the Pacific Exchange, Inc. (''Pacific Exchange'') and NYSE Regulation will enter into a regulatory services agreement (''Pacific Exchange Regulatory Services Agreement''). In addition, the NYSE proposes various amendments to its rules to reflect the Merger, which, after the Merger, will be the rules of New York Stock Exchange LLC. The Exchange states that the present Constitution of the NYSE will be eliminated and relevant provisions thereof will be included in the rules of New York Stock Exchange LLC.

The text of the Proposed Rule Change 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. The text of Exhibits 5A through 5K of the Proposed Rule Change and Amendment No. 5 are also available on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended. 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 is submitting the Proposed Rule Change to the Commission in connection with the Merger with Archipelago. Following the Merger, the businesses of the NYSE and Archipelago will be held under a single, publicly traded holding company named NYSE Group, a Delaware corporation. The Merger will occur pursuant to the terms of the Agreement and Plan of Merger, dated as of April 20,

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b-4 dated December 12, 2005 (''Amendment No. 3''). Amendment No. 3 replaced Amendment No. 1 in its entirety.

[4] *See* Partial Amendment dated December 21, 2005 (''Amendment No. 5'').

2005, as amended and restated as of July 20, 2005 and as amended as of October 20, 2005 and as of November 2, 2005 (as amended from time to time, ''Merger Agreement''), by and among the NYSE, Archipelago, NYSE Group, NYSE Merger Corporation Sub, Inc., a Delaware corporation and a wholly owned subsidiary of the NYSE, NYSE Merger Sub LLC, a New York limited liability company and a wholly owned subsidiary of NYSE Group, and Archipelago Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of NYSE Group. The Merger is subject to approval of the NYSE members and Archipelago stockholders. The joint proxy statement/prospectus sent to the NYSE members and Archipelago stockholders in connection with their consideration of the Merger has been filed with the Commission.

The Merger will have the effect of ''demutualizing'' the NYSE because equity ownership in the NYSE will be separated from trading privileges on the NYSE. In the Merger, NYSE members will receive cash and/or shares of NYSE Group common stock. (Archipelago stockholders will receive solely shares of NYSE Group common stock.) After the Merger, trading privileges on the NYSE will be made available exclusively through trading licenses, as described in greater detail below.

The corporate structure and governance that the Proposed Rule Change affects seek to preserve and extend the functional separation, yet pervasive communication, achieved under the NYSE's comprehensive reforms to its governance architecture in 2003, and to insulate the NYSE's self-regulatory function from the additional cross-currents created by demutualization and public ownership.

In connection with the Merger, the NYSE proposes to engage in a reorganization (''Reorganization'') so that immediately after the Merger, its businesses and assets are held in three separate entities:

1. *New York Stock Exchange LLC.* New York Stock Exchange LLC, a New York limited liability company, will be a wholly owned subsidiary of NYSE Group and will be the entity registered as a national securities exchange. After the Merger, New York Stock Exchange LLC is not expected to hold any assets other than all of the equity interests of NYSE Market and NYSE Regulation.

2. *NYSE Market, Inc.* NYSE Market, a Delaware corporation, will be a wholly owned subsidiary of New York Stock Exchange LLC. After the Merger, NYSE Market will hold all of the NYSE's current assets and liabilities other than the New York Stock Exchange LLC's registration as a national securities exchange and other than the assets and liabilities relating to the regulatory functions currently conducted by the NYSE. NYSE Market will be the entity holding the assets and liabilities relating to the current securities exchange business of the NYSE.

3. *NYSE Regulation, Inc.* NYSE Regulation, a New York Type A not-for-profit corporation, will perform the regulatory responsibilities currently conducted by NYSE for New York Stock Exchange LLC and will contract to perform many of the regulatory functions of the Pacific Exchange for Archipelago. NYSE Regulation's sole member under the New York Not-for-Profit Corporation Law and thereby sole voting equity holder will be New York Stock Exchange LLC.[5]

Following the Merger, Archipelago will become a wholly owned subsidiary of NYSE Group; PCX Holdings, Inc., a Delaware corporation (''PCX Holdings''), will remain a wholly owned subsidiary of Archipelago; and the Pacific Exchange, a Delaware corporation, will remain a wholly owned subsidiary of PCX Holdings. Archipelago's businesses and assets will continue to be held by Archipelago and its subsidiaries. As noted above, pursuant to a services agreement, NYSE Regulation will perform many of the regulatory functions of the Pacific Exchange.

Purpose of the Merger and Reorganization

The Merger will have the effect of (1) converting the NYSE from a not-for-profit entity into a for-profit entity (other than with respect to the regulatory responsibilities currently conducted by the NYSE, which will be separated into a not-for-profit entity), (2) demutualizing the NYSE by separating equity ownership in the NYSE from trading privileges on the NYSE, and (3) combining the businesses of the NYSE and Archipelago.

With the exception of NYSE Regulation, NYSE Group and its subsidiaries will be for-profit entities, rather than not-for-profit entities. The conversion from a not-for-profit entity to a for-profit entity will increase the NYSE's capability to invest in its growth both internally and through acquisitions, and increase its focus on efficiency and cost reduction. Further, as a public, listed company, NYSE Group will have improved access to capital, and the ability to engage in future transactions using its stock as acquisition currency. The NYSE also expects that, after the Merger, NYSE Group will have much greater flexibility and ability to respond to competitive pressures than the NYSE's current membership structure permits. In addition, as a for-profit entity, NYSE Group will have an increased transparency and a sharper focus on costs, efficiency, and growth.

The combination of the businesses of the NYSE and Archipelago under a single holding company also has the advantage of creating a diversified business model for the combined company. The combination provides opportunities for cost savings by eliminating duplicative activities and realizing synergies between the business of Archipelago and the NYSE, while at the same time realizing revenue growth opportunities.

As part of the Reorganization, NYSE Regulation will be a separate, not-for-profit entity. The NYSE believes that NYSE Regulation's continued status as a not-for-profit entity will facilitate NYSE Group and its subsidiaries in managing conflicts between their business and regulatory objectives, maintaining regulatory standards and complying with the obligations of the exchange subsidiaries as registered national securities exchanges and self-regulatory organizations (''SROs'').

Corporate Structure

NYSE Group

Following the Merger, NYSE Group will be a for-profit, publicly traded stock corporation and will act as a holding company for the businesses of the NYSE and Archipelago. NYSE Group will hold all of the equity interests in New York Stock Exchange LLC and Archipelago.

NYSE Group Board of Directors

The NYSE Group board of directors will consist of a number of directors that will be fixed from time to time by the NYSE Group board of directors pursuant to a resolution adopted by a majority of the board of directors. It is currently contemplated that the NYSE Group board of directors will consist of at least 11 directors, one of whom will be the chief executive officer of NYSE Group.

The initial term of directors will end with the first annual stockholders

[5] The New York Not-for-Profit Corporation Law, under which NYSE Regulation is incorporated, uses the term ''members'' to describe those that have rights to distribution on liquidation and to elect the board of directors, analogous to the rights of stockholders as owners of a business corporation. New York Stock Exchange LLC will be the sole ''member'' of NYSE Regulation within the meaning of the New York Not-for-Profit Corporation Law, but this term should not be confused with the concept of a member or member organization of New York Stock Exchange LLC under its rules and for purposes of section 6 of the Act.

meeting to be held by NYSE Group. Thereafter, the directors will serve one-year terms. Nominees to the NYSE Group board of directors will be recommended by the nominating and governance committee of the NYSE Group board of directors. The nominating and governance committee will consider shareholder and public investor recommendations for candidates for the NYSE Group board of directors.

The NYSE Group board of directors will appoint the chairman of the board. The chairman may be, but need not be, the chief executive officer of NYSE Group. If the chairman is not the chief executive officer, then he or she must satisfy the board's independence criteria.[6] A director may serve for any number of terms, consecutive or otherwise. Directors need not be stockholders of NYSE Group.

Under section 3.2 of the proposed NYSE Group Bylaws, all members of the NYSE Group board of directors (other than the chief executive officer of NYSE Group) must satisfy the requirements for directors of NYSE Group for independence from management, member organizations and listed companies. The independent nature of the NYSE Group board of directors will be modeled after the current Commission-approved independence structure of the NYSE board of directors.[7] Specifically, each member of the NYSE Group board of directors, other than the chief executive officer of NYSE Group, will be required to be independent from (1) NYSE Group and its subsidiaries,[8] (2) any member organizations of New York Stock Exchange LLC or the Pacific Exchange,[9] and (3) any companies listed on New York Stock Exchange LLC or the Pacific Exchange. The independence policy of the NYSE Group board of directors applicable to elected members of the NYSE Group board of directors is part of the Proposed Rule Change. This policy mirrors the NYSE's current independence policy,[10] but has been expanded to cover relationships with the Pacific Exchange and its affiliates, and the member organizations and listed companies of the Pacific Exchange. It also removes the reference to lessor members, since there will be no such category after the Mergers, and no look-back is intended to disqualify individuals who were lessor members within the last three years.

Committees of NYSE Group Board of Directors

After the Merger, the NYSE Group board of directors may create one or more committees. It is expected that, upon completion of the Merger, the NYSE Group board of directors will initially have the following three committees: (1) An audit committee; (2) a human resource and compensation committee; and (3) a nominating and governance committee.

Each committee of the NYSE Group board of directors will consist solely of directors meeting the independence requirements of NYSE Group. As a result, the chief executive officer of NYSE Group will not be permitted to serve on any of these committees. The NYSE Group board of directors will review and adopt a charter for each of these committees annually.

NYSE Group Management

The officers of NYSE Group will manage the business and affairs of NYSE Group, subject to the oversight of the NYSE Group board of directors, and except as discussed below in relation to NYSE Regulation. The only member of the senior management team of NYSE Group who will also serve as a director of NYSE Group is the chief executive officer of NYSE Group. The chief executive officer of NYSE Regulation will attend, as appropriate, meetings of the board of directors of NYSE Group and its subsidiaries, and also will not be prohibited from meeting with management of NYSE Group and its subsidiaries. However, he or she will not be an officer or employee of any affiliated entity other than NYSE Regulation and will report solely to the NYSE Regulation board of directors.

Voting and Ownership Limitations of NYSE Group Stock

The proposed NYSE Group Certificate of Incorporation will place certain restrictions on the ability to vote and own shares of stock of NYSE Group.[11] Under the proposed Certificate of Incorporation of NYSE Group, no person (either alone or together with its related persons[12]) will be entitled to

[6] The current NYSE Constitution provides that the positions of chairman of the board and chief executive officer of the NYSE may be, but need not be, held by the same person. The current chairman of the board of the NYSE is not the chief executive officer of the NYSE, and is therefore required to satisfy the same independence criteria applicable to the other independent members of the board. Under the current NYSE Constitution, if the chairman of the board is the chief executive officer, then such individual is not an independent director and cannot participate in executive sessions of the independent directors.

[7] *See* Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003).

[8] At the request of the Exchange, the Commission replaced ''or its subsidiaries'' with ''and its subsidiaries.'' Telephone conversation between James F. Duffy, Senior Vice President and Deputy General Counsel, NYSE, *et al.*, and Heather A. Seidel, Senior Special Counsel, Commission, Division of Market Regulation (''Division''), *et al.*, on December 14, 2005 (''December 14 Telephone Conversation'').

[9] This would include member organizations of New York Stock Exchange LLC and OTP Firms of the Pacific Exchange and ETP Holders of PCX Equities, Inc. or non-member broker-dealers that engage in business involving substantial direct contact with securities customers, as well as members and allied members (as defined in paragraphs (a) and (c), respectively, of Rule 2 of New York Stock Exchange LLC), and OTP Holders and ''allied persons'' (as defined, respectively, in Rules 1.1(q) and 1.1(b) of the Pacific Exchange and Rule 1.1(c) of PCX Equities, Inc.).

[10] The NYSE's current independence policy was filed with and approved by the Commission. *See* Securities Exchange Act Release No. 51217 (February 16, 2005), 70 FR 9688 (February 28, 2005).

[11] At the request of the Exchange, the Commission staff replaced the phrase ''common stock'' with ''stock.'' Telephone conversation between James F. Duffy, Senior Vice President and Deputy General Counsel, NYSE, and Heather A. Seidel, Senior Special Counsel, Commission, Division, on January 3, 2006 (''January 3 Telephone Conversation'').

[12] A ''related person'' means, with respect to any person: (i) Any ''affiliate'' of such person (as such term is defined in Rule 12b–2 under the Act); (ii) any other person(s) with which such first person has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the stock of NYSE Group; (iii) in the case of a person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b–7 under the Act) or director of such person and, in the case of a person that is a partnership or a limited liability company, any general partner, managing member or manager of such person, as applicable; (iv) in the case of a person that is a ''member organization'' (as defined in the rules of New York Stock Exchange LLC, as such rules may be in effect from time to time), any ''member'' (as defined in the rules of New York Stock Exchange LLC, as such rules may be in effect from time to time) that is associated with such person (as determined using the definition of ''person associated with a member'' as defined under section 3(a)(21) of the Act); (v) in the case of a person that is an OTP Firm, any OTP Holder that is associated with such person (as determined using the definition of ''person associated with a member'' as defined under section 3(a)(21) of the Act); (vi) in the case of a person that is a natural person, any relative or spouse of such natural person, or any relative of such spouse who has the same home as such natural person or who is a director or officer of NYSE Group or any of its parents or subsidiaries; (vii) in the case of a person that is an executive officer (as defined under Rule 3b–7 under the Act), or a director of a company, corporation or similar entity, such company, corporation or entity, as applicable; (viii) in the case of a person that is a general partner, managing member or manager of a partnership or limited liability company, such partnership or limited liability company, as applicable; (ix) in the case of a person that is a ''member'' (as defined in the rules of New York Stock Exchange LLC, as such rules may be in effect from time to time), the ''member organization'' (as defined in the rules of New York Stock Exchange LLC, as such rules may be in effect from time to time) with which such Person is associated (as determined using the definition of ''person associated with a member'' as defined under section 3(a)(21) of the Act); and (x) in the case of a person that is an OTP Holder, the OTP Firm with which such person is associated (as determined using the definition of ''person

vote or cause the voting of shares of stock of NYSE Group representing in the aggregate more than 10% of the total number of votes entitled to be cast on any matter, and no person (either alone or together with its related persons) may acquire the ability to vote more than 10% of the aggregate number of votes being cast on any matter by virtue of agreements entered into with other persons not to vote shares of NYSE Group's outstanding capital stock. NYSE Group shall disregard any such votes purported to be cast in excess of this limitation.[13]

In addition, under the proposed NYSE Group Certificate of Incorporation, no person (either alone or together with its related persons) may at any time beneficially own shares of stock of NYSE Group representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.[14]

In the event that a person, either alone or together with its related persons, beneficially owns shares of stock of NYSE Group in excess of the 20% threshold, such person and its related persons will be obligated to sell promptly, and NYSE Group will be obligated to purchase promptly, at a price equal to the par value of such shares of stock and to the extent that funds are legally available for such purchase, that number of shares necessary to reduce the ownership level of such person and its related persons to below the permitted threshold, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding.

The NYSE Group board of directors will have the right to waive the provisions regarding voting and ownership limits applicable to any person by a resolution expressly permitting this voting or ownership (which resolution must be filed with and approved by the Commission under section 19 of the Act), subject to a determination by the NYSE Group board of directors that:

- The exercise of such voting rights or ownership, as applicable, will not impair the ability of either NYSE Group or any of New York Stock Exchange LLC, NYSE Market, NYSE Regulation, Archipelago Exchange, L.L.C. (''ArcaEx''), Pacific Exchange or PCX Equities, Inc. (''PCX Equities'') (each, a ''Regulated Subsidiary'' and together, the ''Regulated Subsidiaries'') to discharge their respective responsibilities under the Act and the rules and regulations thereunder and is otherwise in the best interests of NYSE Group, its stockholders and the Regulated Subsidiaries; and
- The exercise of such voting rights or ownership, as applicable, will not impair the Commission's ability to enforce the Act.[15]

In making these determinations, the NYSE Group board of directors may impose conditions and restrictions on the relevant stockholder or its related persons that it deems necessary, appropriate or desirable in furtherance of the objectives of the Act and its governance. Any such waiver would be tantamount to a proposed rule change subject to approval by the Commission. However, the NYSE Group board of directors may not waive the voting and ownership limits above the 20% threshold for any person if such person or its related persons is:

- For so long as NYSE Group directly or indirectly controls the New York Stock Exchange LLC or NYSE Market, a ''member'' or ''member organization'' (as defined in the rules of New York Stock Exchange LLC, as such rules may be in effect from time to time);
- For so long as NYSE Group directly or indirectly controls the Pacific Exchange, PCX Equities or any facility of the Pacific Exchange, an ETP Holder (as defined in the PCX Equities rules of the Pacific Exchange), an OTP Holder or an OTP Firm (each as defined in the rules of Pacific Exchange); or
- Subject to any statutory disqualification (as defined in section 3(a)(39) of the Act).

The proposed NYSE Group Certificate of Incorporation will also require any stockholder that the NYSE Group board of directors reasonably believes to be subject to the voting or ownership restrictions summarized above, and any person (either alone or together with its related persons) that at any time beneficially owns 5% or more of NYSE Group's outstanding capital stock (which ownership has not been reported to NYSE Group), to provide to NYSE Group, upon the request of the NYSE Group board of directors, complete information as to all shares of capital stock of NYSE Group beneficially owned by such person and its related persons, and any other factual matters relating to the applicability or effect of the voting and ownership limitations outlined above as may be reasonably requested of such person and its related persons.[16]

Protection of Self-Regulatory Functions and Oversight

The proposed NYSE Group Certificate of Incorporation will contain several other provisions designed to protect the independence of the self-regulatory function of the Regulated Subsidiaries.

The proposed NYSE Group Certificate of Incorporation requires that, in discharging his or her responsibilities as a member of the board, each director of NYSE Group must, to the fullest extent permitted by applicable law, take into consideration the effect that NYSE Group's actions would have on the ability of the Regulated Subsidiaries to carry out their responsibilities under the Act and on the ability of the Regulated Subsidiaries and NYSE Group:

- To engage in conduct that fosters and does not interfere with the Regulated Subsidiaries' and NYSE Group's ability to prevent fraudulent and manipulative acts and practices in the securities markets;
- To promote just and equitable principles of trade in the securities markets;
- To foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities;
- To remove impediments to and perfect the mechanisms of a free and open market in securities and a national securities market system; and
- In general, to protect investors and the public interest.[17]

The proposed NYSE Group Certificate of Incorporation provides that, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of the New York Stock Exchange LLC, NYSE Market, NYSE Regulation, Pacific Exchange and PCX Equities (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of any of the Regulated Subsidiaries that shall come into the possession of NYSE Group shall:

- Not be made available to any persons other than to those officers, directors, employees and agents of NYSE Group that have a reasonable need to know the contents thereof;
- Be retained in confidence by NYSE Group and its officers, directors, employees and agents; and

associated with a member'' as defined under section 3(a)(21) of the Act). *See* proposed NYSE Group Certificate of Incorporation, Article V, section 1(E).

[13] *See* proposed NYSE Group Certificate of Incorporation, Article V, section 1(A).

[14] *See* proposed NYSE Group Certificate of Incorporation, Article V, section 2(A).

[15] *See* proposed NYSE Group Certificate of Incorporation, Article V, sections 1(A) and 2(C).

[16] *See* proposed NYSE Group Certificate of Incorporation, Article V, section 4.

[17] *See* proposed NYSE Group Certificate of Incorporation, Article VI, section 8.

• Not be used for any commercial purposes.[18]

Notwithstanding the foregoing, nothing in the NYSE Group Certificate of Incorporation shall be interpreted so as to limit or impede the rights of the Commission or any of the Regulated Subsidiaries to access and examine such confidential information pursuant to the Federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of NYSE Group to disclose such confidential information to the Commission or the Regulated Subsidiaries.[19] NYSE Group's books and records shall be subject at all times to inspection and copying by (a) the Commission and (b) any Regulated Subsidiary; provided that, in the case of (b), such books and records are related to the operation or administration of such Regulated Subsidiary or any other Regulated Subsidiary over which such Regulated Subsidiary has regulatory authority or oversight. NYSE Group's books and records related to Regulated Subsidiaries shall be maintained within the United States. In addition, for so long as NYSE Group directly or indirectly controls any Regulated Subsidiary, the books, records, premises, officers, directors and employees of NYSE Group shall be deemed to be the books, records, premises, officers, directors and employees of the Regulated Subsidiaries for purposes of and subject to oversight pursuant to the Act.[20]

The proposed NYSE Group Certificate of Incorporation provides that NYSE Group shall comply with the Federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and the Regulated Subsidiaries pursuant to and to the extent of their respective regulatory authority, and shall take reasonable steps necessary to cause its agents to cooperate with the Commission and, where applicable, the Regulated Subsidiaries pursuant to their regulatory authority.[21]

The proposed NYSE Group Certificate of Incorporation also provides that NYSE Group, its directors and officers, and those of its employees whose principal place of business and residence is outside of the United States shall be deemed to irrevocably submit to the jurisdiction of the U.S. Federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the U.S. Federal securities laws, and the rules and regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of the Regulated Subsidiaries (and shall be deemed to agree that NYSE Group may serve as U.S. agent for purposes of service of process in such suit, action or proceeding). Further, NYSE Group, as well as each such director, officer or employee by virtue of acceptance of such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the Commission, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.[22] Moreover, the proposed NYSE Group Certificate of Incorporation provides that each director, officer and employee of NYSE Group, in discharging his or her responsibilities in such capacity, shall (1) comply with the Federal securities laws and the rules and regulations thereunder, (2) cooperate with the Commission, and (3) cooperate with the Regulated Subsidiaries pursuant to their regulatory authority.[23]

The proposed NYSE Group Certificate of Incorporation provides that, for so long as NYSE Group shall control, directly or indirectly, any of the Regulated Subsidiaries, before any amendment to the NYSE Group Certificate of Incorporation shall be effective, such amendment shall be submitted to the boards of directors of the New York Stock Exchange LLC, NYSE Market, NYSE Regulation, Pacific Exchange and PCX Equities, and if any or all of such boards of directors determines that the amendment must be filed with or filed with and approved by the Commission under section 19 of the Act, then such amendment shall not be effectuated until filed with or filed with and approved by the Commission.[24]

In addition, the proposed Certificate of Incorporation of NYSE Group provides that NYSE Group, its directors, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of the Regulated Subsidiaries (to the extent of each Regulated Subsidiary's self-regulatory function) and to obligations to investors and the general public and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of the Regulated Subsidiaries relating to their regulatory functions (including disciplinary matters) or that would interfere with the ability of the Regulated Subsidiaries to carry out their respective responsibilities under the Act.[25]

Under the proposed NYSE Group Certificate of Incorporation, NYSE Group shall take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, of NYSE Group to consent in writing to the applicability to them of certain of these provisions with respect to their activities related to any Regulated Subsidiary.[26]

The NYSE does not currently, nor after the Merger will it, own or control any of its member organizations. To the extent that a member organization is the owner of NYSE Group common stock, the ownership limitations described above are intended to deal with the issues that might otherwise be presented. However, the NYSE understands that the Commission is also concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interests that could exist if an exchange were to become affiliated with one of its members, as well as the potential for unfair competitive advantage that the affiliated member could have by virtue of informational or operational advantages, or the ability to receive preferential treatment.[27] The NYSE acknowledges that ownership of, or a control relationship with, a member organization by NYSE Group or any of its subsidiaries would necessitate that the foregoing concerns be first addressed with, and to the satisfaction of, the Commission.[28]

[18] *See* proposed NYSE Group Certificate of Incorporation, Article XI.

[19] *See* proposed NYSE Group Certificate of Incorporation, Article XI.

[20] *See* proposed NYSE Group Certificate of Incorporation, Article XI.

[21] *See* proposed NYSE Group Certificate of Incorporation, Article XII.

[22] *See* proposed NYSE Group Certificate of Incorporation, Article X.

[23] *See* proposed NYSE Group Certificate of Incorporation, Article VI, section 8.

[24] *See* proposed NYSE Group Certificate of Incorporation, Article XIII.

[25] *See* proposed NYSE Group Certificate of Incorporation, Article XII.

[26] *See* proposed NYSE Group Certificate of Incorporation, Article XII.

[27] *See* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005).

[28] *See* proposed Rule 2B. The Exchange notes that the Commission has specifically approved the ownership and operation of the outbound router function of Archipelago Securities by Archipelago, subject to the conditions specified in Securities Exchange Act Release No. 52497. *See supra* note 27.

New York Stock Exchange LLC

As proposed, after the Merger, New York Stock Exchange LLC will succeed to the registration of the NYSE as a national securities exchange under the Act. It will be a direct, wholly owned subsidiary of NYSE Group and the parent company of NYSE Market and NYSE Regulation. It will not hold any material assets other than the equity interests in NYSE Market and NYSE Regulation. Pursuant to the proposed delegation agreement by and among New York Stock Exchange LLC, NYSE Market and NYSE Regulation (''NYSE Delegation Agreement'') (described below), the market functions of New York Stock Exchange LLC will be delegated to NYSE Market and the regulatory functions of New York Stock Exchange LLC will be delegated to NYSE Regulation.[29]

New York Stock Exchange LLC Board of Directors

The New York Stock Exchange LLC board of directors will consist of a number of directors as determined by NYSE Group, as the sole equity owner, from time to time; provided that (1) all of the independent directors of the NYSE Group (''NYSE Group Independent Directors'') shall be directors of New York Stock Exchange LLC, and (2) at least twenty percent (20%), and not less than two, of the directors of New York Stock Exchange LLC will be persons who are not NYSE Group directors,[30] but who otherwise qualify as independent under the independence policy of the NYSE Group board of directors (''Non-Affiliated LLC Directors'').

Committees of New York Stock Exchange LLC Board of Directors

The board of directors of New York Stock Exchange LLC is not expected to have its own committees. Rather, it is expected that any necessary functions with respect to audit, compensation, nomination and governance will be performed by the relevant committees of the NYSE Group board of directors.

Appointment of Non-Affiliated LLC Directors

NYSE Group, as the sole equity owner of New York Stock Exchange LLC, shall appoint or elect as the Non-Affiliated LLC Directors the candidates nominated by the nominating and governance committee of the NYSE Group board of directors (such candidates, ''Non-Affiliated LLC Director Candidates'').

The nominating and governance committee of the NYSE Group board of directors shall be obligated to designate as Non-Affiliated LLC Director Candidates those Fair Representation Candidates (as hereinafter defined) who are recommended jointly by the director candidate recommendation committee of NYSE Market (which committee is described below) and the director candidate recommendation committee of NYSE Regulation (which committee is described below), including those who emerge from the petition process of New York Stock Exchange members, all as described below under ''Fair Representation of Members.''

New York Stock Exchange LLC Management

The officers of New York Stock Exchange LLC will be appointed by the New York Stock Exchange LLC board of directors as it deems appropriate.

NYSE Market, Inc.

NYSE Market will be a wholly owned subsidiary of New York Stock Exchange LLC. NYSE Market will hold all of NYSE's current assets and liabilities other than the registration as a national securities exchange and other than the assets and liabilities relating to the regulatory functions currently conducted by the NYSE, which will be held by NYSE Regulation. After the Merger, NYSE Market will conduct the exchange business that is currently conducted by the NYSE pursuant to the NYSE Delegation Agreement (described below), including the issuance of licenses to trade on NYSE Market (''Trading Licenses''), which such Trading Licenses are described in greater detail below.

NYSE Market Board of Directors

The NYSE Market board of directors will consist of a number of directors as determined from time to time by New York Stock Exchange LLC (as the sole stockholder of NYSE Market); *provided that:* (1) The chief executive officer of NYSE Group will be a director of NYSE Market; (2) a majority of the directors of NYSE Market will be NYSE Group Independent Directors; and (3) at least twenty percent (20%), and not less than two, of the NYSE Market directors will be persons[31] who are not NYSE Group directors (''Non-Affiliated Market Directors'').[32] The Non-Affiliated Market Directors need not be independent, and must meet any status or constituent affiliation qualifications prescribed by NYSE Market rule or policy filed with the Commission.

Committees of NYSE Market Board of Directors

The NYSE Market board of directors may create one or more committees comprised of NYSE Market directors. It is expected that the committees of the NYSE Group board of directors will perform the board committee functions relating to audit, governance and compensation. The NYSE Market board of directors may also create committees comprised in whole or in part of individuals who are not directors.

Upon completion of the Merger, the NYSE Market board of directors will establish one or more advisory committees. The advisory committees will facilitate communication and provide input to the board of directors, management, and staff of NYSE Market and its affiliated entities on policies, programs, products and services to further strengthen the ability of NYSE Market and its affiliated entities to better serve their customers.

In addition, a Market Performance Committee and an Allocation Committee will be created by the board of directors of NYSE Market containing representatives of member organizations. These committees will have responsibilities specified in certain Exchange rules (see, for example, proposed NYSE Rule 20(b) and NYSE Rules 103A and 103B).

On an annual basis, the NYSE Market board of directors will appoint a director candidate recommendation committee (''NYSE Market DCRC'') comprised of representatives of upstairs firms, specialists and floor brokers. The NYSE Market DCRC will be responsible for recommending to the nominating and governance committee of the NYSE

[29] NYSE Market's responsibilities include the operation of Market Watch, a unit whose functions include, among others, coordination with listed companies, floor officials, and regulatory staff of NYSE Regulation with respect to dissemination of news and trading halts. This unit is distinguished from the Stock Watch unit within NYSE Regulation, whose functions include review of exception reports, alerts and investigations. NYSE Market will establish the principles and policies under which trading on NYSE Market will be conducted, and those principles and policies will be codified by NYSE Regulation in the rules of New York Stock Exchange LLC. In addition, NYSE Market will be responsible for referring to NYSE Regulation, for investigation and action as appropriate, any possible rule violations that come to its attention.

[30] At the request of the Exchange, the Commission staff replaced ''directors'' with ''persons'' to match the language in the proposed Operating Agreement of New York Stock Exchange LLC. December 14 Telephone Conversation.

[31] At the request of the Exchange, the Commission staff replaced ''directors'' with ''persons'' to match the language in the proposed Bylaws of NYSE Market. December 14 Telephone Conversation.

[32] Note that the reference to ''at least 20%, and not less than two'' is keyed into the requirements outlined in the ''Fair Representation of Members'' section below. There may in fact be more Non-Affiliated Market Directors, but they would not be subject to the selection, recommendation and petition procedures described in the ''Fair Representation of Members'' section.

Group board of directors Fair Representation Candidates for the Non-Affiliated Market Directors.

Appointment of Non-Affiliated Market Directors

New York Stock Exchange LLC, as the sole stockholder of NYSE Market, will appoint or elect as the Non-Affiliated Market Directors the candidates nominated by the nominating and governance committee of the NYSE Group board of directors (such candidates, ''Non-Affiliated Market Director Candidates'').

The nominating and governance committee of the NYSE Group board of directors shall be obligated to designate as Non-Affiliated Market Director Candidates those Fair Representation Candidates who are recommended by the NYSE Market DCRC, including those who emerge from the petition process of New York Stock Exchange members, all as described below under ''Fair Representation of Members.''

NYSE Market Management

The officers of NYSE Market will manage the business and affairs of NYSE Market, subject to the oversight of the NYSE Market board of directors, and except as discussed below in relation to NYSE Regulation. The chief executive officer of NYSE Group will serve as the chief executive officer of NYSE Market and will also serve as a director of NYSE Market.

NYSE Regulation, Inc.

As noted above, New York Stock Exchange LLC will be the sole voting equity holder of NYSE Regulation. NYSE Regulation will hold all of the assets and liabilities held by the NYSE prior to the Merger related to the regulatory functions conducted by the NYSE prior to the Merger. After the Merger, NYSE Regulation will be responsible for the regulatory functions of New York Stock Exchange LLC pursuant to the NYSE Delegation Agreement (described below), as well as many of the regulatory functions of the Pacific Exchange pursuant to the Pacific Exchange Regulatory Services Agreement.

NYSE Regulation Board of Directors

The NYSE Regulation board of directors will consist of a number of directors as determined from time to time by New York Stock Exchange LLC (as the sole equity holder of NYSE Regulation); *provided that*: (1) The chief executive officer of NYSE Regulation will be a director of NYSE Regulation; (2) a majority of the NYSE Regulation directors will be NYSE Group Independent Directors; and (3) at least twenty percent (20%), and not less than two, of the NYSE Regulation directors will be persons [33] who are not NYSE Group directors, but who otherwise qualify as independent under the independence policy of the NYSE Group board of directors (''Non-Affiliated Regulation Directors'').[34]

Committees of the NYSE Regulation Board of Directors

The NYSE Regulation board of directors may create one or more committees comprised of NYSE Regulation directors. It will create a nominating and governance committee, which will be comprised of a majority of NYSE Group Independent Directors and at least two Non-Affiliated Regulation Directors. It is expected that the committees of the NYSE Group board of directors will perform the board committee functions relating to audit and compensation. With due regard to the independence of NYSE Regulation, compensation for NYSE Regulation will be determined in consultation with the NYSE Regulation directors. This is similar to the interplay between the compensation committee and the regulatory oversight committee of the NYSE that exists today.

The NYSE Regulation board of directors may also create committees comprised in whole or in part of individuals who are not directors. For example, the NYSE Regulation board of directors will appoint a Committee for Review that will, among other things, review disciplinary decisions on behalf of the NYSE Regulation board of directors. This committee will be comprised of both directors of NYSE Regulation that satisfy the independence requirements for directors of NYSE Regulation, as well as persons who are not directors; *provided, however*, that a majority of the members of the committee voting on a matter subject to a vote of the committee will be directors of NYSE Regulation. Among the persons on the committee who are not directors, there will be included representatives of each of (a) upstairs firms, (b) specialists, and (c) floor brokers. The Exchange Rules are proposed to be amended to reflect the ability of such committee members and Executive Floor Governors [35] to require review by the board of New York Stock Exchange LLC of disciplinary decisions pursuant to NYSE Rules 476 and 476A, acceptability committee decisions pursuant to NYSE Rule 308, and decisions resulting from summary proceedings pursuant to NYSE Rule 475.

In addition, a regulatory advisory committee will be created by the NYSE Regulation board of directors and will include representatives of member organizations. This committee will have responsibilities specified in proposed NYSE Rule 20(b).

Upon completion of the Merger, the NYSE Regulation board of directors is expected to establish one or more additional advisory committees. The advisory committees will facilitate communication and provide input to the board of directors, management, and staff of NYSE Regulation and its affiliated entities on policies, programs, regulatory aspects of products and services to further strengthen the ability of NYSE Regulation and its affiliated entities to better serve its regulatory responsibilities.

On an annual basis, the NYSE Regulation board of directors will appoint a director candidate recommendation committee (''NYSE Regulation DCRC'') comprised of representatives of each of (a) upstairs firms, (b) specialists, and (c) floor brokers. The NYSE Regulation DCRC will be responsible for recommending to the nominating and governance committee of the NYSE Regulation board of directors Fair Representation Candidates for the Non-Affiliated Regulation Directors.

Appointment of Non-Affiliated Regulation Directors

New York Stock Exchange LLC, as the sole equity owner of NYSE Regulation, will appoint or elect as the Non-Affiliated Regulation Directors the candidates nominated by the nominating and governance committee of NYSE Regulation (such candidates, ''Non-Affiliated Regulation Director Candidates'').

The nominating and governance committee of NYSE Regulation shall be obligated to designate as Non-Affiliated Regulation Director Candidates those Fair Representation Candidates who are recommended by the NYSE Regulation DCRC, including those who emerge from the petition process of New York Stock Exchange members, all as

[33] At the request of the Exchange, the Commission staff replaced ''directors'' with ''persons'' to match the language in the proposed Bylaws of NYSE Regulation. December 14 Telephone Conversation.

[34] Note that the reference to ''at least 20%, and not less than two'' is keyed into the requirements outlined in the ''Fair Representation of Members'' section below. There may in fact be more Non-Affiliated Regulation Directors, but they would not be subject to the selection, recommendation and petition procedures described in the ''Fair Representation of Members'' section.

[35] *See* proposed NYSE Rule 46A.

described below under ''Fair Representation of Members.''

NYSE Regulation Management

The officers of NYSE Regulation will manage the affairs of NYSE Regulation, subject to the oversight of the NYSE Regulation board of directors. The chief executive officer of NYSE Regulation will attend as appropriate meetings of the board of directors of NYSE Group and its subsidiaries, and also will not be prohibited from meeting with management of NYSE Group and its subsidiaries. However, he or she will not be an officer or employee of any affiliated entity other than NYSE Regulation and will report solely to the NYSE Regulation board of directors.

Archipelago Holdings, Inc.

Through the Merger, Archipelago will become a wholly owned subsidiary of NYSE Group. The governing documents of Archipelago will remain unchanged other than amendments required to permit NYSE Group to own all of the outstanding shares of Archipelago. These amendments will be proposed in a separate application on Form 19b–4 to be filed by the Pacific Exchange.

PCX Holdings, Inc.

PCX Holdings will remain a wholly owned subsidiary of Archipelago after the Merger, and the Proposed Rule Change will not affect its governing documents or operations.

Pacific Exchange, Inc. and PCX Equities, Inc.

The Pacific Exchange will remain a wholly owned subsidiary of PCX Holdings and will maintain its status as a registered national securities exchange and an SRO. Its operations will remain unchanged except with regard to its regulatory responsibilities, many of which will be performed by NYSE Regulation after the Merger.

PCX Equities will remain a wholly owned subsidiary of the Pacific Exchange. Its operations will remain unchanged except with regard to its regulatory responsibilities, many of which will be performed by NYSE Regulation after the Merger.

New York Stock Exchange Membership

After the Merger, there will continue to be ''members'' and ''member organizations'' of the New York Stock Exchange. Such members or member organizations (and new applicants), however, will not, by virtue of their membership, be equity owners of NYSE Group or any of its subsidiaries. Instead, after the Merger, such members and member organizations will be comprised of: (1) Organizations that obtain Trading Licenses in accordance with the rules of New York Stock Exchange LLC (including the rules of eligibility that will apply to those who wish to be a member or member organization); and (2) broker-dealers that agree to submit to the jurisdiction and rules of New York Stock Exchange LLC, without obtaining a Trading License and thus without having rights to directly access the trading facilities of NYSE Market.[36] After the Merger, NYSE Market may decide to issue separate licenses for electronic-only access or access limited to particular products. Such decisions would be implemented only following any required rule changes filed with and approved by the Commission.

Fair Representation of Members

To ensure fair representation of New York Stock Exchange members in the selection of directors and the administration of the affairs of New York Stock Exchange LLC after the Mergers,[37] twenty percent (20%), and not less than two, of the directors on the boards of directors of each of New York Stock Exchange LLC, NYSE Market and NYSE Regulation will be persons who are not NYSE Group directors, and will be chosen solely from candidates (referred to herein as ''Fair Representation Candidates'') who are recommended by the NYSE Market DCRC and/or NYSE Regulation DCRC, as applicable, including those who may emerge from the petition process described below in this section, to fill positions as non-affiliated directors on the boards of New York Stock Exchange LLC, NYSE Market and NYSE Regulation, respectively.

New York Stock Exchange LLC members will also have the right to propose Fair Representation Candidates by petition. The petition process will work as follows:

Candidates put forward by the NYSE Market DCRC and/or NYSE Regulation DCRC, as applicable, to be Fair Representation Candidates will be announced to the member organizations of New York Stock Exchange on a date in each year (''Announcement Date'') sufficient to accommodate the process for the proposal of alternate nominees by petition. Following the Announcement Date, and subject to the limitations described below, a person shall be a petition candidate if a properly completed petition shall be completed and such person shall be endorsed by a number of votes equal to at least ten percent (10%) of the votes eligible to be cast for such candidate as described below. For purposes of determining whether a person has been endorsed by the requisite ten percent (10%) of votes to be a petition candidate, the votes eligible to be cast shall be as follows:

- For purposes of a candidate for the New York Stock Exchange LLC board of directors or the NYSE Regulation board of directors, each member organization in good standing shall be entitled to one vote for each trading license owned by it, and each member organization in good standing that does not own a trading license shall be entitled to one vote;
- For purposes of a candidate for the NYSE Market board of directors, each member organization in good standing shall be entitled to one vote for each trading license owned by it (and member organizations that do not own a trading license shall not be entitled to vote);

provided, however, that, in each case, no member organization, either alone or together with its affiliates (as defined under Rule 12b–2 under the Act), may account for more than fifty percent (50%) of the votes endorsing a particular petition candidate, and any votes cast by such member organization, either alone or together with its affiliates, in excess of such fifty percent (50%) limitation shall be disregarded.

Each petition must include for each potential Fair Representation Candidate a completed questionnaire used to gather information concerning non-affiliated director candidates for the relevant entity (the form of questionnaire will be provided upon the request of any member organization). The petitions must be filed within two weeks after the Announcement Date. The nominating and governance committee of the NYSE Group board of directors (with respect to candidates for New York Stock Exchange LLC and NYSE Market), and the nominating and

[36] Proposed NYSE Rule 2(a) defines the term ''member,'' when used to denote a natural person approved by the Exchange, as meaning a natural person associated with a member organization who has been approved by the Exchange and designated by such member organization to effect transactions on the floor of the Exchange or any facility thereof.

[37] See section 6(b)(3) of the Act. In nominating candidates that will serve on the boards of New York Stock Exchange LLC, NYSE Market and NYSE Regulation, the nominating and governance committees of NYSE Group and NYSE Regulation respectively will include at least one person intended to allow each such board to meet the requirements of section 6(b)(3) of the Act concerning issuers and at least one person intended to allow each such board to meet the requirements of section 6(b)(3) of the Act concerning investors. At the request of the Exchange, the Commission staff modified the language of this footnote to clarify its meaning. December 14 Telephone Conversation.

governance committee of the NYSE Regulation board of directors (with respect to NYSE Regulation) will determine whether the persons proposed by petition are eligible for election to the position for which they are to be nominated, and such determinations will be final and conclusive. Those to be nominated for the New York Stock Exchange LLC or NYSE Regulation board of directors must qualify as independent under the independence policy of the NYSE Group board of directors. Those to be nominated for a position on the NYSE Market board must meet any applicable constituent status qualifications that have been prescribed for such directors by rule or policy filed with the Commission. All nominees must be free of any statutory disqualification (as defined in section 3(a)(39) of the Act).

If the sum of the number of candidates recommended by the NYSE Market DCRC and/or the NYSE Regulation DCRC, as applicable, and the number of petition candidates exceeds the number of available Fair Representation Candidate positions for New York Stock Exchange LLC, NYSE Market or NYSE Regulation, as applicable, all such candidates shall be submitted to the member organizations for a vote. The candidates receiving the highest number of votes for the available Fair Representation Candidate positions shall be the Fair Representation Candidates recommended to the nominating and governance committee of the board of directors of NYSE Group or NYSE Regulation, as applicable. The member organizations will be afforded a confidential voting procedure and will be given no less than 20 business days to submit their votes. For purposes of determining which candidates received the highest number of votes and therefore should be the Fair Representation Candidates recommended to the applicable nominating and governance committee, the votes eligible to be cast shall be as follows:

- For purposes of a candidate for the New York Stock Exchange LLC board of directors or the NYSE Regulation board of directors, each member organization in good standing shall be entitled to one vote for each trading license owned by it, and each member organization in good standing that does not own a trading license shall be entitled to one vote;
- For purposes of a candidate for the NYSE Market board of directors, each member organization in good standing shall be entitled to one vote for each trading license owned by it (and member organizations that do not own a trading license shall not be entitled to vote);

provided, however, that, in each case, no member organization, either alone or together with its affiliates, may account for more than twenty percent (20%) of the votes endorsing a particular petition candidate, and any votes cast by such member organization, either alone or together with its affiliates, in excess of such twenty percent (20%) limitation shall be disregarded.

Listing of NYSE Group Common Stock on NYSE Market

Initial Listing

NYSE Group intends to list its shares of common stock for trading on New York Stock Exchange LLC. Pursuant to proposed NYSE Rule 497(b), any security of NYSE Group or its affiliates shall not be approved for listing on New York Stock Exchange LLC unless NYSE Regulation finds that such securities satisfy New York Stock Exchange LLC's rules for listing, and such finding is approved by the NYSE Regulation board of directors. As proposed NYSE Rule 497 will not be in effect, the Merger will not have closed and the NYSE Regulation board of directors will not have been constituted as contemplated herein prior to the time by which the initial listing of the NYSE Group common stock must be approved, that listing will be reviewed by the regulatory staff of NYSE and approved by the Regulatory Oversight Committee of the current board of directors of NYSE, as the most logical predecessor to the NYSE Regulation board.[38]

Continued Listing and Trading

NYSE Regulation will be responsible for all listing compliance decisions with respect to NYSE Group as an issuer. NYSE Regulation will prepare a quarterly report summarizing its monitoring of NYSE Group common stock's compliance with listing standards and trading rules as described in proposed NYSE Rule 497(c).[39] This report will be provided to the NYSE Regulation board of directors and a copy will be forwarded promptly to the Commission. Once a year an independent accounting firm will review NYSE Group's compliance with the listing standards and a copy of its report will be forwarded promptly to the Commission. If NYSE Regulation determines that NYSE Group common stock is not in compliance with any applicable listing standard, NYSE Regulation shall notify NYSE Group promptly and request a plan for compliance. Within five business days[40] of providing such notice to NYSE Group, NYSE Regulation shall file a report with the Commission identifying the date on which NYSE Group common stock was not in compliance with the listing standard at issue and any other material information conveyed to NYSE Group in the notice of non-compliance. Within five business days of receiving a plan of compliance from the issuer, NYSE Regulation will notify the Commission of such receipt, whether the plan was accepted by NYSE Regulation or what other action was taken with respect to the plan, and the time period provided to regain compliance with the Exchange's listing standard, if any.

Trading Licenses; Access to NYSE Market

Following the Merger, NYSE Market will issue Trading Licenses to registered broker-dealers, subject to an annual fee to NYSE Market paid in monthly installments, and review and approval of the applicant by NYSE Regulation. Organizations holding Trading Licenses will be subject to rules applicable to member organizations, and except as otherwise noted herein, those rules will be substantively the same as the rules applicable to NYSE member organizations under the NYSE's current Constitution and Rules.[41] Each Trading License will entitle its holder to have physical and electronic access to the trading facilities of NYSE Market, subject to such limitations and requirements as may be specified in the rules, and in each case will include the right to designate a natural person, subject to pre-approval by NYSE Regulation, who may have physical access to the floor and facilities of NYSE Market to trade thereon. The quantity and price of Trading Licenses issued shall be annually determined by a ''Dutch auction.''

The clearing price at which all Trading Licenses will be sold in the

[38] This process is not included in the text of proposed NYSE Rule 497. The Exchange has represented that it will amend proposed NYSE Rule 497 to include this procedure prior to any Commission approval of the Proposed Rule Change. December 14 Telephone Conversation.

[39] At the request of the Exchange, the Commission staff edited this statement to match the language in proposed NYSE Rule 497. December 14 Telephone Conversation.

[40] Proposed NYSE Rule 497 provides for a period of five days. The Exchange has represented that it plans to amend proposed NYSE Rule 497 to change ''five days'' to ''five business days.'' December 14 Telephone Conversation.

[41] As noted above, the term ''member organization'' may also include any other registered broker-dealer that agrees to be regulated by NYSE Regulation, notwithstanding that it does not hold a Trading License and thus does not have direct access to the trading facilities of NYSE Market.

auction will be determined under procedures calculated to provide suitable revenue to NYSE Market while providing fair access to its facilities to member organizations that wish to do business there. For each auction NYSE Market will determine the minimum price that a bidder will be required to pay for each Trading License (''Minimum Bid Price''), which will be no greater than 80% of the clearing price at the last annual auction, or for the first auction, 80% of the average annual lease price for leases commenced during a recent six month period.[42] Unpriced ''at the market'' bids will also be permitted. At the end of the auction, NYSE Market will select as the purchase price for each Trading License the highest bid price that will allow it to sell the number of Trading Licenses that will maximize auction revenue to NYSE Market (referred to as a clearing price), provided that (i) the clearing price shall not be greater than the price that will result in the sale in the auction of at least 1000 Trading Licenses, (ii) NYSE Market will not sell in the auction more than 1366 Trading Licenses, and if the bids at the clearing price bring the total to more than 1366 Trading Licenses, NYSE Market will sell at the clearing price to the unpriced ''at the market'' bids and higher priced bids, but will allocate trading licenses among the bids at the clearing price by lot, and (iii) NYSE Market at its discretion may sell the number of Trading Licenses determined by the clearing price at a price less than the clearing price but not lower than the Minimum Bid Price. However, if there are insufficient bids at the Minimum Bid Price (including unpriced at the market bids) to purchase at least 1000 Trading Licenses, NYSE Market may, although it need not, sell the largest number of Trading Licenses as can be sold at a price equal to the Minimum Bid Price, even though such number of Trading Licenses is less than 1000. In the alternative, under such circumstances NYSE Market may conduct another auction or auctions, setting a new Minimum Bid Price, which may be lower than that determined by the formula above, and in any such auction the clearing price will be determined as explained above, but without the requirement to sell at least 1000 trading licenses. In such case, NYSE Market will use its discretion to conclude an auction that will best serve the dual goals of raising adequate proceeds for NYSE Market while selling a number of Trading Licenses adequate to serve the needs of investors and the broker-dealer community.

It is also proposed that, in each auction, NYSE Market will limit the number of Trading Licenses that may be bid for by a single member organization to the greater of (i) 35 and (ii) 125% of the number of trading licenses (or in the case of the first auction, regular and electronic access memberships) utilized by the member organization in its business immediately prior to the auction. It is also proposed that the aggregate number of Trading Licenses to be issued in any one year will be limited to 1,366.

Except for the initial Trading Licenses, which will be valid from the closing date of the Merger through the end of the calendar year in which the Merger occurs, each Trading License will be valid for one calendar year.[43] Trading Licenses will not be able to be leased or transferred, although they will be permitted to be transferred to an affiliated member organization, or to another qualified member organization which continues substantially the same business as the Trading License holder. A member organization may terminate a Trading License prior to the expiration of its term in accordance with applicable rules and subject to applicable administrative fees. Trading Licenses will not represent any equity interest in NYSE Group or any of its subsidiaries (including NYSE Market). Holders of Trading Licenses will not have any voting rights or rights to distribution in New York Stock Exchange LLC, NYSE Market or NYSE Group by virtue of their status as holders of Trading Licenses, except to the extent their vote is sought in connection with the petition nomination process described under ''Fair Representation of Members'' above.

As noted above, the procedures under which Trading Licenses will be made available are calculated to comply with the requirements of section 6(b)(2) of the Act regarding fair access to the facilities of a registered exchange. As discussed more fully below, the Dutch auction is itself a fair way to determine access, especially given that it is subject to provisions calculated to insure that Trading Licenses are widely available, such as the provisions (i) specifying a reasonable minimum bid price, (ii) calculating the clearing price with reference to what will sell at least 1000 Trading Licenses, assuming sufficient bids, (iii) limiting the number of Trading Licenses that may be bid for by a single member organization, and (iv) the arrangement to sell additional Trading Licenses during the year at a 10% premium up to the maximum of 1366 Trading Licenses. The procedures under which Trading Licenses will be made available are also intended to comply with the requirements of section 6(b)(4) of the Act, which requires that a registered exchange provide for the equitable allocation of reasonable dues, fees, and charges among its members and issuers and other persons using its facilities. The price for a Trading License is reasonable because it is basically determined by ''the market'', that is, by the member organizations that wish to obtain a trading license. The Dutch auction allows those member organizations to themselves determine the price, subject to the provisions referenced in clauses (i) to (iv) above which, as noted, are calculated to insure that Trading Licenses are widely available. The minimum bid price is reasonable because it is determined with reference to the prices which member organizations have recently been willing to pay for direct access to the trading facilities. The auction is also closely related to the way access to the New York Stock Exchange was traditionally priced, with supply and demand governing the price at which traditional memberships were purchased or leased. The pricing of Trading Licenses in between auctions is also reasonable, as it is based on the auction price, but with a premium to the auction price that is modest, but hopefully will encourage participation in the auction, which in turn will strengthen the price discovery mechanism that the auction provides.

Access to ArcaEx

The Merger will have no effect on the right of any party to trade securities on ArcaEx, a facility of the Pacific Exchange. Any registered broker-dealer who wishes to trade on ArcaEx must become a permit holder by obtaining an equity trading permit from PCX Equities. Broker-dealers that do not hold

[42] The first auction will also have a maximum price for bids, which will be 120% of the average annual lease price for leases commenced during such recent six month period. This is expected to ease the concerns of existing members given the potentially significant changes to business models that may evolve following the implementation of the Commission's new Regulation NMS and the Exchange's own hybrid market initiative.

[43] The NYSE also proposes to provide for the sale of additional Trading Licenses during the year at a premium to the auction price, pro rated for the amount of time remaining for the year, in order to, among other things, ensure that the supply of Trading Licenses is adequate to meet demand for Trading Licenses should conditions change after the auction, and to accommodate new businesses that commence operations after the beginning of the year. This will also accommodate those who under priced their bids in the auction. The premium will help defray out-of-cycle administration costs and encourage participation in the annual auction, thereby promoting the optimal price and quantity discovery in the auction.

such trading permits may have access to ArcaEx through a broker-dealer that is a permit holder.

Access to the Pacific Exchange

The Merger will have no effect on the right of any party to trade securities on the trading facilities of the Pacific Exchange. Any registered broker-dealer who wishes to trade on the Pacific Exchange must become a permit holder by obtaining a trading permit from the Pacific Exchange. Broker-dealers that do not hold such trading permits may access the Pacific Exchange through a broker-dealer that is a permit holder.

Delegation and Protection of SRO Functions; Services Agreement

Overview

Following the Merger, NYSE Group will be the parent company of two national securities exchanges registered under section 6 of the Act: (a) New York Stock Exchange LLC (as the proposed successor to the NYSE); and (b) the Pacific Exchange (which will be held through Archipelago).

Pursuant to the NYSE Delegation Agreement, New York Stock Exchange LLC will delegate the performance of its regulatory functions to NYSE Regulation and the performance of its market functions to NYSE Market.[44] The Pacific Exchange will also contract for the provision of certain of its regulatory functions from NYSE Regulation pursuant to the Pacific Exchange Regulatory Services Agreement.

NYSE Delegation Agreement

The NYSE Delegation Agreement will provide that New York Stock Exchange LLC shall delegate to NYSE Regulation, and NYSE Regulation shall assume, the following responsibilities and functions of a registered national securities exchange:[45]

1. To establish and administer rules and regulations, including developing and adopting necessary or appropriate amendments thereto, interpretations, exemptions, policies and procedures relating to the business of New York Stock Exchange LLC members, member organizations and their employees, allied members, and approved persons (''member organizations and persons associated therewith'') including, but not limited to regulatory fees, qualifications, reporting and membership requirements, trading, financial, operational, sales practice and disciplinary rules, and rules governing hearings, arbitrations and dispute resolution.

2. To take necessary or appropriate action to assure compliance with the rules, interpretations, policies and procedures of New York Stock Exchange LLC, the Federal securities laws, and other laws, rules and regulations that New York Stock Exchange LLC has the authority to administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary and other programs.

3. To administer programs and systems for the surveillance and enforcement of rules governing trading on the NYSE Market and any facilities thereof and in NYSE-listed securities by New York Stock Exchange LLC member organizations and persons associated therewith.

4. To review complaints, examine and investigate New York Stock Exchange LLC member organizations and persons associated therewith to determine if they have violated the rules and policies of New York Stock Exchange LLC, the Federal securities laws, and other laws, rules and policies that New York Stock Exchange LLC has the authority to administer, interpret or enforce.

5. To administer New York Stock Exchange LLC enforcement and disciplinary programs, including investigation, adjudication of cases and the imposition of fines and other sanctions. A decision upon appeal to the NYSE Regulation board of directors of disciplinary matters shall be the final action of New York Stock Exchange LLC.

6. To administer New York Stock Exchange LLC's Office of the Hearing Board.

7. To conduct arbitrations, mediations and other dispute resolution programs.

8. To conduct qualification examinations and continuing education programs.

9. To determine whether natural person designees for Trading Licenses and applications for member organizations have met the requirements established by New York Stock Exchange LLC.

10. To place restrictions on the business activities of New York Stock Exchange LLC member organizations and persons associated therewith consistent with the public interest, the protection of investors, the rules and policies of New York Stock Exchange LLC, the federal securities laws, and other laws, rules and policies that New York Stock Exchange LLC has the authority to administer, interpret or enforce.

11. To determine whether persons seeking to register as associated persons of New York Stock Exchange LLC member organizations, including members, have met such qualifications for registration as may be established by New York Stock Exchange LLC, including whether statutorily disqualified persons will be permitted to associate with particular New York Stock Exchange LLC member organizations and members, and the conditions of such association.

12. To determine whether applicants for listing on New York Stock Exchange LLC have met the initial listing requirements established by the New York Stock Exchange LLC and to determine whether listed issues and issuers meet the continuing listing requirements and to administer rules governing listing standards established by the New York Stock Exchange LLC.

13. To coordinate with NYSE Market with respect to the operations of Market Watch.

14. To determine, assess, collect and retain for regulatory purposes such examination, access, registration, qualification, continuing education, arbitration, mediation, dispute resolution and other regulatory fees as may be imposed from time to time and to retain disciplinary fines and penalties as may be imposed in disciplinary actions, for regulatory purposes.

15. To establish the annual budget for NYSE Regulation.

16. To determine allocation of NYSE Regulation resources.

17. To establish and assess fees and other charges on New York Stock Exchange LLC member organizations and persons associated therewith, and others using the services or facilities of NYSE Regulation.

18. To manage external relations on enforcement and regulatory policy issues with Congress, the Commission, state regulators, other self-regulatory organizations, business groups, and the public.

New York Stock Exchange LLC will also delegate performance of the following market functions to NYSE Market pursuant to the NYSE Delegation Agreement:[46]

1. To operate NYSE Market, including automated systems supporting it.

2. To provide and maintain a communications network infrastructure linking market participants for the efficient process and handling of quotations, orders, transaction reports and comparisons of transactions.

[44] *See* proposed NYSE Rule 20(a).

[45] Note that, of necessity, NYSE Market will be called upon to coordinate with and assist NYSE Regulation in certain of its functions. *See supra* note 29.

[46] Note that, of necessity, NYSE Market will be called upon to coordinate with and assist NYSE Regulation in certain of its functions. *See supra* note 29.

3. To act as a Securities Information Processor for quotations and transaction information related to securities traded on NYSE Market and other trading facilities operated by NYSE Market.

4. To administer the participation of New York Stock Exchange LLC in the National Market System and Commission regulations related thereto.

5. To collect, process, consolidate and provide to NYSE Regulation accurate information requisite to operation of a surveillance audit trail.

6. To develop and adopt rules governing listing standards applicable to securities listed on New York Stock Exchange LLC and the issuers of those securities in consultation with NYSE Regulation.

7. To establish and assess listing fees, access fees, transaction fees, market data fees and other fees for the products and services offered by NYSE Market.

8. To develop, adopt and administer rules governing the issuance of Trading Licenses.

9. To operate Market Watch in coordination with NYSE Regulation and to refer to NYSE Regulation any complaints of a regulatory nature involving potential rule violations by Trading License holders, member organizations or employees.

10. To establish the annual budget for NYSE Market.

11. To determine allocation of NYSE Market resources.

12. To manage external relations on matters related to trading on and the operation and functions of the NYSE Market with Congress, the Commission, state regulators, other self-regulatory organizations, business groups, and the public.

New York Stock Exchange LLC will have ultimate responsibility for the operations, rules and regulations developed by NYSE Regulation and NYSE Market, as well as their enforcement. Actions taken pursuant to delegated authority will remain subject to review, approval or rejection by the board of directors of New York Stock Exchange LLC in accordance with procedures established by that board of directors; *provided that* action taken upon review of disciplinary decisions by the NYSE Regulation board of directors shall be final action of the New York Stock Exchange LLC.

In addition, New York Stock Exchange LLC will expressly retain the following authority and functions:

1. To exercise overall responsibility for ensuring that statutory and self-regulatory obligations and functions of New York Stock Exchange LLC are fulfilled and to perform any duties and functions not delegated.

2. To delegate authority to NYSE Regulation and, to the extent applicable, NYSE Market to take actions on behalf of the New York Exchange LLC.

3. To elect the members of the boards of directors of NYSE Market and NYSE Regulation.

4. To coordinate actions of NYSE Regulation and NYSE Market as necessary.

5. To resolve as appropriate any disputes between NYSE Regulation and NYSE Market.

6. To direct NYSE Regulation and NYSE Market to take action necessary to effectuate the purposes and functions of New York Stock Exchange LLC, consistent with the independence of the regulatory functions delegated to NYSE Regulation, exchange rules, policies and procedures and the Federal securities laws.

The delegation of regulatory functions to NYSE Regulation will be subject to certain provisions designed to ensure the ability of the New York Stock Exchange LLC to comply with its obligations as SRO and to maintain the ability of the Commission to ensure effective oversight of these obligations. Specifically, for so long as NYSE Regulation has any delegated regulatory responsibility pursuant to this Agreement, NYSE Regulation agrees that:

1. To the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of New York Stock Exchange LLC or any Delegated Regulatory Responsibility (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of New York Stock Exchange LLC or NYSE Market that shall come into the possession of NYSE Regulation shall: (a) Not be made available to any person (other than as provided in the next sentence) other than to those officers, directors, employees and agents of the NYSE Regulation who have a reasonable need to know the contents thereof; (b) be retained in confidence by NYSE Regulation and the officers, directors, employees and agents of NYSE Regulation; and (c) not be used for any commercial purposes; provided, that nothing in this sentence shall be interpreted so as to limit or impede the rights of the Commission or New York Stock Exchange LLC to access and examine such confidential information pursuant to the Federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of NYSE Regulation to disclose such confidential information to the Commission or New York Stock Exchange LLC.

2. NYSE Regulation's books and records shall be subject at all times to inspection and copying by (a) the Commission and (b) by New York Stock Exchange LLC.

3. NYSE Regulation's books and records shall be maintained within the United States.

4. The books, records, premises, officers, directors and employees of NYSE Regulation shall be deemed to be the books, records, premises, officers, directors and employees of New York Stock Exchange LLC for purposes of and subject to oversight pursuant to the Act.

5. NYSE Regulation shall comply with the Federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and New York Stock Exchange LLC pursuant to and to the extent of its regulatory authority, and shall take reasonable steps necessary to cause its agents to cooperate, with the Commission and, where applicable, New York Stock Exchange LLC pursuant to their regulatory authority.

6. NYSE Regulation, its directors and officers, and those of its employees whose principal place of business and residence is outside of the United States shall be deemed to irrevocably submit to the jurisdiction of the United States Federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the United States Federal securities laws and the rules and regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of New York Stock Exchange LLC or any delegated regulatory responsibility (and shall be deemed to agree that NYSE Regulation may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding), and NYSE Regulation and each such director, officer or employee, in the case of any such director, officer or employee by virtue of his acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the Commission, that such suit, action or proceeding is an inconvenient forum or that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.

In addition, for so long as NYSE Regulation has any delegated regulatory responsibility pursuant to the NYSE

Delegation Agreement, New York Stock Exchange LLC agrees that:

1. New York Stock Exchange LLC shall not transfer or assign its membership in NYSE Regulation to another person.

2. New York Stock Exchange LLC shall not use any assets of, or any regulatory fees, fines or penalties collected by, NYSE Regulation for commercial purposes or distribute such assets, fees, fines or penalties to NYSE Group or any other entity other than NYSE Regulation.

In addition, for so long as NYSE Market has any delegated market responsibility pursuant to the NYSE Delegation Agreement, NYSE Market agrees that:

1. To the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of New York Stock Exchange LLC or any Delegated Market Responsibility (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of New York Stock Exchange LLC or NYSE Regulation that shall come into the possession of NYSE Market shall: (a) Not be made available to any person (other than as provided in the next sentence) other than to those officers, directors, employees and agents of the NYSE Market who have a reasonable need to know the contents thereof; (b) be retained in confidence by NYSE Market and the officers, directors, employees and agents of NYSE Market; and (c) not be used for any commercial purposes; provided, that nothing in this sentence shall be interpreted so as to limit or impede the rights of the Commission or New York Stock Exchange LLC to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of NYSE Market to disclose such confidential information to the Commission or New York Stock Exchange LLC.

2. NYSE Market's books and records shall be subject at all times to inspection and copying by (a) the Commission and (b) by New York Stock Exchange LLC.

3. NYSE Market's books and records shall be maintained within the United States.

4. The books, records, premises, officers, directors and employees of NYSE Market shall be deemed to be the books, records, premises, officers, directors and employees of New York Stock Exchange LLC for purposes of and subject to oversight pursuant to the Act.

5. NYSE Market shall comply with the Federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and New York Stock Exchange LLC pursuant to and to the extent of its regulatory authority, and shall take reasonable steps necessary to cause its agents to cooperate, with the Commission and, where applicable, New York Stock Exchange LLC pursuant to their regulatory authority.

6. NYSE Market, its directors, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of New York Stock Exchange LLC delegated to NYSE Regulation and to obligations to investors and the general public and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of New York Stock Exchange LLC and NYSE Regulation relating to their regulatory functions (including disciplinary matters) or that would interfere with the ability of New York Stock Exchange LLC to carry out its responsibilities under the Act or NYSE Regulation with respect to regulatory responsibilities delegated by New York Stock Exchange LLC.

7. NYSE Market, its directors and officers, and those of its employees whose principal place of business and residence is outside of the United States shall be deemed to irrevocably submit to the jurisdiction of the United States Federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws and the rules and regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of New York Stock Exchange LLC or any delegated market responsibility (and shall be deemed to agree that NYSE Market may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding), and NYSE Market and each such director, officer or employee, in the case of any such director, officer or employee by virtue of his acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the Commission, that such suit, action or proceeding is an inconvenient forum or that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.

For so long as NYSE Market has any delegated market responsibility pursuant to this Agreement, New York Stock Exchange LLC agrees that New York Stock Exchange LLC may not transfer or assign any of its shares of common stock of NYSE Market.

The NYSE Delegation Agreement may not be modified except pursuant to a written agreement among New York Stock Exchange LLC, NYSE Regulation and NYSE Market; *provided that*, prior to the effectiveness of any such amendment, such amendment shall be filed with, and approved by, the Commission under section 19 of the Act and the rules promulgated thereunder.

Services Agreement

Following the Merger, the Pacific Exchange and NYSE Regulation will be parties to a services agreement. The services agreement will ensure that the Pacific Exchange will provide adequate funding to NYSE Regulation so that NYSE Regulation has the capacity to carry out the regulatory services it will provide to the Pacific Exchange.

Regulatory Activities of NYSE Regulation

Currently, the regulatory responsibilities of the NYSE are conducted within the NYSE by the following five divisions, collectively referred to as NYSE Regulation: Listed Company Compliance; Member Firm Regulation; Market Surveillance; Enforcement; and Arbitration/Dispute Resolution. In addition, although not currently within NYSE Regulation, the Office of the Hearing Board and the Chief Hearing Officer report to the NYSE board of directors through its regulatory oversight committee rather than to the chief regulatory officer. Regulatory Quality Review (''RQR'') is similarly positioned, and the heads of Corporate Audit and RQR likewise report to the regulatory oversight committee in respect of RQR functions. After the Merger, NYSE Regulation will operate as a separate not-for-profit entity, rather than as a division of NYSE Group.

NYSE Regulation will continue to have the same responsibilities as its current responsibilities, and will be contracted to provide certain of the regulatory responsibilities of the Pacific Exchange, and the administration of disciplinary actions, except that the Office of the Hearing Board does not currently (and after the Merger will not) report through or to the chief regulatory officer of NYSE Regulation. The NYSE Regulation board of directors will perform all the functions of the current regulatory oversight committee, with the Office of the Hearing Board and the RQR function reporting to it. After the

Merger, the decisions of the Office of the Hearing Board may be reviewed by the non-management members of the NYSE Regulation board of directors, pursuant to the NYSE Delegation Agreement, or by the Pacific Exchange board of directors as to disciplinary matters affecting Pacific Exchange members and permit holders, pursuant to the Pacific Exchange Regulatory Services Agreement. As noted above, the NYSE Regulation board of directors will create a successor committee to the current regulatory enforcement and listing standards committee of the NYSE board of directors, to be called the Committee for Review. This successor committee will include both NYSE Regulation directors, and other individuals representing member constituencies. It is also expected to include individuals representing investor and listed company constituencies. Any member of the Committee for Review, including the non-director representatives on such committee, will be authorized to call up disciplinary decisions for appellate review, as will the Executive Floor Governors who will constitute the most senior level of practitioner supervision on the trading floor.

NYSE Regulation will determine, assess, collect and retain for regulatory purposes such examination, access, registration, qualification, continuing education, arbitration, dispute resolution and other regulatory fees as may be imposed from time to time, subject to Commission approval. NYSE Regulation expects, for example, to continue to fund its examination programs for assuring financial responsibility and compliance with sales practice rules, testing and continuing education services (the primary functions of Member Firm Regulation), through fees assessed directly on member organizations, that are calculated as a percentage of gross revenues of these member organizations and will fund arbitration and dispute resolution services through assessment of fees.[47]

NYSE Regulation will also receive funding through its agreements with New York Stock Exchange LLC and the Pacific Exchange.[48] No assets of, and no regulatory fees, fines or penalties collected by NYSE Regulation, will be distributed or otherwise used by the rest of NYSE Group. Upon completion of the Merger, NYSE Regulation may undergo additional structural and governance changes to comply with any rules finally adopted by the Commission following its proposals relating to governance, transparency, oversight and ownership of SROs.

Rules of New York Stock Exchange LLC

New York Stock Exchange LLC, as the proposed successor to the NYSE's registration as a national securities exchange, proposes to make a number of amendments to the NYSE Rules, which, after the Merger, will be the rules of New York Stock Exchange LLC.[49] As, such, the first proposed amendment is to delete references to ''New York Stock Exchange, Inc.'' in the rules and replace them with ''the Exchange.''

In addition, under the current business model of the NYSE, in order to effect transactions on the NYSE trading floor, a NYSE member has to own or lease a NYSE membership, or ''seat.'' Upon completion of the Merger, NYSE memberships and leases of those memberships will cease to exist. Instead, they will be replaced with Trading Licenses. NYSE Rules 300 and 300T are proposed to specify the terms under which Trading Licenses will be sold.

The NYSE proposes to amend NYSE Rule 2 to redefine the terms ''member'' and ''member organization'' in order to be consistent with the new form of access to the NYSE Market that will result after the Merger. Currently, NYSE Rule 2 cites the definitions found in Section 3 of Article I of the NYSE Constitution. The Proposed Rule Change will delete any reference to the NYSE Constitution and incorporate the new definitions that comport with the fact that member organizations will be those that hold Trading Licenses, as well as those who do not hold Trading Licenses but have agreed to subject themselves to NYSE Regulation.

In addition, upon completion of the Merger, the governance portion of the NYSE Constitution will be replaced by the proposed governing documents of NYSE Group and affiliated entities. In order to maintain a coherent set of Rules and comply with New York Stock Exchange LLC's obligations as a self-regulatory organization, this Proposed Rule Change seeks to codify any relevant provisions of the non-governance portions of the NYSE Constitution and remove all references to the NYSE Constitution. In order to conform the NYSE Rules, the Exchange proposes to amend those Exchange Rules that make reference to the NYSE Constitution.

The Proposed Rule Change further seeks to amend rules that reference the NYSE board of executives. Upon completion of the Merger, it is contemplated that the NYSE Market and NYSE Regulation boards of directors will establish one or more advisory committees (including industry representatives and representatives of specialists and non-specialists). Designated floor officials, to be called Executive Floor Governors,[50] shall generally have responsibilities of the current floor representatives on the NYSE board of executives. In order to facilitate this transition of authority, those Exchange Rules that refer to the NYSE board of executives Floor Representatives are proposed to be amended.

In addition, Trading Licenses will not be subject to lease or sub-lease. Therefore, various provisions and rules that reference leases will be deleted. The New York Stock Exchange LLC (through NYSE Regulation) will continue to approve member organizations and persons associated therewith, specialists and floor brokers, but will dispense with the requirement for posting and personal sponsors formerly required for members and allied members contained in NYSE Rules 301, 304, and 311. The Exchange proposes to amend certain Exchange Rules to delete references to leases and to amend the definition of ''member organization.''

Further, the Proposed Rule Change includes proposed new NYSE Rule 20 that sets forth the delegation from the New York Stock Exchange LLC to NYSE Market and NYSE Regulation.

[47] NYSE Regulation will oversee the NYSE Hybrid Market,SM currently being created by the NYSE as the world's first auction/electronic hybrid trading market, through its regulatory program.

[48] At the request of the Exchange, the Commission staff replaced the phrase ''services agreement'' with ''agreements.'' January 3 Telephone Conversation.

[49] The following NYSE Rules proposed to be amended through this filing are currently the subject of pending, proposed amendments previously filed with the Commission: Rules 103A and 103B (SR–NYSE–2005–40, filed on June 6, 2005); Rule 123A (SR–NYSE–2004–05, filed on February 9, 2004); Rule 123D (SR–2005–46, filed on June 29, 2005); Rule 301 (SR–NYSE–2005–83, filed on November 28, 2005, operative December 5, 2005); Rule 312 (SR–2005–58, filed on August 15, 2005); Rule 325 (SR–NYSE–2005–03, filed on January 5, 2005); Rule 342 (SR–NYSE–2005–22, filed on March 16, 2005; and SR–NYSE–2005–60, filed on August 15, 2005); Rules 475 and 476 (SR–NYSE–2005–37, filed on May 23, 2005); Rule 476A (SR–NYSE–2005–40, filed on June 6, 2005; SR–NYSE–2005–64, filed on September 22, 2005, approved on November 10, 2005; and SR–NYSE–2005–86, filed on December 7, 2005); Rule 600 (SR–NYSE–2005–73, filed on October 20, 2005); and Rule 619 (SR–NYSE–2005–18, filed on February 17, 2005; and SR–NYSE–2005–48, filed on July 13, 2005). At the request of the Exchange, the Commission revised the footnote to correct factual errors. Telephone conversation between James F. Duffy, Senior Vice President and Deputy General Counsel, NYSE, and Kim M. Allen, Special Counsel, Commission, Division, on December 14, 2005.

[50] *See* proposed NYSE Rule 46A.

The Exchange also proposes to amend NYSE Rule 103B, the Exchange Allocation Policy, with respect to the allocation of NYSE Group stock to (i) give NYSE Group the right to determine the number and identity of specialist firms that will be included in the group from which it shall choose its specialist, provided the group consists of at least four specialist firms, and (ii) provide NYSE Group with the same material with respect to each specialist firm applicant as would have been reviewed by the Allocation Committee in allocating other securities. All other aspects of the policy will continue to apply. It is expected that the independent directors of NYSE Group will select the specialist for NYSE Group common stock.

The Exchange is proposing this change to the Allocation Policy in recognition of the special circumstances involved in determining which of its specialist firms will be the specialist for the NYSE Group's stock. The Exchange is concerned that it would be unreasonable to subject the non-specialist members of the Exchange who serve on the Allocation Committee to the unique pressures involved in making a judgment to remove several of the specialist units from consideration. In effect, they would be subject to a kind of conflict that the Exchange believes would make it difficult for them to bring their impartial judgment to the selection process. The Exchange believes instead that the entire selection decision is best placed in the hands of independent directors, who have no ties to the member community other than their membership on the board. For similar reasons NYSE Group intends to remove its own chief executive officer from the process, in contrast to the typical listing, where it is normally the chief executive that would be entitled to make the final decision on selection of a specialist.

2. Statutory Basis

The Exchange believes that this filing, as amended, is consistent with section 6(b) of the Act,[51] in general, and furthers the objectives of section 6(b)(1) of the Act,[52] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing, as amended, furthers the objectives of section 6(b)(5)[53] of the Act because the rules summarized herein would create a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.[54]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

While the Exchange did not solicit comments on the Proposed Rule Change, it did receive one written comment in a letter dated December 14, 2005 from the Independent Broker Action Committee (''IBAC''). IBAC noted that the Exchange had informed its members that the first Trading License auction would take place on December 20, 2005. IBAC stated that it is improper for the Exchange to hold an auction under the Proposed Rule Change before it has been published for comment and approved by the Commission, and that if the Exchange did so it would prejudice IBAC's ability to comment on Proposed Rule Change.

IBAC has not commented on the substance of the Proposed Rule Change, but rather has objected to proposed Exchange action prior to Commission approval of the Proposed Rule Change. The Exchange does not agree that IBAC would be in any way prejudiced in its ability to comment. Conducting the first auction provisionally would simply give members and others as much certainty as possible as early as possible to plan for post-Merger business, as well as permitting both the Commission and the Exchange the opportunity to observe whether the auction procedures resulted in a fair and orderly pricing of the Trading Licenses and fair access to the facilities of the Exchange.

[51] 15 U.S.C. 78f(b).

[52] 15 U.S.C. 78f(b)(1).

[53] 15 U.S.C. 78f(b)(5).

[54] The Commission notes that the Exchange has referenced section 6(b)(3) of the Act in connection with the Exchange's discussion of ''Fair Representation of Members.'' *See supra* note and accompanying text. The Commission further notes that the Exchange has referenced sections 6(b)(2) and 6(b)(4) of the Act. *See supra* ''Trading Licenses; Access to NYSE Market.''

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange is targeting a closing date of January 23, 2006 for the Merger. In the event that it is necessary in order to facilitate that timetable, the Exchange requests that the Commission accelerate effectiveness of the filing pursuant to section 19(b)(2) to a date no later than January 23, 2006.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2005–77 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 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–77. 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–2005–77 and should be submitted on or before February 2, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[55]

Nancy M. Morris,

Secretary.

[FR Doc. 06–299 Filed 1–11–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53077; File No. SR–PCX–2005–134]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Certificate of Incorporation and Bylaws of Archipelago Holdings, Inc.

January 9, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 5, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 15, 2005, the Exchange amended its proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX proposes: (i) To allow NYSE Group, Inc., a Delaware corporation (''NYSE Group''), and its related persons to wholly own and vote all of the outstanding capital stock of Archipelago Holdings, Inc., a Delaware corporation and the parent company of the Exchange (''Archipelago''), upon the consummation of the proposed business combination of Archipelago and New York Stock Exchange, Inc., a New York Type A not-for-profit corporation (the ''NYSE''), subject to certain exceptions described herein; (ii) certain new rules of PCX and PCX Equities, Inc. (''PCXE'') prohibiting certain relationships between NYSE Group on the one hand and OTP Holders, OTP Firms, and ETP Holders (in each case as defined below) on the other hand; and (iii) to amend the rules of PCX and PCXE to impose certain restrictions on certain rights of OTP Holders and ETP Holders with respect to the nomination and election of the directors of PCX and PCXE.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX 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.[4] PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. *The Archipelago NYSE Mergers.* The Exchange is submitting the proposed rule change in connection with the proposed mergers (''Mergers'') of the NYSE and Archipelago. Following the Mergers, the businesses of the NYSE and Archipelago will be held under a single, publicly traded holding company named NYSE Group. The Mergers will occur pursuant to the terms of the Agreement and Plan of Merger, dated as of April 20, 2005, as amended and restated as of July 20, 2005, as further amended as of October 20, 2005, and as of November 2, 2005 (as so amended and restated, the ''Merger Agreement''), by and among the NYSE, Archipelago, NYSE Group, NYSE Merger Corporation Sub, Inc., a Delaware corporation and a wholly owned subsidiary of the NYSE, NYSE Merger Sub LLC, a New York limited liability company and a wholly owned subsidiary of NYSE Group, and Archipelago Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of NYSE Group.[5] In the Mergers, NYSE members will receive cash and/or shares of NYSE Group common stock, and Archipelago stockholders will receive solely shares of NYSE Group common stock.[6] Archipelago acquired PCX Holdings, Inc. (''PCXH'') on September 26, 2005, and is currently the ultimate parent company of PCXH and all of its subsidiaries, including PCX and PCXE.

b. *Ownership Limitation in the Archipelago Certificate of Incorporation.* The Archipelago Certificate of Incorporation was approved by the Commission on August 9, 2004 in connection with the initial public offering of Archipelago.[7] In order to ensure that the ownership of Archipelago by the public will not unduly interfere with, or restrict the ability of, the Commission or PCX to effectively carry out its regulatory oversight responsibilities under the Act and generally to enable the Archipelago Exchange, L.L.C. (''ArcaEx'') to operate in a manner that complies with the federal securities laws, including furthering the objectives of section 6(b)(5) of the Act,[8] the Archipelago Certificate of Incorporation imposes certain ownership and voting limitations with respect to the stock of Archipelago.

Specifically, the Archipelago Certificate of Incorporation provides that no person,[9] either alone or together with its related persons,[10] may own

[55] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced PCX's original filing in its entirety.

[4] Exhibit 5.A (Resolutions Adopted at the October 20, 2005 Regular Meeting of the Board of Directors of Archipelago Holdings, Inc.), Exhibit 5.B (Proposed PCX Rules), and Exhibit 5.C (Proposed PCXE Rules) of the proposed rule change are also available on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*).

[5] For a description of the Merger Agreement and the transactions contemplated thereby, see Amendment No. 3 to the Registration Statement on Form S–4, Registration No. 333–126780, filed with the Commission on November 3, 2005 (''S–4 Registration Statement''), at 125–147.

[6] *Id.*

[7] *See* Securities Exchange Act Release No. 50170, 69 FR 50419 (August 16, 2004).

[8] 15 U.S.C. 78f(b)(5).

[9] The Archipelago Certificate of Incorporation defines ''Person'' to mean a natural person, company, government, or political subdivision, agency, or instrumentality of a government. Archipelago Certificate of Incorporation, Article Fourth H(2).

[10] The Archipelago Certificate of Incorporation defines ''Related Persons'' to mean with respect to any person (a) any other person(s) whose beneficial ownership of shares of stock of Archipelago with the power to vote on any matter would be aggregated with such first person's beneficial ownership of such stock or deemed to be beneficially owned by such first person pursuant to

Continued

beneficially shares of Archipelago stock representing in the aggregate more than 40% of the then outstanding votes entitled to be cast on any matter (the ''Ownership Limitation'').[11] The Ownership Limitation will apply unless and until (1) a person, either alone or with its related persons, delivers to the board of directors of Archipelago a notice in writing regarding its intention to acquire shares of Archipelago stock that would cause such person, either alone or with its related persons, to own beneficially shares of stock of Archipelago in excess of the Ownership Limitation, at least 45 days (or such shorter period as the board of directors of Archipelago expressly consents to) prior to the intended acquisition, and (2) such person, either alone or with its related persons, receives prior approval by the board of directors of Archipelago and the Commission to exceed the Ownership Limitation.[12] Specifically, (1) the board of directors of Archipelago must adopt a resolution approving such person and its related persons to exceed the Ownership Limitation, (2) the resolution must be filed with the Commission under section 19(b) of the Act,[13] and (3) such proposed rule change must be approved by the Commission and become effective thereunder.[14]

Subject to its fiduciary obligations under the Delaware General Corporation Law, as amended (''DGCL''), before adopting any such resolution, the board of directors of Archipelago must first determine that: (1) such acquisition of beneficial ownership by such person, either alone or with its related persons, would not impair any of Archipelago's, PCX's, or PCXE's ability to discharge its responsibilities under the Act and the rules and regulations thereunder and is otherwise in the best interests of Archipelago and its stockholders; (2) such acquisition of beneficial ownership by such person, either alone or with its related persons, would not impair the Commission's ability to enforce the Act; and (3) such person and its related persons are not subject to any statutory disqualification [15] (as defined in section 3(a)(39) of the Act).[16] In making such determinations, the board of directors of Archipelago may impose any conditions and restrictions on such person and its related persons owning any shares of stock of Archipelago entitled to vote on any matter as the board of directors of Archipelago in its sole discretion deems necessary, appropriate, or desirable in furtherance of the objectives of the Act and the governance of Archipelago.[17]

In addition, the Archipelago Certificate of Incorporation provides that for so long as ArcaEx remains a facility (as defined in section 3(a)(2) of the Act) [18] of PCX and PCXE and the Facility Services Agreement, which currently governs the regulatory relationship of PCX and PCXE to ArcaEx, remains in full force and effect, no ETP Holder, either alone or with its related persons, shall be permitted at any time to own beneficially shares of Archipelago stock representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.[19] Furthermore, unlike the Ownership Limitation described earlier, the Archipelago Certificate of Incorporation does not give the board of directors of Archipelago the authority to waive the 20% ownership limitation with respect to ETP Holders and their related persons.

c. *Voting Limitation in the Archipelago Certificate of Incorporation.* The Archipelago Certificate of Incorporation also provides that no person, either alone or with its related persons, shall be entitled to (1) vote or cause the voting of shares of Archipelago stock to the extent such shares represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the ''Voting Limitation'') or (2) enter into any agreement, plan, or arrangement not to vote shares, the effect of which agreement, plan, or arrangement would be to enable any person, either alone or with its related persons, to vote, possess the right to vote, or cause the voting of shares that would represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (''Nonvoting Agreement Prohibition'').[20] The Voting Limitation and the Nonvoting Agreement Prohibition shall apply unless and until (1) a person, either alone or with its related persons, delivers to the board of directors of Archipelago a notice in writing regarding such person's intention to vote, possess the right to vote, or cause the voting of shares of Archipelago stock that would cause such person, either alone or with its related persons, to violate the Voting Limitation or the Nonvoting Agreement Prohibition, at least 45 days (or such shorter period as the board of directors of Archipelago expressly consents to) prior to the intended vote and (2) such person, either alone or with its related persons, receives prior approval from the board of directors of Archipelago and the Commission to exceed the Voting Limitation or enter into an agreement, plan, or arrangement not otherwise allowed pursuant to the Nonvoting Agreement Prohibition.[21] Specifically, (1) the board of directors of Archipelago must adopt a resolution approving such person and its related persons to exceed the Voting Limitation or to enter into an agreement, plan, or arrangement not otherwise allowed pursuant to the Nonvoting Agreement Prohibition, (2) the resolution must be filed with the Commission under section 19(b) of the Act,[22] and (3) such proposed rule change must be approved by the Commission and become effective thereunder.[23]

Rules 13d–3 and 13d–5 under the Act; (b) in the case of a person that is a natural person, for so long as ArcaEx remains a facility (as defined in section 3(a)(2) of the Act) of PCX and PCXE and the Amended and Restated Facility Services Agreement among Archipelago, PCX, and PCXE, dated as of March 22, 2002 (''Facility Services Agreement''), is in full force and effect, any broker or dealer that is an ETP Holder (as defined in the PCXE rules of PCX, as such rules may be in effect from time to time) with which such natural person is associated; (c) in the case of a person that is an ETP Holder, for so long as ArcaEx remains a facility of PCX and PCXE and the Facility Services Agreement is in full force and effect, any broker or dealer with which such ETP Holder is associated; (d) any other person(s) with which such person has any agreement, arrangement, or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding, or disposing of shares of the stock of Archipelago; and (e) in the case of a person that is a natural person, any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of Archipelago or any of its parents or subsidiaries. Archipelago Certificate of Incorporation, Article Fourth H(3). As defined in the PCXE rules, the term ''ETP Holder'' refers to any sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that has been issued an Equity Trading Permit, a permit issued by the PCXE for effecting approved securities transactions on the trading facilities of PCXE. PCXE Rule 1.1 (m) and (n). *See* 17 CFR 240.13d–3 and 240.13d–5. *See also* 15 U.S.C. 78c(a)(2).

[11] In considering whether a person owns shares of stock of Archipelago in violation of the applicable ownership limitations, Archipelago must consider any filings made with the Commission under section 13(d) and section 13(g) of the Act by such person and its related persons and must aggregate all shares owned or voted by such person and its related persons to determine such person's beneficial ownership. *See* 15 U.S.C. 78m(d) and (g).

[12] Archipelago Certificate of Incorporation, Article Fourth D(1)(a).

[13] 15 U.S.C. 78s(b).

[14] Archipelago Certificate of Incorporation, Article Fourth D(1)(a).

[15] Archipelago Certificate of Incorporation, Article Fourth D(1)(b).

[16] 15 U.S.C. 78c(a)(39).

[17] Archipelago Certificate of Incorporation, Article Fourth D(1)(b).

[18] 15 U.S.C. 78c(a)(2).

[19] Archipelago Certificate of Incorporation, Article Fourth D(2).

[20] Archipelago Certificate of Incorporation, Article Fourth C(1).

[21] Archipelago Certificate of Incorporation, Article Fourth C(2).

[22] 15 U.S.C. 78s(b).

[23] Archipelago Certificate of Incorporation, Article Fourth C(2).

Subject to its fiduciary obligations under DGCL, before adopting any such resolution, the board of directors of Archipelago must first determine that: (1) The exercise of such voting rights or the entering into of such agreement, plan, or arrangement, as applicable, by such person, either alone or with its related persons, would not impair Archipelago's, PCX's or PCXE's ability to discharge its responsibilities under the Act and the rules and regulations thereunder and is otherwise in the best interests of Archipelago and its stockholders; (2) the exercise of such voting rights or the entering into of such agreement, plan, or arrangement would not impair the Commission's ability to enforce the Act; (3) such person and its related persons are not subject to any statutory disqualification (as defined in section 3(a)(39) of the Act);[24] and (4) in the case of a resolution to approve the exercise of voting rights in excess of the Voting Limitation, for so long as ArcaEx remains a facility (as defined in section 3(a)(2) of the Act)[25] of PCX and PCXE and the Facility Services Agreement is in full force and effect, neither such person nor its related persons are ETP Holders.[26] In making such determinations, the board of directors of Archipelago may impose any conditions and restrictions on such person and its related persons owning any shares of Archipelago stock entitled to vote on any matter as the board of directors of Archipelago in its sole discretion deems necessary, appropriate, or desirable in furtherance of the objectives of the Act and the governance of Archipelago.[27]

d. *Additional Matters Relating to OTP Holders and OTP Firms of PCX.* In connection with the closing of the acquisition by Archipelago of PCXH on September 26, 2005,[28] Archipelago amended and restated its bylaws (as amended and restated, the ''Archipelago Bylaws'') to provide that the board of directors of Archipelago will not adopt any resolution waiving the Voting Limitation, the Nonvoting Agreement Prohibition, and the Ownership Limitation with respect to any OTP Holder or OTP Firm of PCX (as defined in PCX rules, as such rules may be in effect from time to time)[29] or its related persons.[30] These new provisions of the Archipelago Bylaws may not be amended, modified, or repealed unless such amendment, modification, or repeal is filed with and approved by the Commission or approved by Archipelago stockholders voting not less than 80% of the then outstanding votes entitled to be cast in favor of any such amendment, modification, or repeal.[31]

e. *Resolutions of the Board of Directors of Archipelago.* In order to allow NYSE Group to wholly own and vote all of Archipelago stock upon consummation of the Mergers, on October 19, 2005, NYSE Group delivered a written notice to the board of directors of Archipelago, pursuant to the procedures set forth in the Archipelago Certificate of Incorporation, requesting approval of its ownership and voting of Archipelago stock in excess of the Ownership Limitation and the Voting Limitation. Among other things, in the notice, NYSE Group represented to the board of directors of Archipelago that neither it, nor any of its related persons, are (1) ETP Holders, OTP Holders, or OTP Firms or (2) subject to any statutory disqualification (as defined in section 3(a)(39) of the Act).[32]

At a meeting duly convened on October 20, 2005, the board of directors of Archipelago adopted a resolution approving NYSE Group's request that it be permitted, either alone or with its related persons, to exceed the Ownership Limitation and the Voting Limitation. In adopting such resolution, the board of directors of Archipelago determined that: (1) The acquisition of beneficial ownership of 100% of the outstanding shares of Archipelago common stock and the exercise of voting rights with respect to 100% of the outstanding shares of Archipelago common stock by NYSE Group, either alone or with its related persons, would not impair any of Archipelago's, PCX's, or PCXE's ability to discharge its responsibilities under the Act and the rules and regulations thereunder and are otherwise in the best interests of Archipelago and its stockholders; (2) such acquisition of beneficial ownership and exercise of voting rights of Archipelago common stock by NYSE Group, either alone or with its related persons, would not impair the Commission's ability to enforce the Act; (3) neither NYSE Group nor any of its related persons is subject to any statutory disqualification (as defined in section 3(a)(39) of the Act);[33] and (4) neither NYSE Group nor any of its related persons is an ETP Holder, OTP Holder, or OTP Firm. The board of directors of Archipelago also approved the submission of this proposed rule change to the Commission.

f. *Request for Approval.* The Exchange hereby requests the Commission to allow NYSE Group to wholly own and vote all of the outstanding common stock of Archipelago, either alone or with its related persons, except for any related person of NYSE Group that is an ETP Holder, OTP Holder, or OTP Firm, upon the consummation of the Mergers.

g. *Certain Relationships Between NYSE Group and OTP Holders, OTP Firms, and ETP Holders.* Upon consummation of the Mergers, NYSE Group will become the parent company of the successors to the NYSE and Archipelago.[34] In order to protect the integrity and independence of the regulatory responsibilities of PCX and PCXE after the consummation of the Mergers, PCX and PCXE have proposed certain new rules designed to minimize any potential conflicts of interest that

[24] 15 U.S.C. 78c(a)(39).

[25] 15 U.S.C. 78c(a)(2).

[26] Archipelago Certificate of Incorporation, Article Fourth C(3).

[27] *Id.*

[28] *See* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005).

[29] PCX rules define an ''OTP Holder'' to mean any natural person, in good standing, who has been issued an Options Trading Permit (''OTP'') by the Exchange for effecting approved securities transactions on the Exchange's trading facilities or has been named as a Nominee. PCX Rule 1.1(q). The term ''Nominee'' means an individual who is authorized by an ''OTP Firm'' (a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing who holds an OTP or upon whom an individual OTP Holder has conferred trading privileges on the Exchange's trading facilities) to conduct business on the Exchange's trading facilities and to represent such OTP Firm in all matters relating to the Exchange. PCX Rule 1.1(n). In connection with Archipelago's acquisition of PCXH, PCX also implemented certain new rules which provide, in part, that for as long as Archipelago controls, directly or indirectly, PCX, no OTP Holder or OTP Firm, either alone or together with its ''related persons'' (as such term is defined in PCX rules), shall: (i) own beneficially shares of Archipelago stock representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter; (ii) have the right to vote, vote, or cause the voting of shares of Archipelago stock to the extent such shares represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter; or (iii) enter into any agreement, plan, or arrangement not to vote shares of Archipelago stock, the effect of which would enable any person, either alone or together with its related persons, to vote, possess the right to vote, or cause the voting of shares what would represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter. PCX Rules 3.4(a) and (b).

[30] Archipelago Bylaws, section 6.8(d). For purposes of section 6.8(d), the term ''Related Person'' has the meaning set forth in the Archipelago Certificate of Incorporation and also includes (1) in the case of a person that is a natural person, any broker or dealer that is an OTP Holder or an OTP Firm with which such natural person is associated and (2) in the case of a person that is an OTP Holder or an OTP Firm, any broker or dealer with which such OTP Holder or OTP Firm is associated.

[31] Archipelago Bylaws, section 6.8(g).

[32] 15 U.S.C. 78c(a)(39).

[33] 15 U.S.C. 78c(a)(39).

[34] For a description of the structure of NYSE Group after the consummation of the Mergers, *see* S–4 Registration Statement, at 252.

may result from ownership relationships or affiliations between OTP Holders, OTP Firms, and ETP Holders on the one hand and NYSE Group and its subsidiaries, including PCX and PCXE on the other hand.

Specifically, the proposed PCX Rule 3.10 and proposed PCXE Rule 3.10 provide that, unless approved by the Commission, (a) no OTP Holder, OTP Firm, or ETP Holder shall be affiliated (as such term is defined in Rule 12b–2 under the Act) [35] with NYSE Group or any of its affiliated entities,[36] and (b) neither NYSE Group nor any of its affiliates (as such term is defined in Rule 12b–2 under the Act) [37] shall hold, directly or indirectly, an ownership interest in any OTP Firm or ETP Holder.[38] The proposed PCX and PCXE rules further provide that any person who fails to meet the requirements described in the preceding sentence shall not be eligible to become an OTP Holder, OTP Firm, or ETP Holder, as the case may be.[39] In addition, in the event of any failure by any OTP Holder, OTP Firm, or ETP Holder to comply with the applicable provisions of the proposed PCX Rule 3.10 and proposed PCXE Rule 3.10, PCX or PCXE shall suspend all trading rights and privileges of such OTP Holder, OTP Firm, or ETP Holder, as the case may be, in accordance with the proposed PCX and PCXE rules, subject to the procedures provided therein.[40]

PCX and PCXE believe that by prohibiting these relationships, the proposed new rules will ensure that PCX and PCXE can fairly and objectively exercise their regulatory oversight responsibilities with respect to OTP Holders, OTP Firms, and ETP Holders.

h. *Rights of OTP Holders and ETP Holders With Respect to the Nomination and Election of Their Representatives to the PCX Board and PCXE Board.* The Bylaws of PCX and PCXE contain certain composition requirements with respect to the respective boards of directors of PCX and PCXE. Specifically, the Bylaws of PCX provide that at least 20% of the directors of PCX shall consist of individuals nominated by trading permit holders, with at least one director nominated by the ETP Holders and at least one director nominated by the OTP Holders.[41] The Bylaws of PCXE provide that at least 20% of the directors (but no fewer than two directors) of PCXE shall be nominees of the ETP/Equity ASAP Nominating Committee, as provided under PCXE Rule 3.[42] The procedures for the nomination, appointment, and election of the directors of PCX and PCXE are governed by PCX and PCXE rules.[43] In order to ensure that the director nomination and election processes of each of PCX and PCXE would not be subject to any undue influence from the concentration of rights in any one OTP Holder [44] or ETP Holder, either alone or together with certain affiliates, each of PCX and PCXE has proposed amendments to its rules that will impose certain restrictions on the ability of OTP Holders and ETP Holders to participate in the director nomination and election processes of PCX and PCXE, respectively.

Specifically, with respect to the nomination and election of the OTP Holder members of the nominating committee of PCX (''PCX Nominating Committee''), the PCX rules currently provide that: (i) The PCX Nominating Committee shall have seven members consisting of six OTP Holders and one person from the public; (ii) in addition to candidates nominated by the PCX Nominating Committee to fill positions on the PCX Nominating Committee for the next annual term, the PCX Nominating Committee must nominate any candidate for the OTP Holders' positions on the PCX Nominating Committee endorsed by the written petition of the lesser of 35 OTP Holders or 10% of OTP Holders in good standing on or before the 45th day preceding the expiration of the existing term; (iii) in the event that there are more than six nominees to fill the OTP Holders' positions on the PCX Nominating Committee as a result of petition by OTP Holders, the PCX Nominating Committee must submit the nominees to OTP Holders for election.[45]

The proposed PCX Rule 3.2(b)(2)(B)(i) provides that with respect to the nomination process described in clause (ii) above, no OTP Holder, either alone or together with (x) other OTP Holders associated with (as such term is defined in section 3(a)(18) of the Act) [46] the same OTP Firm that such OTP Holder is associated with and (y) OTP Holders associated with OTP Firms that are affiliated (as such term is defined in Rule 12b–2 under the Act) [47] with the OTP Firm that such OTP Holder is associated with, may account for more than 50% of the signatories to the petition endorsing a particular petition nominee for an OTP Holders' position on the PCX Nominating Committee. In addition, the proposed PCX Rule 3.2(b)(2)(B)(iii) provides that with respect to the election process described in clause (iii) above, no OTP Holder, either alone or together with (x) other OTP Holders associated with the same OTP Firm that such OTP Holder is associated with and (y) OTP Holders associated with OTP Firms that are affiliated with the OTP Firm that such OTP Holder is associated with, may account for more than 20% of the votes cast for a particular nominee for an OTP Holders' position on the PCX Nominating Committee.

With respect to the nomination and election of the OTP Holder representative on the PCX Board, the PCX rules currently provide that (i) in addition to the candidate nominated by the PCX Nominating Committee for the OTP Holders' position on the PCX Board, the PCX Nominating Committee must nominate any eligible candidate

[35] Pursuant to Rule 12b–2 under the Act, an ''affiliate'' of a specified person is a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified. 17 CFR 240.12b–2.

[36] Proposed PCX Rule 3.10(a) and proposed PCXE Rule 3.10(a).

[37] Pursuant to Rule 12b–2 under the Act, a person ''affiliated'' with a specified person is a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified. 17 CFR 240.12b–2.

[38] Proposed PCX Rule 3.10(b) and proposed PCXE Rule 3.10(b).

[39] Proposed PCX Rule 3.10(c) and proposed PCXE Rule 3.10(c).

[40] The proposed PCX and PCXE rules provide that in the event of any such failure to comply with the proposed PCX Rule 3.10 and proposed PCXE Rule 3.10, respectively, PCX or PCXE shall: (1) Provide notice to the applicable OTP Holder, OTP Firm, or ETP Holder, as the case may be, within five business days of learning of the failure to comply; (2) allow the applicable OTP Holder, OTP Firm, or ETP Holder fifteen calendar days to cure any such failure to comply; (3) in the event that the applicable OTP Holder, OTP Firm, or ETP Holder does not cure such failure to comply within such fifteen calendar day cure period, schedule a hearing to occur within thirty calendar days following the expiration of such fifteen calendar day cure period; and (4) render its decision as to the suspension of all trading rights and privileges of the applicable OTP Holder, OTP Firm, or ETP Holder no later than ten calendar days following the date of such hearing. Proposed PCX Rule 13.2(a)(2)(F) and proposed PCXE Rule 11.2(a)(2)(v).

[41] PCX Bylaws, section 3.02(a).

[42] PCXE Bylaws, section 3.02(a).

[43] PCX Rule 3.2(b)(2) and PCXE Rule 3.2(b)(2).

[44] Even though OTP Firms also hold options trading permits, they do not have any voting rights with respect to the nomination and election of the OTP Holder representative on the PCX Board.

[45] PCX Rules 3.2(b)(2)(A) and (B).

[46] Pursuant to section 3(a)(18) of the Act, the term ''associated person of a broker or dealer'' means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that such term does not include any person associated with a broker or dealer whose functions are solely clerical or ministerial. 15 U.S.C. 78c(a)(18).

[47] 17 CFR 240.12b–2.

endorsed by the written petition of the lesser of 35 OTP Holders or 10% of OTP Holders in good standing on or before the tenth business day after the PCX Nominating Committee publishes its nominee for the PCX Board,[48] and (ii) if there are two or more nominees for the PCX Holder's position on the PCX Board as a result of petition by OTP Holders, the PCX Nominating Committee must submit the contested nomination(s) to OTP Holders for election.[49]

The proposed PCX Rule 3.2(b)(2)(C)(ii) provides that with respect to the nomination process described in clause (i) above, no OTP Holder, either alone or together with (x) other OTP Holders associated with the same OTP Firm that such OTP Holder is associated with and (y) OTP Holders associated with OTP Firms that are affiliated with the OTP Firm that such OTP Holder is associated with, may account for more than 50% of the signatories to the petition endorsing a particular petition nominee for the OTP Holders' position on the PCX Board. In addition, the proposed PCX Rule 3.2(b)(2)(C)(iii) provides that with respect to the election process described in clause (iii) above, no OTP Holder, either alone or together with (x) other OTP Holders associated with the same OTP Firm that such OTP Holder is associated with and (y) OTP Holders associated with OTP Firms that are affiliated with the OTP Firm that such OTP Holder is associated with, may account for more than 20% of the votes cast for a particular nominee for the OTP Holders' position on the PCX Board.

Similarly, with respect to the nomination and election of the ETP Holder members of the nominating committee of PCXE (''PCXE Nominating Committee''), the PCXE rules currently provide that (i) the PCXE Nominating Committee shall have seven members consisting of six ETP Holders and one person from the public, (ii) in addition to candidates nominated by the PCXE Nominating Committee to fill positions on the PCXE Nominating Committee for the next annual term, the PCXE Nominating Committee must nominate any candidate for the ETP Holders' positions on the PCXE Nominating Committee endorsed by the written petition of at least 10% of ETP Holders in good standing on or before the 45th day preceding the expiration of the existing term, (iii) in the event that there are more than six nominees to fill the ETP Holders' positions on the PCXE Nominating Committee as a result of petition by ETP Holders, the PCXE Nominating Committee must submit the nominees to ETP Holders for election.[50]

The proposed PCXE Rule 3.2(b)(2)(B)(i) would provide that with respect to nomination process described in clause (ii) above, no ETP Holder, either alone or together with other ETP Holders who are deemed its affiliates (as such term is defined in Rule 12b–2 under the Act),[51] may account for more than 50% of the signatories to the petition endorsing a particular petition nominee for an ETP Holders' position on the PCXE Nominating Committee. In addition, the proposed PCXE Rule 3.2(b)(2)(B)(iii) would provide that with respect to election process described in clause (iii) above, no ETP Holder, either alone or together with other ETP Holders who are deemed its affiliates, may account for more than 20% of the votes cast for a particular nominee for an ETP Holders' position on the PCXE Nominating Committee.

With respect to the nomination and election of the ETP Holder representatives on the PCX Board and Board of Directors of PCXE (''PCXE Board''), the PCXE rules currently provide that (i) in addition to the candidates nominated by the PCXE Nominating Committee for the ETP Holders' positions on the PCX Board and PCXE Board, the PCXE Nominating Committee must nominate any eligible candidate endorsed by the written petition of at least 10% of ETP Holders in good standing to the PCX Board or PCXE Board, as the case may be, within the time period set forth in the PCXE rules,[52] and (ii) if there are three or more nominees for the ETP Holders' positions on the PCXE Board or two or more nominees for the ETP Holder's position on the PCX Board, the PCXE Nominating Committee shall submit the contested nomination(s) to the ETP Holders for election.[53]

The proposed PCXE Rule 3.2(b)(2)(C)(i) provides that with respect to nomination process described in clause (i) above, no ETP Holder, either alone or together with other ETP Holders who are deemed its affiliates, may account for more than 50% of the signatories to a petition endorsing a particular petition nominee for an ETP Holders' position on the PCX Board or PCXE Board. In addition, the proposed PCXE Rule 3.2(b)(2)(C)(ii) provides that with respect to the election process described in clause (ii) above, no ETP Holder, either alone or together with other ETP Holders who are deemed its affiliates, may account for more than 20% of the votes cast for a particular nominee for an ETP Holders' position on the PCX Board or PCXE Board.

PCX believes that the proposed limitations relating to the director nomination and election process would serve to protect the integrity of PCX's, PCXE's, and the Commission's regulatory oversight responsibilities and would allow PCX and PCXE to protect their respective board of directors from any undue influences of a group of related OTP Holders or ETP Holders. Aside from the trading rights that such permit holders are entitled to and these rights described in this section, the respective permit holders have no other voting, nomination, petition, or other rights under the organizational documents and rules of PCX and PCXE, as applicable.

2. Basis

The Exchange believes that this filing, as amended, is consistent with section 6(b)[54] of the Act, in general, and furthers the objectives of section 6(b)(5),[55] in particular, because the rules summarized herein would create a governance and regulatory structure with respect to the operation of the equities and options business of PCX that is designed to help prevent fraudulent and manipulative acts and practices; to promote just and equitable principals of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that this filing, as amended, furthers the objectives of section 6(b)(1) of the Act[56] in that it enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to sections 17(d) or 19(g)(2) of the Act)[57] to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

[48] PCX Rule 3.2(b)(2)(C)(ii).

[49] PCX Rule 3.2(b)(2)(C)(iii).

[50] PCXE Rules 3.2(b)(2)(A) and (B).

[51] 17 CFR 240.12b–2.

[52] PCXE Rule 3.2(b)(2)(C)(i).

[53] PCXE Rule 3.2(b)(2)(C)(ii).

[54] 15 U.S.C. 78f(b).

[55] 15 U.S.C. 78f(b)(5).

[56] 15 U.S.C. 78f(b)(1).

[57] 15 U.S.C. 78q(d) and 78s(g)(2).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods.

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2005–134 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 20549–9303.

All submissions should refer to File Number SR–PCX–2005–134. 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 PCX. 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–PCX–2005–134 and should be submitted on or before February 2, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[58]

Nancy M. Morris,

Secretary.

[FR Doc. 06–316 Filed 1–11–06; 8:45 am]

BILLING CODE 8010–01–P

[58] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53052; File No. SR–PCX–2004–46]

Self-Regulatory Organizations; Order Approving Proposed Rule Change, and Amendment No. 1 Thereto, by the Pacific Exchange, Inc. Relating to Modifying the Market Imbalance Calculation for the Opening and Market Order Auctions on the Archipelago Exchange

January 5, 2006.

On May 14, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly-owned subsidiary PCX Equities, Inc. (''PCXE'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the practices that the Exchange employs with respect to the calculation of the Market Imbalance during the Market Order Auction[3] and Closing Auction[4] conducted on the Archipelago Exchange (''ArcaEx''), the equity trading facility of the Exchange. On May 24, 2004, the PCX submitted Amendment No. 1 to the proposed rule change.[5] The **Federal Register** published the proposed rule change, as amended, for comment on June 3, 2004.[6] The Commission received no comments on the proposed rule change, as amended.

The Exchange proposes to modify PCXE Rule 1.1(q) for the purpose of modifying the ArcaEx calculation of the Market Imbalance. Currently, the ''Market Imbalance'' is defined as the imbalance of any remaining Market Orders[7] that are not matched for execution during the Market Order Auction[8] and the imbalance of any remaining Market-on-Close (''MOC'') Orders that are not matched for execution during the Closing Auction.[9] As such, all eligible Market Orders, MOC Orders,[10] Limit Orders,[11] and Limit-on-Close (''LOC'') Orders[12] that are eligible for execution in the applicable auction against Market Orders or MOC Orders are taken into consideration when calculating the Market Imbalance for the Market Order Auction and Closing Auction. The Exchange proposes to modify the Market Imbalance calculation for both the Market Order Auction and the Closing Auction so that it will only take into consideration Market Orders (for the Market Order Auction) and MOC Orders (for the Closing Auction) in determining the Market Imbalance.

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[13] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5),[15] in particular, because it is designed to promote just and equitable principles of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* PCXE Rule 7.35(c).

[4] *See* PCXE Rule 7.35(e).

[5] Amendment No. 1 replaced and superseded the original filing in its entirety.

[6] Securities Exchange Act Release No. 49773 (May 26, 2004), 69 FR 31440.

[7] PCXE Rule 7.31(a).

[8] PCXE Rule 7.35(c).

[9] PCXE Rule 7.35(e).

[10] PCXE Rule 7.31(dd).

[11] PCXE Rule 7.31(b).

[12] PCXE Rule 7.31(ee).

[13] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

The Exchange represents that the modified Market Imbalance calculation will provide Users [16] with more information about the number of Market Orders and MOC Orders available for execution on the side of the market with an excess number of such orders during the applicable auction. The Commission believes that the Exchange's proposal is reasonably designed to promote transparency of the available Market Orders and MOC Orders that have been submitted to participate in the applicable auction. The Commission also believes that the proposed rule change, as amended, appears to be reasonably designed to promote competition among Users seeking to execute against Market Orders and MOC Orders, which are executed before marketable Limit Orders and LOC orders during the Market Order Auction and Closing Auction, respectively.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change, as amended, (SR–PCX–2004–46) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Nancy M. Morris,

Secretary.

[FR Doc. E6–194 Filed 1–11–06; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10222 and # 10223]

Florida Disaster Number FL–00011

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA–1609–DR), dated October 24, 2005.

Incident: Hurricane Wilma.

Incident Period: October 23, 2005 through November 18, 2005.

Effective Date: January 6, 2006.

Physical Loan Application Deadline Date: January 19, 2006.

EIDL Loan Application Deadline Date: July 24, 2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National 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 the State of Florida, dated October 24, 2005, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to January 19, 2006.

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. E6–240 Filed 1–11–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10312 and # 10313]

Wisconsin Disaster # WI–00002

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Wisconsin dated 01/05/2006.

Incident: Tornadoes.

Incident Period: 08/18/2005.

Effective Date: 01/05/2006.

Physical Loan Application Deadline Date: 03/06/2006.

Economic Injury (EIDL) Loan Application Deadline Date: 10/05/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National 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 Administrator's disaster declaration 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:

Dane, Richland.

Contiguous Counties: Wisconsin:

Columbia, Crawford, Dodge, Grant, Green, Iowa, Jefferson, Rock, Sauk, Vernon

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.687
Businesses With Credit Available Elsewhere	6.557
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.750
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10312 C and for economic injury is 10313 O.

The States which received an EIDL Declaration # are Wisconsin.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: January 5, 2006.

Hector V. Barreto,

Administrator.

[FR Doc. E6–244 Filed 1–11–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board

Public Meeting

The U.S. Small Business Administration, Office of Small Business Development Centers, National Advisory Board will be hosting a public meeting via conference call to discuss such matters that may be presented by members, and the staff of the U.S. Small Business Administration, or interested others. The conference call will be held on Tuesday, February 21, 2006 at 1 p.m. Eastern Standard Time.

Anyone wishing to make an oral presentation to the Board must contact Erika Fischer, Senior Program Analyst, U.S. Small Business Administration, Office of Small Business Development Centers, 409 3rd Street, SW.,

[16] *See* PCXE Rule 1.1(yy) for the definition of ''User.''

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

Washington, DC 20416, telephone (202) 205–7045 or fax (202) 481–0681.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. E6–241 Filed 1–11–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Women's Business Council; Notice of Public Meeting

In accordance with the Women's Business Ownership Act, Public Law 106–554 as amended, the National Women's Business Council (NWBC) would like to announce a forthcoming Council meeting. The meeting will discuss the National Women's Business Council's agenda and action items for fiscal year 2006, included and not limited to procurement, access to capital, access to training and technical assistance, and access to markets.

DATES: Thursday, January 26, 2006.

ADDRESSES: U.S. Small Business Administration, 409 Third Street, SW., Eisenhower Conference Room, Washington, DC 20416.

Time: 9 a.m.–4 p.m.

Status: Open to the public. Attendance by RSVP only.

Contact: Katherine Stanley, National Women's Business Council, 202–205–3850.

Anyone wishing to attend and to make an oral presentation at the meeting must contact Margaret Barton, no later than Monday, January 23, 2006 at (202) 205–3850.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. E6–243 Filed 1–11–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Waiver of the Nonmanufacturer Rule for Office Supplies, Paper and Toner.

SUMMARY: The U.S. Small Business Administration (SBA) is granting a waiver of the Nonmanufacturer Rule for Office Supplies, Paper and Toner. The basis for waiver is that no small business manufacturers are supplying this class of product to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses; service-disabled veteran-owned small businesses or SBA's 8(a) Business Development Program.

DATES: This waiver is effective January 27, 2006.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619–0422; by FAX at (202) 481–1788; or by e-mail at *edith.butler@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act, (Act) 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding systems. The first coding system is the Office of Management and Budget North American Industry Classification System (NAICS).

The SBA received a request on October 18, 2005, to waive the Nonmanufacturer Rule for Office Supplies, Paper and Toner.

In response, on November 3, 2005, SBA published in the **Federal Register** a notice of intent to waive the Nonmanufacturer Rule for Office Supplies, Paper and Toner. SBA explained in the notice that it was soliciting comments and sources of small business manufacturers of this class of products.

In response to this notice, a comment was received from an interested party. SBA has determined that there are no small business manufacturers of this class of products, and is therefore granting the waiver of the Nonmanufacturer Rule for Office Supplies, Paper and Toner, NAICS 424120, 339940, 325992, 322231, and 453210.

Authority: 15 U.S.C. 637(a)(17).

Dated: January 5, 2006.

Karen C. Hontz,

Associate Administrator for Government Contracting.

[FR Doc. E6–247 Filed 1–11–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5271]

Culturally Significant Objects Imported for Exhibition Determinations: ''David Smith: A Centennial''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''David Smith: A Centennial'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at Solomon R. Guggenheim Museum, from on or about February 3, 2006, until on or about May 14, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 9, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 06–332 Filed 1–11–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5270]

Culturally Significant Objects Imported for Exhibition Determinations: ''Goya's Last Works''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Goya's Last Works'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Frick Collection from on or about February 22, 2006 until on or about May 14, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 3, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–246 Filed 1–11–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5261]

Announcement of Meetings of the International Telecommunication Advisory Committee

SUMMARY: This notice corrects meeting days (not dates) announced in Notice 5219. The International Telecommunication Advisory Committee announces meetings to prepare for the Organization of American States CITEL Assembly 2006.

The International Telecommunication Advisory Committee (ITAC) will meet on each Wednesday 2–4 p.m. during January and February starting January 11, 2006 to prepare for the 2006 ITU Plenipotentiary Conference. The meetings will be held at the offices of AT&T, 1120 20th Street, NW., Washington, DC. A conference bridge will be provided. Directions to the venue of the meeting may be obtained from Julian Minard *minardje@state.gov.*

The International Telecommunication Advisory Committee (ITAC) will meet on each Thursday 2–4 p.m. during January and February starting January 12, 2006 to prepare for the 2006 ITU Telecommunication Development Conference. A conference bridge will be provided. Directions to the venue of the meeting may be obtained from Julian Minard *minardje@state.gov.*

The International Telecommunication Advisory Committee (ITAC) will meet on Tuesday January 31 and February 14, 2006 both 2–4 p.m. to prepare for the 2006 OAS CITEL Assembly. A conference bridge will be provided. Directions to the venue of the meeting may be obtained from Julian Minard *minardje@state.gov*.

Dated: January 5, 2006.

Douglas R. Spalt,

Telcom Officer, International Communications & Information Policy, Department of State.

[FR Doc. E6–248 Filed 1–11–06; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 5259]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1:30 p.m. on Wednesday, January 25, 2006, at the Hilton Hotel in Crystal City, Arlington, VA. The primary purpose of the meeting is to begin preparations for the 49th Session of the International Maritime Organization (IMO) Sub-Committee on Stability and Load Lines and on Fishing Vessels Safety to be held at IMO Headquarters in London, England from July 24th to 28th.

The primary matters to be considered include:

—Development of explanatory notes for harmonized SOLAS Chapter II–1;
—Passenger ship safety;
—Review of the Intact Stability Code;
—Safety of small fishing vessels;
—Tonnage measurement of open-top containerships.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Paul Cojeen, Commandant (G–MSE), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 1308, Washington, DC 20593–0001 or by calling (202) 267–2988.

Dated: January 6, 2006.

Clay L. Diamond,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E6–242 Filed 1–11–06; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 5260]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Tuesday, March 14, 2006, in Room 2415 of the United States Coast Guard Headquarters Building, 2100 2nd Street SW., Washington, DC, 20593–0001. The primary purpose of the meeting is to prepare for the 54th Session of the International Maritime Organization (IMO) Marine Environment Protection Committee (MEPC) to be held at IMO Headquarters in London, England from March 20th to 24th, 2006.

The primary matters to be considered include:

—Harmful aquatic organisms in ballast water;
—Recycling of ships;
—Prevention of air pollution from ships;
—Consideration and adoption of amendments to mandatory instruments;
—Interpretation and amendments of MARPOL 73/78 and related instruments;
—Implementation of the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC) Convention and the OPRC–Hazardous Noxious Substance (OPRC–HNS) Protocol and relevant conference resolutions;
—Identification and protection of Special Areas and Particularly Sensitive Sea Areas;
—Inadequacy of reception facilities;
—Reports of sub-committees;
—Work of other bodies;
—Status of Conventions;
—Harmful anti-fouling systems for ships;
—Promotion of implementation and enforcement of MARPOL 73/78 and related instruments;

—Follow-up to UNCED and WSSD;
—Technical co-operation programme;
—Future role of formal safety assessment and human element issues;
—Work program of the Committee and subsidiary bodies;
—Application of the Committees' Guidelines; and
—Consideration of the report of the Committee.

Please note that hard copies of documents associated with MEPC 54 will not be available at this meeting. Documents will be available in Adobe Acrobat format on CD–ROM. To request documents please write to the address provided below, or request documents via the following Internet link: *http://www.uscg.mil/hq/gm/mso/mso4/mepc.html.*

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Lieutenant Heather St. Pierre, Commandant (G–MSO–4), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 1601, Washington, DC 20593–0001 or by calling (202) 267–2079.

Dated: January 6, 2006.

Clay Diamond,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E6–249 Filed 1–11–06; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 23–26, Synthetic Vision and Pathway Depictions on the Primary Flight Display

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This advisory circular (AC) sets forth an acceptable means, but not the only means, of showing compliance with Title 14 Code of Federal Regulations (14 CFR) part 23 for two new concepts in small airplanes. The two concepts are: (1) Synthetic Vision (SV), and (2) pathway depictions displaying the navigation course on the primary flight display. This AC addresses the two concepts in a head down display format only. This AC covers airplanes in the normal, utility, acrobatic, and commuter categories approved to fly under Instrument Flight Rules (IFR). Material in this AC is neither mandatory nor regulatory in nature and does not constitute a regulation. The draft advisory circular was issued for Public Comment on May 16, 2005 (70 FR 25873). When possible, comments received were used to modify the draft advisory circular.

DATES: Advisory Circular (AC) 23–26 was issued by the Manager, Small Airplane Directorate on December 22, 2005.

How To Obtain Copies: A paper copy of AC 23–22 may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, M–30, Ardmore East Business Center, 3341Q 75th Avenue, Landover, MD 20785, telephone 301–322–5377, or by faxing your request to the warehouse at 301–386–5394. The AC will also be available on the Internet at *http://www.airweb.faa.gov/ac.*

Issued in Kansas City, Missouri on December 22, 2005.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certificate Service.

[FR Doc. E6–173 Filed 1–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Consensus Standards, Light-Sport Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces the availability of one new consensus standard and revisions to certain previously accepted consensus standards relating to the provisions of the Sport Pilot and Light-Sport Aircraft rule issued July 16, 2004, and effective September 1, 2004. ASTM International Committee F37 on Light Sport Aircraft developed the new and revised standards with Federal Aviation Administration (FAA) participation. By this Notice, the FAA finds the new and revised standards acceptable for certification of the specified aircraft under the provisions of the Sport Pilot and Light-Sport Aircraft rule.

DATES: Comments must be received on or before March 13, 2006.

ADDRESSES: Comments may be mailed to: Federal Aviation Administration, Small Airplane Directorate, Programs and Procedures Branch, ACE–114, Attention: Larry Werth, Room 301, 901 Locust, Kansas City, Missouri 64106. Comments may also be e-mailed to: *Comments-on-LSA-Standard@faa.gov.* All comments must be marked: Consensus Standards Comments, and must specify the standard being addressed by ASTM designation and title.

FOR FURTHER INFORMATION CONTACT: Larry Werth, Light-Sport Aircraft Program Manager, Programs and Procedures Branch (ACE–114), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4147; e-mail: *larry.werth@faa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces the availability of one new consensus standard and revisions to certain previously accepted consensus standards relating to the provisions of the Sport Pilot and Light-Sport Aircraft rule. ASTM International Committee F37 on Light Sport Aircraft developed the new and revised standards.

Comments Invited: Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the consensus standard number and be submitted to the address specified above. All communications received on or before the closing date for comments will be forwarded to ASTM International Committee F37 for consideration. The standard may be changed in light of the comments received. The FAA will address all comments received during the recurring review of the consensus standard and will participate in the consensus standard revision process.

Background: Under the provisions of the Sport Pilot and Light-Sport Aircraft rule, and revised Office of Management and Budget (OMB) Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities'', dated February 10, 1998, industry and the FAA have been working with ASTM International to develop consensus standards for light-sport aircraft. These consensus standards satisfy the FAA's goal for airworthiness certification and a verifiable minimum safety level for light-sport aircraft. Instead of developing airworthiness standards through the rulemaking process, the FAA participates as a member of Committee F37 in developing these standards. The use of the consensus standard process assures government and industry discussion and agreement

on appropriate standards for the required level of safety.

Comments on Previous Notices of Availability

In the Notice of Availability (NOA) issued on July 19, 2005, and published in the **Federal Register** on July 27, 2005, the FAA asked for public comments on the new and revised consensus standards accepted by that NOA. The comment period closed on September 26, 2005.

The preamble to the Sport Pilot and Light-Sport Aircraft Rule states,

> ''If comments from the public are received as a result of the Notice of Availability, the FAA will address them during its recurring review of the consensus standards and participation in the consensus standards revision process.''

And—

> ''The FAA will respond to comments on the consensus standards in this revision process.''

ASTM International Committee F37 examined the public comments received on these new and revised standards during the October 2005 committee meeting held in Sebring, Florida. The committee determined the comments did not warrant or justify any changes or revisions to the standards.

Consensus Standards in This Notice of Availability

The FAA has reviewed the standards presented in this NOA for compliance with the regulatory requirements of the rule. Any light-sport aircraft issued a special light-sport airworthiness certificate, which has been designed, manufactured, operated and maintained, in accordance with this and previously accepted ASTM consensus standards provides the public with the appropriate level of safety established under the regulations. Manufacturers who choose to produce these aircraft and certificate these aircraft under 14 CFR part 21, 21.190 or 21.191 are subject to the applicable consensus standard requirements. The FAA maintains a listing of all accepted standards at: *http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/afs/afs600/afs610.*

The Revised Consensus Standards and Effective Period of Use

The following previously accepted consensus standards have been revised, and this NOA is accepting the later revisions. Either the previous revisions or the later revisions may be used for the initial certification of special light-sport aircraft until May 1, 2006. This overlapping period of time will allow aircraft that have started the initial certification process using the previous revision levels to complete that process. After May 1, 2006, manufacturers must use the later revisions and must identify these later revisions in the Statement of Compliance for initial certification of special light-sport aircraft unless the FAA publishes a specific notification otherwise. The following Consensus Standards may not be used after May 1, 2006:

a. ASTM Designation F 2241–05, titled: Standard Specification for Continued Airworthiness System for Powered Parachute Aircraft.

b. ASTM Designation F 2339–04, titled: Standard Practice for Design and Manufacture of Reciprocating Spark Ignition Engines for Light Sport Aircraft.

c. ASTM Designation F 2353–04, titled: Standard Specification for Manufacturer Quality Assurance Program for Lighter-Than-Air Light Sport Aircraft.

d. ASTM Designation F 2354–05, titled: Standard Specification for Continued Airworthiness System for Lighter-Than-Air Light Sport Aircraft.

e. ASTM Designation F 2355–05, titled: Standard Specification for Design and Performance Requirements for Lighter-Than-Air Light Sport Aircraft.

f. ASTM Designation F 2356–05, titled: Standard Specification for Production Acceptance Testing System for Lighter-Than-Air Light Sport Aircraft.

g. ASTM Designation F 2425–05, titled: Standard Specification for Continued Airworthiness System for Weight-Shift-Control Aircraft.

h. ASTM Designation F 2426–05, titled: Standard Guide on Wing Interface Documentation for Powered Parachute Aircraft.

i. ASTM Designation F 2427–05, titled: Standard Specification for Required Product Information to be Provided with Lighter-Than-Air Light Sport Aircraft.

The Consensus Standards

The FAA finds the following new and revised consensus standards acceptable for certification of the specified aircraft under the provisions of the Sport Pilot and Light-Sport Aircraft rule. The consensus standards listed below may be used unless the FAA publishes a specific notification otherwise.

a. ASTM Designation F 2241–05a, titled: Standard Specification for Continued Airworthiness System for Powered Parachute Aircraft.

b. ASTM Designation F 2317/F 2317M–05, titled: Standard Specification for Design of Weight-Shift-Control Aircraft.

c. ASTM Designation F 2339–05, titled: Standard Practice for Design and Manufacture of Reciprocating Spark Ignition Engines for Light Sport Aircraft.

d. ASTM Designation F 2353–05, titled: Standard Specification for Manufacturer Quality Assurance Program for Lighter-Than-Air Light Sport Aircraft.

e. ASTM Designation F 2354–05b, titled: Standard Specification for Continued Airworthiness System for Lighter-Than-Air Light Sport Aircraft.

f. ASTM Designation F 2355–05a, titled: Standard Specification for Design and Performance Requirements for Lighter-Than-Air Light Sport Aircraft.

g. ASTM Designation F 2356–05a, titled: Standard Specification for Production Acceptance Testing System for Lighter-Than-Air Light Sport Aircraft.

h. ASTM Designation F 2425–05a, titled: Standard Specification for Continued Airworthiness System for Weight-Shift-Control Aircraft.

i. ASTM Designation F 2426–05a, titled: Standard Guide on Wing Interface Documentation for Powered Parachute Aircraft.

j. ASTM Designation F 2427–05a, titled: Standard Specification for Required Product Information to be Provided with Lighter-Than-Air Light Sport Aircraft.

Availability

These consensus standards are copyrighted by ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959. Individual reprints of this standard (single or multiple copies, or special compilations and other related technical information) may be obtained by contacting ASTM at this address, or at (610) 832–9585 (phone), (610) 832–9555 (fax), through *service@astm.org* (e-mail), or through the ASTM Web site at *http://www.astm.org.*

To inquire about standard content and/or membership, or about ASTM International Offices abroad, contact Daniel Schultz, Staff Manager for Committee F37 on Light Sport Aircraft: (610) 832–9716, *dschultz@astm.org.*

Issued in Kansas City, Missouri on December 29, 2005.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–175 Filed 1–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–23419; Notice 1]

Optronics Products Company, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Optronics Products Company, Inc. (Optronics) has determined that certain combination lamps that it produced in 2002 do not comply with 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, reflective devices, and associated equipment.'' Optronics has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Optronics has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Optronics' petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 6000 4-inch round LED 3 function combination lamps, part number STL45RK, produced in November 2002 and sold as replacement equipment for trailers less than 80 inches in overall width. NHTSA testing of this model showed that three out of the four tested lamps failed to meet the minimum photometry requirements for a 3-lighted section lamp. In particular, the lamps failed to meet the minimum zone 3 photometry requirements for the taillamp, stop lamp, and turn signal lamp. The FMVSS No. 108 minimum photometry requirement for zone 3 of these functions is 24 cd, 520 cd, and 520 cd, respectively. The lamps failed to meet the zonal requirements by a margin of 7% to 28% for the taillamp, and 4% to 18% for the stop and turn signal lamps.

Optronics believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Optronics states that, although the lamps noncomply with the requirements for a 3-lighted section lamp, they would meet or exceed the light output requirements if the lamps were tested to the requirements of ''an incandescent light of the same fit, form, and function.''

Optronics asserts that ''[h]olding a 4-inch LED light to a higher standard than a 4-inch incandescent light is the result of definitions in the regulations and is not based on the relative safety of one light versus another.'' The petitioner further states,

> [W]e believe that the lights' failure under the regulations is a technical issue and not a substantive one * * *. Consumers and Company's (sic) should not be required to go through a product recall on a technicality. What is important here is the safety of the consumer. We believe that the data in this filing show that the lights are as safe as any incandescent on the road.

Optronics states that there have been no accidents, injuries, fatalities, or warranty claims related to this noncompliance.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 13, 2006.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: January 9, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E6–234 Filed 1–11–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34807]

Richard D. Robey—Continuance in Control Exemption—Susquehanna Valley Railroad Corporation and Stourbridge Railroad Company

Richard D. Robey, a noncarrier individual, has filed a verified notice of exemption to continue in control of Susquehanna Valley Railroad Corporation (SVRC), a newly incorporated holding company, and Stourbridge Railroad Company (Stourbridge).

The transaction was scheduled to be consummated on or after January 1, 2006.

At the time of filing, Mr. Robey was the sole shareholder and owner of eight Class III railroads: Stourbridge, Juniata Valley Railroad Company, Lycoming Valley Railroad Company, Nittany & Bald Eagle Railroad Company, North Shore Railroad Company, Wellsboro & Corning Railroad Company, Union County Industrial Railroad Company, and Shamokin Valley Railroad Company. In a related transaction, SVRC has filed a verified notice of exemption to acquire control of all of the above Class III railroads, except Stourbridge, which Mr. Robey will continue to control directly.

Mr. Robey states that: (i) The railroads do not connect with each other or any railroads in their corporate family; (ii) The continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any other railroad in their corporate family; and (iii) The transaction does not involve a Class I railroad. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34807, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Richard R. Wilson, Esq., 127 Lexington Avenue, Ste. 100, Altoona, PA 16601.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 5, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–217 Filed 1–11–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34808]

Chicago Port Railroad Company—Operation Exemption—Ozinga Transportation

Chicago Port Railroad Company (CPRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate approximately 1.3 miles of rail line owned by Ozinga Transportation. The line consists of The Calumet River Yard and the Transload Facility trackage located adjacent to the Calumet River in Chicago, IL, and does not have milepost numbers.

CPRR certifies that its projected annual revenues as a result of the transaction do not exceed those that would qualify it as a Class III rail carrier.

The transaction was scheduled to be consummated prior to January 1, 2006, but consummation could lawfully occur no earlier than December 23, 2005, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34808, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David C. Dillon, Dillon & Nash, Ltd., 111 West Washington Street, Suite 719, Chicago, IL 60602.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: January 4, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 06–232 Filed 1–11–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34799]

Permian Basin Railways, Inc.—Acquisition of Control Exemption—San Luis & Rio Grande Railroad Company, Inc.

Permian Basin Railways, Inc. (Permian), a noncarrier,[1] has filed a verified notice of exemption to acquire control of Class III carrier San Luis & Rio Grande Railroad Company, Inc. (SLRG).[2] SLRG is currently owned by RailAmerica Transportation Corp. (RTC), a short line railroad holding company, indirectly controlled by RailAmerica, Inc.[3]

The transaction was expected to be consummated on or after December 22, 2005.

Permian states that: (1) The railroads do not connect with each other or any railroad in their corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34799, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on John D. Heffner, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: January 5, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 06–231 Filed 1–11–06; 8:45 am]

BILLING CODE 4915–01–P

[1] Permian owns the stock of three existing Class III short line railroads: West Texas and Lubbock Railway Company, Inc., the Austin & Northwestern Railroad Company, Inc. d/b/a Texas New Mexico Railroad, and the Arizona Eastern Railway Company, Inc.

[2] A redacted version of the executed purchase and sale agreement and all supporting documents was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for a protective order. A protective order was served on December 23, 2005.

[3] RTC and RailAmerica formed SLRG in 2003 for the purpose of acquiring the subject rail lines from the Union Pacific Railroad Company. The Board authorized SLRG's acquisition of the subject lines and RTC's and RailAmerica's control of SLRG in STB Finance Docket Nos. 34350 and 34352, respectively.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 6, 2006.

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 February 13, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1505.

Type of Review: Extension.

Title: Orphan Drug Credit.

Form: IRS form 8820.

Description: Filers use this form to elect to claim the orphan drug credit, which is 50% of the qualified clinical testing expenses paid or incurred with respect to low or unprofitable drugs for rare diseases and conditions, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 511 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.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–197 Filed 1–11–06; 8:45 am]

BILLING CODE 4810–01–P

Corrections

Federal Register

Vol. 71, No. 8

Thursday, January 12, 2006

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 DEFENSE

Department of the Army, Corps of Engineers

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Integrated Environmental Impact Statement/Environmental Impact Report/Feasibility Report for the South San Francisco Bay Shoreline Study: Alviso Ponds and Santa Clara County Interim Feasibility Study

Correction

In notice document 06–102 beginning on page 924 in the issue of Friday, January 6, 2006, make the following corrections:

1. On page 924, in the third column, in the last paragraph, in the first line, ''oversearching'' should read ''overarching''.

2. On page 925, in the second column, in the second line from the top, ''anfsalt ponds of EIS/EIR'' should read ''an EIS/EIR''.

3. On page 926, in the third column, in the third full paragraph, in the third to last line, ''there re two'' should read ''there are two''.

[FR Doc. C6–102 Filed 1–11–06; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

Correction

In notice document 05–24509 beginning on page 76865 in the issue of Wednesday, December 28, 2005 make the following corrections:

1. On page 76865, in the second column, the subagency heading is corrected to read as set forth.

2. On the same page, in the same column, in the second paragraph, in the fifth line, ''sold'' should read ''sole''.

[FR Doc. C5–24509 Filed 1–11–06; 8:45 am]

BILLING CODE 1505–01–D

PRESIDIO TRUST

36 CFR Part 1011

RIN 3212–AA07

Debt Collection

Correction

In rule document 05–23951 beginning on page 73587 in the issue of Tuesday, December 13, 2005, make the following correction:

§1011.5 [Corrected]

On page 73591, in §1011.5(e), in the second column, in the third line from the top, '' ''.4'' should read ''§1011.4 ''.

[FR Doc. C5–23951 Filed 1–11–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
January 12, 2006

Part II

Department of Housing and Urban Development

24 CFR Parts 401 and 402
Renewal of Expiring Section 8 Project-Based Assistance Contracts; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 401 and 402

[Docket No. FR–4551–F–01]

RIN 2502–AH47

Renewal of Expiring Section 8 Project-Based Assistance Contracts

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule governs renewal of Section 8 project-based assistance contracts, except renewal as part of a restructuring plan (Restructuring Plan) in the Mark-to-Market program. Currently, contracts are being renewed under the authority of an interim rule that became effective October 11, 1998, and later statutory changes.

EFFECTIVE DATE: February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000. (This is not a toll-free number.) For hearing- and speech-impaired persons, this number may be accessed through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Mark-to-Market

HUD issued an interim rule on September 11, 1998 (63 FR 48926), to implement subtitles A and D of the Multifamily Assisted Housing Reform and Affordability Act of 1997, 42 U.S.C. 1437f note (MAHRA). Except for section 524, these subtitles apply to the Mark-to-Market program for restructuring debt and rental assistance. The interim rule implemented section 524 of MAHRA in a new 24 CFR part 402. Other sections of MAHRA were implemented in a new 24 CFR part 401. HUD issued part 401 as a final rule on March 22, 2000 (65 FR 15452). Some related changes to §§ 402.1, 402.4, and 402.6 were included in that 2000 final rule, but those sections are updated further in this final rule. The preamble to the 2000 final rule stated that further changes would be made to § 402.4(a)(2) based on the comments received in response to the interim rule (see 65 FR 15476). This final rule includes those further changes. HUD issued corrections to the part 401 final rule on September 6, 2000 (65 FR 53899).

B. Renewing Section 8 Project-Based Assistance Without Mark-to-Market Restructuring

Section 524 of MAHRA and the regulations in 24 CFR part 402 authorize renewal of expiring or terminating Section 8 project-based assistance contracts for projects without Restructuring Plans under the Mark-to-Market program, including (1) projects that are not eligible for Restructuring Plans or are otherwise exempt, and (2) eligible projects for which the owners request contract renewals without Restructuring Plans. Part 402 does not apply to the project-based certificate or voucher program, which operates under different statutory authority.

HUD's Office of Housing has provided guidance for contract renewals under section 524, other than for moderate rehabilitation contracts. This guidance was originally provided through various notices including Office of Housing Notices H 98–34, H 99–15, H 99–36, and H 2000–12, issued on May 27, June 16, and December 29, 1999, and June 29, 2000, respectively, and currently through the Section 8 Renewal Policy Guidebook (Office of Multifamily Housing, 2001), which supersedes these prior Housing notices. The interim rule made HUD's Office of Public and Indian Housing responsible for issuing separate guidance on contract renewals under part 402 of the interim rule for non-Single-Room Occupancy (SRO) moderate rehabilitation projects. That guidance was issued on December 15, 1998, as Office of Public and Indian Housing (PIH) Notice PIH 98–62, which was clarified and extended by Notice PIH 99–22, issued May 20, 1999, and Notice PIH 2001–13, issued April 6, 2001. Notice PIH 2000–9 was issued on March 7, 2000, on the related subject of enhanced vouchers and was superseded by Notice PIH 2001–41, issued November 14, 2001.

After the interim rule was issued, Congress enacted two laws that amended certain MAHRA provisions that had been implemented in the part 402 interim rule. These laws are the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, approved October 21, 1998), and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (Pub. L. 106–74, approved October 20, 1999). One change to part 402 that implemented a provision of Public Law 105–276 was made by a technical correction rule published December 28, 1998 (63 FR 71372). Other changes needed to implement Public Law 105–276, and the changes needed to implement Public Law 106–74, are now included, to the extent possible, in this final rule. These changes are discussed in section V of this preamble. In deciding what statutory changes can and should be reflected in this final rule, HUD considered its general rulemaking procedures in 24 CFR part 10, the provisions of section 502 and section 503 of Public Law 106–74, and the provisions of section 522 of MAHRA. A detailed discussion of how HUD has reconciled these requirements was published in the preamble to the final part 402 rule published on March 22, 2000 (65 FR 15453).

On January 12, 2002, Congress enacted the Mark-to-Market Extension Act of 2001, Public Law 107–116. Most of the provisions of that act will be implemented in a separate rulemaking. However, this rule modifies the definition of ''eligible project'' in 24 CFR 401.100 to include the statutory provision for look-back projects in section 612(f) of the Mark-to-Market Extension Act of 2001. In addition, because that law provided that the Office of Multifamily Housing Assistance Restructuring (OMHAR) and the position of Director of OMHAR were terminated ''at the end of September 30, 2004,'' and their functions transferred to the Secretary of HUD, this rule removes the terms ''OMHAR'' and references to the Director of OMHAR.

This final rule is based on HUD's consideration of public comments received on the interim rule of September 11, 1998, HUD's experience to date with renewals of contracts, and certain provisions in Public Law 105–276, Public Law 106–74, and Public Law 107–116, as noted above. In addition to this final rule, a related proposed rule is being published in today's **Federal Register**.

II. Comments Received on Part 402

The interim rule of September 11, 1998, added two new parts to title 24 of the Code of Federal Regulations. HUD received 61 comments, but five comments were not pertinent to the interim rule. The majority of the other comments related solely to part 401 and were discussed in the preamble to the 2000 final rule. The discussion in this section of the preamble summarizes comments related to part 402 and HUD's responses to the comments. In this section of the preamble, the regulatory sections of part 402 are grouped into major areas of related subject matter as shown in the outline below. The

discussion of the comments is presented in the order in which the areas are first covered in part 402. Regulatory sections that received no public comments are not included.

A. Section 402.1 What Is the Purpose of Part 402?

1. Projects previously restructured under MAHRA and under prior restructuring authority.
2. Section 405(a) of the Balanced Budget Downpayment Act.

B. Section 402.3 Contract Provisions

C. Section 402.4 Contract Renewals at or Below Comparable Market Rents Without Restructuring (Former Section 524(a)(1) of MAHRA, Now Section 524(a))

1. Marking up to market.
2. Other comments on renewals for below-market projects.
3. Using budget-basing for determining or adjusting rents.
4. Preservation projects.
5. Extent of HUD discretion to renew.
6. Bond funding.
7. Determination of Operating Cost Adjustment Factor (OCAF).
8. Negative OCAF.
9. Appeals of OCAF.
10. Tenant participation.

D. Section 402.5 Contract Renewals for Projects Eligible for Exception Rents

1. Expenses to be considered in budget-basing.
2. Preservation projects.
3. Adjust through budget-basing or OCAF?
4. Who confirms owner's rent determination?

E. Section 402.6 What Actions Must an Owner Take To Request Contract Renewal Under Part 402?

F. Section 402.7 Rejection of Owner

1. Designation as ''bad'' owner.
2. Treatment of civil rights violations.
3. Project transfers to ''good'' owners.
4. ''Uncooperative'' owners.

G. Section 402.8 Tenant Protection if a Contract Is Not Renewed

1. Is tenant-based assistance mandatory?
2. When is notice required?
3. Rent levels for tenant-based assistance.
4. Timing of tenant-based assistance.

III. Discussion of Comments

A. Section 402.1 What Is the Purpose of Part 402?

Summary of section: This regulatory section sets out the terms and conditions for part 402 under which HUD will renew project-based Section 8 contracts under section 524 of MAHRA without a Restructuring Plan under the Mark-to-Market program under part 401.

Summary of comments:

1. *Projects previously restructured under MAHRA and under prior restructuring authority.*

Comment: Three commenters wanted HUD to clarify that part 402 does not cover contract renewals for projects that have been through restructuring (either as a part of a demonstration or under part 401).

HUD response: As indicated in § 402.1 and in the preamble to both the implementing 1998 rule and the 2000 final rule, section 524 of MAHRA (and the corresponding regulations in part 402) applies only to the renewal of project-based Section 8 contracts without Restructuring Plans under the Mark-to-Market program. HUD therefore agrees that part 402 does not apply to contract renewals for projects that have been restructured under MAHRA. While § 402.5(d)(2) applies to demonstration projects for which HUD made a determination that debt restructuring is inappropriate and the owner of the project executed a Portfolio Reengineering Demonstration Program Use Agreement, nothing else in part 402 applies to projects that completed the Portfolio Reengineering Demonstration Program and executed a recorded Portfolio Reengineering Demonstration Program Use Agreement.

2. *Section 405(a) of the Balanced Budget Downpayment Act.*

Comment: Part 402 should address HUD's continuing authority to renew Section 8 contracts under section 405(a) of the Balanced Budget Downpayment Act (Pub. L. 104–99). Section 405(a) was suggested as a solution for contract renewals for section 236 budget-based projects.

HUD response: Part 402 is concerned only with renewals authorized by MAHRA.

B. Section 402.3 Contract Provisions

Summary of section: This regulatory section provides that contracts renewed under part 402 will be administered in accordance with all HUD regulations and requirements, including changes in HUD's regulations and requirements during the term of the renewal contract.

Summary of comments:

Comment. One commenter wanted an explanation of the provision which the commenter thought was unclear. The commenter asked whether the rule referred only to regulations not required by Section 8, and whether HUD intended the contract to substitute for regulations governing management and operations of projects under renewed project-based assistance contracts.

HUD response: HUD has revised this regulatory section in order to provide clarification. The section now reads that HUD's regulations apply to the Housing Assistance Payment (HAP) contract, unless the contract specifies otherwise.

C. Section 402.4 Contract Renewals Under Section 524(a) of MAHRA (Renewal at or Below Comparable Market Rents)

Summary of section: This regulatory section implements section 524(a) of MAHRA for projects other than projects eligible for exception rents. It achieves this by authorizing contract renewal without restructuring at rents that do not exceed comparable market rents. If the project is eligible for the Mark-to-Market program under the authority of section 512(2) of MAHRA and 24 CFR part 401, the owner's request for contract renewal will be processed under § 402.4(a)(2) (§ 401.601 of the interim rule) to determine whether a Restructuring Plan is needed.

Summary of comments:

1. *Marking up to market.*

Comment: The interim rule did not specifically address the possibility of ''marking up to market,'' i.e., renewing a contract for which existing rents are below comparable market rents at higher rents (up to comparable market rents). Many commenters thought the final rule should specifically permit marking up to market, at least in some situations, in order to preserve affordable housing stock that could not be operated or maintained in a satisfactory condition at existing rents.

HUD response: HUD's policy on ''marking up'' for 1999 was stated originally in Office of Housing Notice H 99–15 issued on June 16, 1999. That policy permitted ''marking up'' for some projects with comparable market rents at least equal to 110 percent of the Fair Market Rent (FMR) under procedures and requirements stated in the Guidebook. Renewal rents were limited to the lesser of comparable market rent or 150 percent of the FMR. The policy on ''marking up'' is now contained in Chapter 3 of the Section 8 Renewal Policy Guidebook.

Public Law 106–74 amended section 524 to mandate marking up of below-market rents in some cases, while permitting it at HUD's discretion in other cases. The amended section 524 applies to renewal of contracts expiring on October 1, 1999, or later. HUD issued Office of Housing Notice H 99–36 (also superseded by the Section 8 Renewal Policy Guidebook) on December 29, 1999, to implement its ''marking up''

policy carrying out the amended law for Fiscal Year (FY) 2000.

2. *Other comments on renewals of below-market projects.*

Comment. Two commenters stated that the initial renewal under § 402.4 for projects at existing below-market rents should be at existing rents plus an operating cost adjustment factor (OCAF), as with projects eligible for exception rents (other than non-Single Room Occupancy (SRO) moderate rehabilitation projects) under § 402.5. Two commenters stated that it was necessary to clarify in the final rule that renewal rents would be no less than existing below-market rents with no downward adjustment.

HUD response: For projects that are not eligible for exception rents, renewal rents under § 402.4 will be in accordance with the specific statutory directions of section 524(a)(4) of MAHRA. In some cases, HUD does not have discretion to set the rent level; in others, there is a permitted range.

Specific instructions are provided in the statute for setting renewal rents for contracts for projects eligible for exception rents renewed pursuant to § 402.5. Renewal rents for these projects will be the lesser of the existing project rent adjusted by an OCAF or a level that provides income sufficient to support a budget-based rent that is justified by reasonable and expected operating expenses, except for non-SRO moderate rehabilitation contracts that are subject to other requirements, as stated in § 402.5(b)(3).

3. *Using budget-basing for determining or adjusting rents.*

Comment: Some commenters expressed concern over the possibility of budget-based adjustments to reduce rents instead of using OCAF. One commenter said that if HUD has doubts about the accuracy of rents based on OCAF, then HUD should conduct a new market analysis. Five commenters did not want HUD to use OCAF if budget-basing resulted in higher rents needed to operate viable projects. Some other commenters encouraged the use of budget-based adjustments. Five commenters argued that projects that historically received budget-based rents (section 202 and section 236 projects) should continue to get them if they are below comparable market rents.

HUD response: Rents under contracts initially renewed pursuant to section 524(a) of MAHRA (§ 402.4) will be adjusted by OCAF or a budget-based method. Owners that request contract renewal for projects eligible for exception rents under section 524(b)(1) of MAHRA (other than non-SRO moderate rehabilitation projects) under § 402.5 will have their contracts renewed at rents that are the lesser of the current rent adjusted by an OCAF or the budget-based rent, as required by the statute. The Department has no flexibility with rents for contracts for projects renewed pursuant to section 524(b)(1) of the amended law.

4. *Preservation projects.*

Comment: Four commenters said HUD should clarify in the final rule that rents for preservation projects under the Low-Income Housing Preservation and Resident Homeownership Act (LIHPRHA) and the Emergency Low-Income Housing Preservation Act (ELIHPA) will be set as needed (including marking up to market and using either budget-based adjustments or OCAF) to honor HUD commitments in Plans of Action. (See also section II.D.2. of this preamble).

HUD response: Although the statutory provisions in effect when the interim rule was issued did not authorize HUD to treat every preservation project with an approved plan of action as an exception, such treatment is now required by statute, and HUD must provide benefits comparable to those in the plan of action to the extent amounts are specifically made available in appropriations acts (as they have been for FY 2000, FY 2001, and FY 2002).

5. *HUD discretion to renew.*

Comment: Two commenters wanted renewal requested by owners of eligible projects to be mandatory rather than discretionary with HUD. If renewal will not be mandatory, two commenters wanted the final rule to indicate HUD's basis for decisions not to renew, with one commenter requesting an express preference for projects to be sold to priority purchasers. One commenter wanted the final rule to clarify that an owner may request renewal for less than all units covered by an expiring contract in order to pursue a mixed-income project option, with tenant-based assistance available for tenants of units not covered by project-based assistance.

HUD response: As amended by Public Law 106–74, section 531 and sections 524(a)(1) and (a)(2) of MAHRA require HUD, at the request of the owner, to renew an expiring Section 8 contract, with two exceptions. Section 524(a)(1) does not require contract renewal for an eligible project without a Restructuring Plan if HUD determines that a plan is necessary. Section 524(a)(2) does not require contract renewal for ''bad'' owners or projects under section 516(a) of MAHRA. Therefore, renewal in these particular cases would not be mandatory. In cases where renewal is required, the statute does not afford an option not to renew certain units because a mixed-income project is pending. As to the comments that the rule should require HUD to provide a reason for a non-renewal, the existing due process protections in the rule (see § 402.7(b)) are sufficient. Therefore, no change has been made as a result of these comments.

6. *Bond funding.*

Comment: A commenter asserted that the interim rule would cause bond defaults for projects renewed under § 402.4 or § 402.5, because the rents allowed will not permit a project to meet the debt service coverage required by bond documents.

HUD response: HUD disagrees with this comment. Projects eligible for exception rents under § 402.5 in the final rule continue to include projects with primary financing provided by a unit of state or general local government, if Mark-to-Market restructuring would conflict with applicable law or agreements governing such financing. Some bond-funded projects are therefore still eligible for renewal under § 402.5 (limited by the lesser of existing rents adjusted by OCAF or a budget-based rent). Thus, unless the project is unable to meet debt service at existing rents and is already in default, there is no circumstance in which the Section 8 renewal policies reflected in the regulations would result in default for bond-funded projects that continue to qualify as exception rent projects under § 402.5.

As a result of Public Law 106–74, many projects financed with bond funding that previously would have received contract renewal under § 402.5(b) are now eligible for renewal either under § 402.4 or through Mark-to-Market restructuring if the project has an insured mortgage and above-market rent levels. A bond-funded project (or a project that otherwise has state or local government financing) will be reviewed initially by HUD to determine whether the project is eligible or ineligible for Mark-to-Market restructuring and ensure that renewals for such projects are not improperly processed under § 402.5. If the requirements for processing under § 402.5(b) are not met (e.g., because restructuring would not conflict with any law or financing agreement), HUD would then proceed under § 402.4(a)(2) to determine whether renewal under § 402.4 would provide sufficient rental income for a viable project. That determination would include consideration of bond requirements concerning debt service coverage. If renewal under § 402.4 would force violation of those requirements, HUD could require restructuring under the Mark-to-Market

program (reducing current debt service charges) as a condition of contract renewal.

7. *Determination of OCAF.*

Comment: Three commenters said that HUD should base OCAF on inflation indicators published outside of HUD, while another commenter ''applauded'' HUD for restricting increases to documented operating cost increases. Two others noticed that the geographical area considered when determining OCAF is left undefined in the rule. They remarked that it should not be too large to pick up local fluctuations in taxes, utilities, etc.

HUD response: A HUD analysis of operating cost data for projects insured by the Federal Housing Administration (FHA) showed that their expenses could be grouped into nine categories—wages, employee benefits, property taxes, insurance, supplies and equipment, fuel oil, electricity, natural gas, and water and sewer. States are the lowest level of geographical aggregation at which there are enough projects to permit statistical analysis. Operating expense-related data on a more localized basis are not available on a current or consistent basis. HUD's OCAF calculations use data series prepared by the U.S. Bureau of Labor Statistics, the Bureau of the Census, and the Department of Energy. Projects may apply for a budget-based rent review in the presumably unusual case in which the application of the OCAF does not address unexpected project specific fluctuations.

Comment: Excluding debt service. Two commenters objected to excluding debt service from the expenses to be adjusted by OCAF. One said the exclusion will make projects increasingly vulnerable to periods of low occupancy and less likely to support a second mortgage, thereby requiring some other means to boost rents. Another said the exclusion will decrease attractiveness of the project to investors who want to increase their debt service coverage over time.

HUD response: Congress' use of the term OCAF (which has historically been applied only to operating expenses), rather than the term Annual Adjustment Factor (AAF), suggests that Congress expected the Department to not apply the increase to the entire rent. Since the interest rate is expected to remain constant, it is not appropriate to apply an inflation factor to the debt service. The debt service component of the effective gross income is the only portion that will not be inflated by the OCAF; the reserve for replacement deposits and the portion of the debt service coverage estimates for owner return will increase and presumably remain constant with inflation.

8. *Negative OCAF.*

Comment: Three other commenters objected to the reduction of rents by using negative OCAF. Two of them questioned the legality of rent reductions in light of Section 8(c)(2) of the United States Housing Act of 1937.

HUD response: HUD will comply with statutory changes to MAHRA made by Public Law 106–74 that prohibit using negative OCAF when determining rent levels.

9. *Appeals of OCAF.*

Comment: One commenter wanted an owner right to appeal OCAF determinations.

HUD response: OCAF is not determined on a case-by-case basis and adjustment of OCAF through appeal for a particular project is not appropriate. However, the commenter probably was interested in the ability to appeal the rent adjustment that resulted from use of OCAF. OCAF is generally used for rent adjustments, but HUD retains the discretion to use a budget-based rent adjustment instead. An owner may request a budget-based rent adjustment if the owner can demonstrate that available operating revenues are insufficient to maintain a project. The published OCAF factors are based on independently produced estimates of changes in major cost items and should prove adequate in most projects. If rent adjustments through use of OCAF are inadequate, however, budget-based review would provide the most relevant basis for reviewing the adequacy of overall project funding.

10. *Tenant participation.*

Comment: Eight commenters wanted the final rule to provide for tenant involvement in contract renewal decisions, including determinations of owner ineligibility, for projects not undergoing restructuring under the Mark-to-Market program.

HUD response: While tenant involvement is required by statute in the Mark-to-Market restructuring process, there is no such requirement for tenant involvement in other contract renewal decisions, although HUD strongly recommends such tenant involvement. For projects eligible for restructuring, see § 401.502 of part 401, which guarantees notice and an opportunity to comment for tenants whenever an owner requests contract renewal without restructuring.

D. Section 402.5 Contract Renewals for Projects Eligible for Exception Rents

Summary of section: This section concerns renewals under section 524(b)(1) and (3) of MAHRA (formerly section 524(a)(2)) for projects that are entitled to exception rents and are ineligible for, or otherwise exempt from, restructuring under part 401. These include certain projects financed by state or local governments, certain elderly projects, SRO projects, and projects ineligible because they do not have rents exceeding comparable market rents or because there is no FHA-insured or HUD-held mortgage. The owner of a project that is ineligible solely because rents are not above market may renew under § 402.5 only if HUD confirms the fact that the rents are at or below market. Contract renewals for projects under section 524(b)(1) of MAHRA are at the lesser of existing rents adjusted by an OCAF or a budget-based rent determined according to instructions issued by HUD's Office of Housing. In the case of a contract for a non-SRO moderate rehabilitation project, section 524(b)(3) of MAHRA provides for rents at the least of existing rents adjusted by an OCAF, fair market rents (less any amounts for tenant-purchased utilities), or comparable market rents. For such a project, future rent adjustments are also governed by section 524(b)(3).

Summary of comments:

1. *Expenses to be considered in budget-basing.*

Comment: Commenters asked that the budget include:

- An owner's rate of return regardless of whether it is separately included in budget-basing under part 401 (one commenter).
- Health and social services for elderly/handicapped projects (one commenter).
- Actual current interest rates on debt rather than rates adjusted to reflect the current market (two commenters).

HUD response: The rule does not dictate the specific components of a budget. It should be noted, however, that HAP payments may be used to cover rent, as defined, but not additional costs, such as food, health, and social services costs.

2. *Preservation projects.*

Comment: Three commenters wanted all preservation projects with expiring contracts treated as ''exception projects,'' with rents determined to permit commitments in the Plan of Action to be honored.

HUD response: Please see the HUD response in Section III.C.4 of this preamble.

3. *Adjust through budget-basing or OCAF?*

Comment: Three commenters said that budget-basing should be used to raise rents for projects under section 524(b)(1) of MAHRA whenever OCAF

results in income inadequate to operate a project. Another commenter wanted the final rule to clarify that a contract initially renewed under budget-based rents will continue to be renewed in that manner. Another commenter questioned the mention of a comparability analysis in § 402.5(d) of the September 11, 1998, interim rule and objected if it meant that HUD will hold rents to market for projects eligible for exception rents.

HUD response: The commenter expressed concern that the current rent adjusted by the OCAF would be inadequate to continue operating the project. Renewal contracts for projects under section 524(b)(1) of MAHRA will have their rents established under the final rule at the lesser of the OCAF-adjusted current rent or the budget-based rent in accordance with statutory requirements. If current rent adjusted by the OCAF is insufficient to cover the project's operating costs in the future, HUD will consider a budget-based increase at the request of an owner.

The Department does not agree with the commenter's request that any contract initially renewed under budget-based rents must continue to be adjusted in that manner. As amended by Public Law 106–74, section 524(c) of MAHRA clearly requires budget-basing for rent adjustments after the initial renewal to be ''subject to the approval of the Secretary.'' In addition, at the expiration of each 5-year period of the renewal contract term, HUD conducts a comparability study by comparing existing rents with comparable market rents in the area and may make adjustments as necessary, either to maintain the contract rents at a level no greater than comparable rents, or to increase the contract rents to comparable market rents. This comparability requirement is stated at 24 CFR 402.4(b)(2) of the separate proposed rule being published in today's **Federal Register**. The OCAF adjustments that are available in subsequent years require considerably less paperwork by the project owner and by HUD. The rule does not preclude the use of a special budget-based rent increase, where warranted.

4. *Who confirms owner's rent determination?*

Comment: One commenter wanted the final rule to clarify that the Participating Administrative Entity (PAE), and not HUD, confirms an owner's determination that a project qualifies as a project entitled to exception rents under § 402.5 due to below-market rents.

HUD response: HUD's Office of Housing or its contract administrator, rather than the PAE, will make the determination.

E. Section 402.6 What Actions Must an Owner Take To Request Contract Renewal Under This Part?

Summary of section: Section 402.6 provides a procedure for requesting contract renewal under part 402. The owner submits to HUD (or the contract administrator) required information, which includes: (1) A certification that the owner is not suspended or debarred; (2) a rent comparability study (not required for most projects entitled to exception rents); and (3) if the owner of a project eligible for Mark-to-Market restructuring under part 401 is instead seeking renewal under § 402.4, the most recent annual audited financial statement for the project, and the owner's evaluation of physical needs complying with § 401.450. (The final rule generally provides for submission of documents and information prescribed by HUD, but no longer lists these specific items.) Separate instructions are issued for renewal of moderate rehabilitation contracts.

Summary of comments:

Comment: One commenter asked HUD to clarify any differences in submission requirements between above- and below-market projects. Another commenter questioned the need to require financial statements and owners' evaluation of physical condition from an owner of a project eligible for exception rents (and thus entitled to renew under § 402.5) who chooses to renew under § 402.4 instead. This commenter noted that financial statements for a fiscal year often are not available until 60 days after year-end and thus may be unavailable when the renewal request is submitted.

HUD response: The most recently required financial statement should be provided. If the renewal request and expiration is within the 90-day period following the end of the project's fiscal year, the previous year's statement will be accepted. Financial statements and owners' evaluations of physical condition are not required if a project entitled to exception rents under section 524(b)(1) of MAHRA renews under § 402.4. These documents should be submitted only for projects that are eligible for a Restructuring Plan, and for which the owners have instead requested renewal under § 402.4. It is not appropriate to include in the final rule additional information for the submission requirements for above- and below-market properties. The Department has published this information in numerous Housing Notices and, more recently, the Section 8 Renewal Policy Guidebook.

F. Section 402.7 Rejection of Owner

Summary of section: This section implements section 516(a) of MAHRA, which permits HUD to elect not to consider a request for contract renewal on the basis of certain actions or omissions by an owner or purchaser of the project or an affiliate. (That MAHRA provision is also implemented through several sections in part 401.) HUD may elect not to consider a renewal request if, among other things, (1) the owner or an affiliate is debarred or suspended by HUD, or (2) the owner or an affiliate has engaged in material adverse financial or managerial actions or omissions as described in section 516(a) of MAHRA (these may include actions that have resulted in imposition of a limited denial of participation (LDP) or a proposed debarment under 24 CFR part 25), or outstanding violations of civil rights laws. A rejection under this section is subject to administrative review as provided in part 401, subpart F.

Summary of comments:

1. *Designation as ''bad'' owner.*

Comment: Two commenters argued that HUD should not reject an owner for a suspension/debarment if the owner's appeal is not yet adjudicated. One of these commenters also objected to basing a ''bad owner'' rejection on an LDP or proposed debarment alone because such actions might not be ''material'' within the meaning of section 516(a) of MAHRA.

HUD response: The rule is consistent with these comments. ''Bad owner'' determinations are made on the basis of ''material adverse financial or managerial actions or omissions'' identified in section 516(a)(2) of MAHRA. HUD or PHAs are required to make a determination of materiality if a debarment or suspension decision has not already been made by the Department.

2. *Treatment of civil rights violations.*

Comment: Two commenters wanted civil rights violations to be considered in a ''bad owner'' determination only if they have been finally adjudicated and have not been substantially cured. One of these commenters commented on a need to clarify which violations are disqualifying civil rights violations.

HUD response: Civil rights violations will be addressed by the appropriate HUD Assistant Secretary after consultation with HUD's Office of Fair Housing and Equal Opportunity. Under this final rule, HUD requires owners requesting restructuring and/or contract renewal to certify compliance with

HUD's non-discrimination requirements at 24 CFR 5.105(a).

3. *Project transfers to ''good'' owners.*

Comment: Four commenters thought that the rule was deficient in its treatment of project transfers after ''bad owner'' determinations. One labeled the interim rule's provisions providing for rejection of certain owners a ''misguided policy of forced voucherization'' and wanted the final rule to reiterate that contract termination is a last resort and that transfers to priority purchasers are preferable to conversion. Two others cited a Senate floor statement regarding the need for HUD to develop alternative solutions for projects when an owner is disqualified.

HUD response: The Department is committed to protecting tenants living in assisted units. The determination not to renew the project-based assistance will be made on a case-by-case basis. HUD will consider the best interests of the tenants, the potential to transfer the project to priority purchasers, and other remedies.

4. *''Uncooperative'' owners.*

Comment: One commenter asked HUD to clarify that an owner who is viewed as insufficiently ''cooperative'' in helping a PAE develop a restructuring plan that differs from the approach suggested by the owner and who thereby is found ineligible for a restructuring plan under 24 CFR 401.402 will not become ineligible under § 402.7 for contract renewal without restructuring.

HUD response: HUD will make a case-by-case determination of whether or not to renew a Section 8 contract with rents reduced to market should the owner of an eligible project be unwilling to cooperate with debt restructuring under part 401.

G. Section 402.8 Tenant Protection if a Contract Is Not Renewed

Summary of section:

The owner is not required to renew a contract, but the owner must give one-year advance notice of contract termination as required by Section 8(c)(8)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(8)(A)). (Note that the underlying statutory provision has changed since the interim rule took effect.) This section of the final rule provides that an owner who does not give the timely notice must continue to permit tenants to stay in their units without increasing the tenant portion of the rent for one year after notice is given.

Summary of comments:

1. *Is tenant-based assistance mandatory?*

Comment: Interim part 402 did not address the availability of tenant-based assistance if an owner of a project ineligible for restructuring under part 401 chose not to renew under part 402 (i.e., the owner ''opts out''). Many commenters wanted the matter addressed. Two commenters argued that tenant-based assistance should be guaranteed if the owner is rejected. One commenter wanted tenant-based assistance to be guaranteed in all termination situations, while another felt that HUD needed to give reasons if this was not done. Finally, one commenter asked HUD to make clear in the rule that HUD expects appropriations for tenant-based assistance to protect displaced tenants.

HUD response: Section 524(d) of MAHRA provides for enhanced vouchers to eligible tenants of assisted units in projects if the Section 8 project-based assistance is not renewed under sections 524(a) or (b), or ''any other authority,'' to the extent that appropriated funds are available for that purpose.

2. *When is notice required?*

Comment: Three commenters said that a failure to renew because HUD found the owner ineligible for contract renewal should not require a notice to tenants. Two others wanted tenant notice in all opt-out or other termination situations, including owner ineligibility.

HUD response: There is no statutory exception for ineligible owners to the one-year termination notice requirement, so HUD cannot provide one in this rule.

3. *Rent levels for tenant-based assistance.*

Comment: One commenter questioned the lack of guidance on rent levels for enhanced vouchers for opt-outs. Two commenters also wanted vouchers to be enhanced whenever an owner is rejected for renewal and where an owner opts out.

HUD response: The final rule reflects the provisions of section 538 of Public Law 106–74 on this point.

4. *Timing of tenant-based assistance.*

Comment: Two commenters said that tenant-based assistance should be available sufficiently early prior to termination/expiration so that tenants can relocate or have assistance in place in time; one suggested four months. Another commenter wanted HUD to provide a short-term renewal of project-based assistance to provide necessary time for tenants to prepare when an owner is rejected only a short time before the project-based assistance expires.

HUD response: These comments are generally consistent with existing HUD policy to provide adequate time for tenants to find alternative housing.

IV. Changes Made to Part 401

References are to the section number of the rule.

Section 401.2 What special definitions apply to this part?

There have been no substantive changes from the March 22, 2000, final rule § 401.2. However, this final rule reorganizes the definition of ''eligible project,'' moving it from § 401.2 to a new § 401.100(a), and replacing the § 401.2 definitions with a cross-reference.

Section 401.100 Which projects are eligible for a Restructuring Plan under this part?

Paragraph (a) of this section states the projects that are eligible for a restructuring plan. The list of eligible projects includes certain projects that receive project-based assistance and were renewed under section 524 of MAHRA.

Paragraph (b) of this section, entitled ''When is eligibility determined?'', addresses additional related statutory interpretation questions that arose after the public comment period closed for the proposed rule. While the Department considers it of benefit to the public to have these related interpretation questions addressed in published regulations, there is no requirement for additional public comment. Paragraph (b) constitutes an interpretative rule not subject to notice and comment rulemaking requirements.

This paragraph states that statutory eligibility for a Restructuring Plan under MAHRA is determined by the status of a project on the earlier of the expiration or termination date of the project-based assistance contract, which includes a contract renewed under section 524(a) of MAHRA, or the date of the owner's request for a Restructuring Plan. In order to determine whether project rents exceed comparable market rents for eligibility purposes, rent levels under a contract renewed under section 524(a) of MAHRA will be considered.

As a practical matter, no Restructuring Plan will be developed after prepayment, since debt restructuring is a required element of each Restructuring Plan. After an owner has submitted a request for debt restructuring, an owner's voluntary decision to prepay, however, will not convert the project to one entitled to exception rents. The situation is similar to any other decision of an owner of an eligible project to forgo the opportunity for a Restructuring Plan. HUD or a PAE

will review the contract renewal request under the procedure in § 402.4(a)(2) of the final rule to ensure that comparable market rents will be sufficient for project operations before project-based assistance is renewed.

Section 401.600 Will a Section 8 contract be renewed if it would expire while an owner's request for a Restructuring Plan is pending?

This regulatory section has been revised to make a nonsubstantive procedural revision that will make it less time-consuming for an owner to request an extension of Section 8 contracts at current rents, or, if such an extension has been granted, a further extension in cases where, through no fault of the owner, the restructuring plan has not been implemented within the regulatory deadlines. HUD has the statutory authority under section 514 of MAHRA (42 U.S.C. 1437f note) to extend a Section 8 contract for any period sufficient to implement the Restructuring Plan. However, under the current regulation, the only procedural means to do so is on an ad hoc basis. HUD's experience shows that a large number of projects seeking restructuring require extensions at current rents pending the implementation of a Restructuring Plan. To date, such extensions have been granted through a regulatory waiver process, which is relatively cumbersome. To address these issues, the rule is being amended to simplify the process and make it broadly available by allowing HUD to approve such extensions without a regulatory waiver. Since this change is a matter of internal agency procedure, public notice and comment is not required under the Administrative Procedure Act (5 U.S.C. 553(b)) and HUD's regulations on rulemaking at 24 CFR 10.1. The only other change is a nonsubstantive, editorial clarification in § 401.600(b).

V. Changes Made to Part 402 of Interim Rule

References are to the section number of the rule.

Section 402.1 What is the purpose of part 402?

The final sentence that appeared in § 402.1 of the interim rule regarding ''bad owners,'' was moved to § 402.7 to more clearly reflect new section 524(b) of MAHRA. Some other changes to this section as it appeared in the interim rule have already been made in connection with final part 401. However, as a statement of policy, separate public notice on this final minor amendment is not required.

Section 402.2 Definitions

Language is added to this regulatory section to specify which definitions in MAHRA and part 401 apply to part 402. The rule adds definitions of ''SRO contract'' and ''SRO project'' (referring to single-room occupancy under section 441 of the Stewart B. McKinney Homeless Assistance Act), a definition for the purposes of this rule of ''project eligible for exception rents'' (referring to section 524(b) of MAHRA), and a definition of ''portfolio reengineering demonstration authority'' (referring to authority described in new section 524(e)(2)(B) of MAHRA). The rule also adds a definition of ''large family'' for use in connection with § 402.4(ii)(A), that follows HUD's existing definition used for ''Consolidated Plans'' (see 24 CFR 91.5) by defining a family of five or more persons as a large family.

Finally, the rule adds a definition of OCAF (operating cost adjustment factor) that incorporates a new statutory prohibition against negative OCAF. The term ''OCAF'' was used in interim part 402 in several places, generally without definition or explanation, although interim § 402.5(d) referred to ''operating cost adjustment factor as provided in § 401.412.'' Section 401.412 is a provision of the Mark-to-Market rule that explains that OCAF is not applied to the debt service portion of rent. HUD has incorporated that explanation into the new part 402 definition to make it clearer that a single concept of OCAF is intended throughout parts 401 and 402.

Interim § 402.2 incorporated the Mark-to-Market program definition of ''comparable market rents'' from § 401.410(b). This final rule instead uses a revised definition to recognize that additional statutory language directly affecting part 402 (but not part 401) was added later to MAHRA by Public Law 106–74. Part 401 governs the question of whether a project is eligible for the Mark-to-Market program due to rents exceeding comparable market rents. For all other purposes under final part 402, determination of comparable market rent is now governed by new section 524(a)(5) of MAHRA added by Public Law 106–74 and referenced in § 402.2(c). In addition, the Assistant Secretary for Housing has provided relevant guidance on matters such as preparation and use of the rent comparability study (RCS) required from an owner for renewals of contracts not covered by section 524(b)(3) of MAHRA (most recently, in Chapter 9 of the Section 8 Renewal Policy Guidebook). Similarly, the Assistant Secretary for Public and Indian Housing uses administrative notices to state the procedures that PHAs must use for determining comparability under section 524(b)(3) of MAHRA. HUD expects to continue this practice until any further rulemaking, if any, on this issue. Thus, the replacement definition of comparable market rents in this section simply references new section 524(a)(5) of MAHRA and HUD instructions in lieu of the prior incorporation of § 401.410(b).

Section 402.3 Contract provisions

The language regarding the contract term was moved from § 402.5(a) of the interim rule to § 402.3 of this final rule, and amended to recognize that HUD's discretion to set the contract term will be subject to any applicable statutory requirements concerning terms (e.g., new section 524(a)(3) of MAHRA requires at least 5-year terms when ''marking up'' rents, and the FY 2000 HUD Appropriations Act, Public Law 106–74, and subsequent HUD appropriations acts for FY 2001, Public Law 106–377, and FY 2002, Public Law 107–73, require one-year terms for FY 2000 preservation project renewals).

Section 402.4 Contract renewals under section 524(a) of MAHRA

Section 402.4 was included in a final rule published on March 22, 2000 (see 65 FR 15498). The preamble to that final rule explained that HUD would make additional changes to § 402.4(a)(2) after further consideration of the comments received on the interim rule (see 65 FR 15476). This final rule contains changes to § 402.4(a)(2) to clarify that the analysis regarding whether renewal of a HAP contract would be ''sufficient''—that is, would maintain adequate debt service coverage and replacement reserve—is triggered upon the request of the owner, pursuant to recent statutory changes to section 524 of MAHRA. See § 402.4(a)(2)(i) of this final rule. This rule also reorganizes the section into a more logical format. Other changes to § 402.4 that require public comment are addressed in the accompanying proposed rule published in today's **Federal Register**.

Section 402.5 Contract renewals under section 524(b) or (e) of MAHRA

Language that linked budget-basing to the statutory procedure applicable to part 401, but not 402, was replaced by a general reference to HUD instructions to allow the greater flexibility for part 402 that Congress intended. A provision that permitted a rent comparability analysis as part of a budget-based adjustment was removed. This rule combines paragraphs (a) and (b), and simplifies former paragraph (d) on rent

adjustments (now paragraph (c)), by referencing proposed § 402.4(b), which is being published in today's **Federal Register**. Statutory references are revised in this section to reflect the revised description in the statute for projects entitled to exception rents, and clarify that renewal requests from owners of moderate rehabilitation projects eligible for exception rents will always be governed by § 402.5(c)(ii).

New paragraph (d) corresponds to new section 524(e) of MAHRA on preservation and demonstration projects. That section authorizes certain renewals, notwithstanding other statutory restrictions, in order to provide benefits comparable to those in preservation plans of action or contracts previously renewed under demonstration authority. Paragraph (d) applies only to the extent amounts are ''specifically'' made available in appropriations acts for preservation projects. The appropriations acts for FY 2000–2002 made amounts available, but for preservation projects the language of each of these appropriations limited renewals to one year. (See Pub. L. 106–74, 106–377, and 107–73).

Section 402.6 What actions must an owner take to request Section 8 contract renewal under this part?

A renewal contract issued under section 524 of MAHRA is not expressly cited among the list of assistance contracts identified under section 512(2)(B) of MAHRA for a project to be eligible for debt-restructuring. However, upon consideration of the issue of whether a contract already renewed under section 524 may be eligible for debt restructuring, HUD has determined that, as a matter of law, a section 524 renewal contract retains the essential Section 8 character of the underlying Section 8 contract and is thus to be treated as eligible for debt-restructuring. (Sections 512(2)(A) and 512(2)(C), however, impose additional requirements for a project to be eligible for debt-restructuring.) HUD bases this interpretation on language in the last sentence of section 512(2)(C) that explicitly reflects a dual source of authority, Section 8 of the United States Housing Act of 1937 and section 524 of MAHRA, for a section 524 renewal contract. The other bases for this determination are MAHRA's definition of ''renewal,'' section 512(12), ''the replacement of an expiring Federal rental contract with a new contract under Section 8 of the United States Housing Act of 1937,'' and the identification in section 524(a)(1) of amounts available ''under Section 8'' as the funding for renewal assistance under section 524. In accordance with this position, HUD is removing: (1) References to the statutory term ''expiring contract,'' the definition of which uses another statutory term; ''project-based assistance,'' that refers to the list of assistance contracts in section 512(2)(B); (2) the term ''initial,'' as opposed to other renewals, throughout this rule; and (3) ''project-based assistance'' from the list of statutory definitions that the rule is adopting in § 402.2(b).

The introductory language in this regulatory section that applied paragraph (a) only to contracts with expiration dates after October 1, 1998, was considered unnecessary and removed. Paragraph (a) of this section was simplified by removing the specific listing of information required from an owner requesting contract renewal. The specific listing was never intended as an exclusive listing. In the final rule of March 22, 2000, HUD published a revised paragraph (a)(3) of this section, requiring the most recent audited financial statement and evaluation of physical condition of the property (see 65 FR 15498). This section, in accordance with regulatory simplification, has been removed in this final rule. Since this change is one of agency procedure, additional public comment is not required under the Administrative Procedure Act and HUD's rulemaking regulations at 24 CFR 10.1. The following clarifies certain points about the specific mandatory information items that were previously in the interim rule, but are omitted from the final rule:

- A financial statement and owner's evaluation of physical condition (OEPC) are not required for a project that is not eligible for restructuring. When an OEPC is required, a recent comprehensive needs assessment may be used in lieu of an OEPC to conform to the final § 401.450.
- A rent comparability study must meet HUD's requirements. HUD may require a less detailed analysis when project rents are below a certain threshold level or when nearly identical units, located in the Section 8 project and not receiving tenant rental assistance, are used to set the market rent ceiling.
- The rule now provides that once a project has been renewed under section 524 of MAHRA, it will be renewed at the owner's request under any renewal option for which the project is eligible, except that if it is eligible for a Restructuring Plan under § 401.100, HUD or a PAE will determine whether a renewal with or without a Restructuring Plan is necessary.
- The owner is no longer required to certify that no affiliate is suspended or debarred. This change corresponds to a change previously made in the final version of part 401 and recognizes that renewal decisions when an owner's affiliate is debarred or suspended may require case-by-case review. However, the requirement for a civil rights certification pursuant to 24 CFR 5.105(a) continues to apply to all affiliates, subcontractors, and associates of the owner.

Paragraph 402.6(b) was updated to reflect HUD's interpretation of MAHRA that a contract that was initially renewed under the renewal provisions of MAHRA is eligible for renewal at the owner's request under any renewal option for which the project is eligible. However, in the case of a project that is eligible for a Restructuring Plan under § 401.100, HUD or a PAE will determine whether renewal with a Restructuring Plan under part 401, or without a Restructuring Plan under this part, is necessary.

Section 402.7 Refusal to consider an owner's request for a Section 8 contract renewal because of actions or omissions of owner or affiliate

The provision that permitted an owner to submit a request for contract renewal less than 90 days before the contract expiration date if that date was before January 13, 1999, was determined obsolete and removed. Paragraph (c) concerning the availability of tenant-based assistance after certain rejections of requests for renewal of project-based assistance was also removed because the subject is covered in a broader new § 402.8(c) in the final rule. Language in § 402.1 was moved as explained in the discussion of that section.

Section 524(a)(2) of MAHRA, as amended by section 531(a) of Public Law 106–74, states that determinations of ineligibility under section 516(a) of MAHRA are to be made by the Secretary only, without the participation of the PAE. Prior law included the PAE in that decision. Section 402.7 of the rule reflects this statutory change.

Section 402.8 Tenant protection if a contract is not renewed

This rule updates this section to reflect HUD policy and statutory changes to section 8(c)(8) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(8)) (1937 Act). The rule adds language in paragraph (a) specifying that required notice to HUD should be sent to HUD and the contract administrator, if there is one, and to the tenants. A new paragraph (c) recognizes that HUD must, to the extent Congress provides

appropriations in advance for this purpose, provide tenant-based assistance whenever project-based assistance is not renewed. This will permit HUD to continue current policies. In paragraph (b), language is added to clarify the continued applicability of the owner's obligation to permit tenants to remain in assisted units with no increase in the tenant rent (i.e., rent no higher than the last month's assisted tenant rent under the terminated HAP contract) until one year after the owner gives the termination notice, even if HUD does not continue to provide housing assistance payments for such units during the notice period. This is consistent with section 8(c)(8)(B) of the 1937 Act, as amended by section 535 of Public Law 106–74 (42 U.S.C. 1437f(c)(8)(B)). Ordinarily, HUD will continue to make section 8 assistance available for units during the one-year period. Section 8(c)(8)(A) of the 1937 Act now requires the owner's termination notice to state, among other things, that HUD ''will'' provide tenant-based assistance (vouchers) to all eligible residents of the project to enable them to choose the place they wish to rent, which is ''likely'' to include their current dwelling unit. Congress has thereby recognized that the continued availability of section 8 assistance for specific units after termination notice may be inappropriate. For example, a voucher HAP contract cannot be executed for a unit that has been determined to violate the Housing Quality Standards (HQS) for the voucher program. Tenants of such substandard units may use vouchers under the Housing Choice Voucher program to move to other units in better condition, but any tenants who choose to remain in substandard units without assistance during the remainder of the one-year termination notice period are still protected from rent increases by section 8(c)(8)(B) of the 1937 Act, which does not condition this protection on the continued availability of assistance under section 8 for the unit.

Finally, the final rule removes the sentence in § 402.8(b) of the interim rule that stated that the period during which rents may not be raised begins on the earlier of the date of actual notice to tenants or the date of contract expiration. (Under the rule as written, the period begins on the date of actual notice to the tenants.) This change conforms to a change previously made to § 401.602 of the Mark-to-Market final rule. HUD's intent in including this language in the interim rule was to provide an express regulatory basis for language restricting rent increases that had previously been included in contracts to implement statutory notification requirements. However, the sentence being deleted went beyond what has been stated in actual contract language and thus was not necessary to accomplish HUD's intent.

VI. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this final rule are currently approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0533. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid control number.

Environmental Impact

On September 6, 2000, a finding of no significant impact with respect to the environment was made regarding this rule in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That finding of no significant impact remains applicable, and is available for public inspection between 8:00 a.m. and 5 p.m. weekdays in the office of the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Executive Order 12866

OMB reviewed this final rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this rule is a ''significant regulatory action'' (but not economically significant) as defined in section 3(f) of the Order. Any changes made in this final rule subsequent to its submission to OMB are identified in the docket file. The docket file is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only multifamily section 8 owners. There are very few multifamily section 8 owners that are small businesses. Therefore, this rule will not affect a substantial number of small entities.

Executive Order 13132, Federalism

This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, approved March 22, 1995) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This rule does not impose any federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

List of Subjects

24 CFR Part 401

Grant programs-housing and community development, Housing, Housing assistance payments, Housing standards, Insured loans, Loan programs-housing and community development, Low- and moderate-income housing, Mortgage insurance, Mortgages, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 402

Housing, Housing assistance payments, Low- and moderate-income housing, Rent subsidies.

The Catalogue of Federal Domestic Assistance number for the programs affected by this rule is 14.871.

■ For the reasons set forth in the preamble, HUD amends 24 CFR parts 401 and 402 as follows:

PART 401—MULTIFAMILY HOUSING MORTGAGE AND HOUSING ASSISTANCE RESTRUCTURING (MARK-TO-MARKET)

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

Authority: 12 U.S.C. 1715z–1 and 1735f–19(b); 42 U.S.C. 1437(c)(8), 1437f(t), 1437f note, and 3535(d).

■ 2. Section 401.2(c) is amended by revising the definition of ''eligible project'' to read as follows:

§ 401.2 What special definitions apply to this part?

* * * * *

Eligible project means a project that meets the requirements for eligibility for a Restructuring Plan in § 401.100.

* * * * *

■ 3. Add a new § 401.100 to read as follows:

§ 401.100 Which projects are eligible for a Restructuring Plan under this part?

(a) *What are the requirements for eligibility?* To be eligible for a Restructuring Plan under this part, a project must:

(1) Have a mortgage insured or held by HUD;

(2) Be covered in whole or in part by a contract for project-based assistance under—

(i) The new construction or substantial rehabilitation program under section 8(b)(2) of the U.S. Housing Act of 1937 as in effect before October 1, 1983;

(ii) The property disposition program under section 8(b) of the U.S. Housing Act of 1937;

(iii) The moderate rehabilitation program under section 8(e)(2) of the United States Housing Act of 1937;

(iv) The loan management assistance program under section 8 of the United States Housing Act of 1937;

(v) Section 23 of the United States Housing Act of 1937 as in effect before January 1, 1975;

(vi) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965;

(vii) Section 8 of the United States Housing Act of 1937, following conversion from assistance under Section 101 of the Housing and Urban Development Act of 1965; or

(viii) Section 8 of the U.S. Housing Act of 1937 as renewed under section 524 of MAHRA;

(3) Have current gross potential rent for the project-based assisted units that exceeds the gross potential rent for the project-based assisted units using comparable market rents;

(4) Have a first mortgage that has not previously been restructured under this part or under HUD's Portfolio Reengineering demonstration authority as defined in § 402.2(c) of this chapter;

(5) Not be a project that is described in section 514(h) of MAHRA; and

(6) Otherwise meet the definition of ''eligible multifamily housing project'' in section 512(2) of MAHRA or meet the following three criteria:

(i) The project is assisted pursuant to a contract for Section 8 assistance renewed under section 524 of MAHRA;

(ii) It has an owner that consents for the project to be treated as eligible; and

(iii) At the time of its initial renewal under section 524, it met the requirements of section 512(2)(A), (B), and (C) of MAHRA.

(b) *When is eligibility determined?* Eligibility for a Restructuring Plan under paragraph (a) of this section is determined by the status of a project on the earlier of the termination or expiration date of the project-based assistance contract, which includes a contract renewed under section 524 of MAHRA, or the date of the owner's request to HUD for a Restructuring Plan. Eligibility is not affected by a subsequent change in status, such as contract extension under § 401.600 or part 402 of this chapter.

■ 4. Revise 24 CFR 401.600 to read as follows:

§ 401.600 Will a section 8 contract be extended if it would expire while an owner's request for a Restructuring Plan is pending?

(a) If a section 8 contract for an eligible project would expire before a Restructuring Plan is implemented, the contract may be extended at rents not exceeding current rents:

(1) For up to the earlier of one year or closing on the Restructuring Plan under § 401.407; or

(2) For such period of time beyond one year as HUD may approve, up to the closing of the Restructuring Plan.

(b) Any extension of the contract beyond one year for a pending Restructuring Plan, other than an extension approved under this section, must be at comparable market rents or exception rents. An extension at comparable market rents will not affect a project's eligibility for the Mark-to-Market program once it has been established under this part.

(c) HUD may terminate the contract earlier if the PAE or HUD determines that an owner is not cooperative under § 401.402 or if the owner's request is rejected under § 401.403 or § 401.405.

PART 402—SECTION 8 PROJECT-BASED CONTRACT RENEWAL UNDER SECTION 524 OF MAHRA

■ 5. The heading to part 402 is revised to read as set forth above.

■ 6–7. The authority citation for part 402 is revised to read as follows:

Authority: 42 U.S.C. 1437(c)(8), 1437f note, and 3535(d).

■ 8. Revise § 402.1 to read as follows:

§ 402.1 What is the purpose of part 402?

This part sets out the terms and conditions under which HUD will renew project-based assistance contracts under the authority provided in section 524 of MAHRA.

■ 9. Revise § 402.2 to read as follows:

§ 402.2 Definitions.

(a) *Terms defined in part 401.* In this part, the following terms have the meanings given in § 401.2 of this chapter: affiliate, disabled family, elderly family, eligible project, HUD, MAHRA, owner, PAE, Restructuring Plan, and section 8.

(b) *Terms defined in MAHRA.* In this part, the following terms have the meanings given in section 512 of MAHRA: expiration date, fair market rent, renewal, and tenant-based assistance.

(c) *Other defined terms.* In this part, the term—

Comparable market rents means rents determined in accordance with section 524(a)(5) of MAHRA and HUD's instructions.

Large family means a family of five or more persons.

OCAF means an operating cost adjustment factor established by HUD, which may not be negative, that is applied to the existing contract rent (less the portion of that rent paid for debt service).

Portfolio Reengineering demonstration authority means the authority specified in section 524(e)(2)(B) of MAHRA.

Project-based assistance means the types of assistance listed in section 512(2)(B) of MAHRA, or a project-based assistance contract under the Section 8 program renewed under section 524 of MAHRA.

Project eligible for exception rents means a project described in section 524(b) of MAHRA.

SRO contract and *SRO project* mean, respectively, a project-based assistance contract for single-room occupancy dwellings under section 441 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11401), and a project with units covered by such a contract.

■ 10. Revise § 402.3 to read as follows:

§ 402.3 Contract provisions.

The renewal HAP contract shall be construed and administered in accordance with all statutory requirements, and with all HUD regulations and other requirements, including changes in HUD regulations and other requirements during the term of the renewal HAP contract, unless the contract provides otherwise.

■ 11. Amend § 402.4 by revising paragraph (a)(2) to read as follows:

§ 402.4 Contract renewals under section 524(a) of MAHRA.

(a) * * *

(2) *Procedure for projects eligible for Restructuring Plan.* (i) If an owner

requests renewal of a contract under this section for a project that is eligible for a Restructuring Plan under the Mark-to-Market program under part 401 and that has not been rejected under that part, HUD or a PAE will determine whether renewal under this section, instead of through a Restructuring Plan under part 401 of this chapter, would be sufficient. Renewal without a Restructuring Plan will be considered sufficient if the rents after renewal would be sufficient to maintain both adequate debt service coverage on the HUD-insured or HUD-held mortgage and necessary replacement reserves to ensure the long-term physical integrity of the project, taking into account any comments received under § 401.502(c) of this chapter.

(ii) If HUD or the PAE determines that renewal under this section would be sufficient, HUD will not require a Restructuring Plan.

(iii) If HUD or the PAE determines that renewal under this section would not be sufficient, HUD or the PAE may require a Restructuring Plan before the owner's request for contract renewal will be given further consideration. If the owner does not cooperate in the development of an acceptable Restructuring Plan, HUD will pursue whatever administrative actions it considers necessary.

* * * * *

■ 12. Revise § 402.5 to read as follows:

§ 402.5 Contract renewals under section 524(b) or (e) of MAHRA.

(a) *Renewal of projects eligible for exception rents at owner's request.* HUD will offer to renew project-based assistance for a project eligible for exception rents under section 524(b) of MAHRA at rent levels determined under this section instead of § 402.4, except as provided in § 402.7, but the owner of a project other than a project with assistance under the Section 8 moderate rehabilitation program may request renewal under § 402.4.

(b) *Rent levels for projects eligible for exception rents.* HUD will renew the contract with rent levels at the least of:

(1) Existing rents adjusted by an OCAF;

(2) A budget-based rent determined in accordance with instructions issued by HUD, subject to a determination by HUD that such a rent level is appropriate; or

(3) In the case of a contract under the Section 8 moderate rehabilitation program (other than an SRO contract), the lesser of existing rents adjusted by an OCAF, fair market rents (less any amounts for tenant-purchased utilities), or comparable market rents, as provided in section 524(b)(3) of MAHRA.

(c) *Rent adjustments.* (1) After rents have been established under this section, rent adjustments will comply with section 524(c) of MAHRA except as otherwise required by paragraph (d)(1) of this section for preservation projects.

(2) Rent adjustments for projects assisted under the Section 8 moderate rehabilitation program, other than projects assisted under the moderate rehabilitation single-room occupancy program, shall be determined in accordance with section 524(b)(3) of MAHRA.

(d) *Preservation projects and demonstration projects.* (1) Notwithstanding any other provision of this part except § 402.7, upon expiration of a section 8 contract for a project subject to an approved plan of action under the Emergency Low-Income Housing Preservation Act of 1987 (ELIHPA) or the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA), the Secretary will provide benefits that are comparable to those provided under such plan of action. This paragraph (d)(1) applies only to the extent amounts are specifically made available in appropriations acts.

(2) Notwithstanding any other provision of this part except § 402.7, upon expiration of a Section 8 contract entered into pursuant to a Portfolio Reengineering demonstration authority for which HUD made a determination that debt restructuring is inappropriate, and the owner of the project executed a Portfolio Reengineering Demonstration Program Use Agreement, the Secretary will provide the owner, at the request of the owner, with benefits comparable to those provided under the contract that is expiring. This paragraph (d)(2) applies only to the extent amounts are made available in appropriations acts.

■ 13. Revise § 402.6 to read as follows:

§ 402.6 What actions must an owner take to request section 8 contract renewal under this part?

(a) *In general.* An owner requesting contract renewal under this part must submit to HUD or HUD's designee, at least 120 days before the termination or expiration date of any project-based assistance contract, all documents or information prescribed by HUD.

(b) *Subsequent renewals.* A contract that was initially renewed under MAHRA will be renewed at the owner's request under any renewal option for which the project is eligible. However, in the case of a project that is eligible for a Restructuring Plan under § 401.100, HUD or a PAE will determine whether renewal with a Restructuring Plan under part 401, or without a Restructuring Plan under this part, is necessary.

■ 14. Revise § 402.7 to read as follows:

§ 402.7 Refusal to consider an owner's request for a Section 8 contract renewal because of actions or omissions of owner or affiliate.

(a) *Determination of eligibility.* Notwithstanding part 24 of this title, HUD may elect not to consider a request for renewal of project-based assistance if at any time before contract renewal:

(1) The owner or an affiliate is debarred or suspended under part 24 of this title;

(2) HUD determines that the owner or an affiliate has engaged in material adverse financial or managerial actions or omissions as described in section 516 of MAHRA, including any outstanding violations of civil rights laws, or has failed to certify to compliance with the nondiscrimination requirements of 24 CFR 5.105(a), in connection with any project of the owner or an affiliate; or

(3) The project does not meet the physical condition standards in 24 CFR 5.703 of this title, unless HUD determines that the project will meet the standards within a reasonable time after renewal.

(b) *Dispute and appeal.* An owner may dispute a rejection under this section and seek administrative review under the procedures in subpart F of part 401 of this chapter.

■ 15. Revise § 402.8 to read as follows:

§ 402.8 Tenant protections if a contract is not renewed.

(a) *Notice of termination.* An owner who is not eligible for a Restructuring Plan under part 401 of this chapter, or who is eligible but does not request restructuring, and who does not renew a contract, must provide one year's notice to tenants, to HUD, and to the contract administrator as provided in section 8(c)(8)(A) of the United States Housing Act of 1937.

(b) *If an owner does not give timely notice.* If an owner does not give one year's notice of termination as described in paragraph (a) of this section, the owner must permit the tenants in assisted units to remain in their units at a rental rate no higher than the tenant rent payable for the tenants' last month of assisted occupancy under the terminated HAP contract until one year after notice is given, even if HUD does not continue to make housing assistance payments with respect to such units.

(c) *If an owner opts out or fails to renew.* In the case where a contract for Section 8 rental assistance for a project

is terminated or expires, an assisted family may elect to remain in the project and, if eligible, receive tenant-based Section 8 assistance under Section 8(t) of the United States Housing Act of 1937.

■ 16. Add 24 CFR 402.9 to read as follows:

§ 402.9 Waivers and delegations of waiver authority.

All waivers of provisions of this part, and delegations of the authority to waive provisions of this part, are governed by § 5.110 of this title.

Dated: December 16, 2005.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 06–288 Filed 1–11–06; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Thursday,
January 12, 2006

Part III

Department of Housing and Urban Development

24 CFR Parts 401 and 402

Renewal of Expiring Section 8 Project-Based Assistance Contracts; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 401 and 402

[Docket No. FR–4551–P–02; HUD–2006–0001]

RIN 2502–AI35

Renewal of Expiring Section 8 Project-Based Assistance Contracts

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise current HUD regulations that govern the renewal of expiring Section 8 project-based assistance contracts. Specifically, the proposed rule would amend the regulations to include tenant protections in the case of a contract that is not renewed, and establish rent levels when an expiring contract is renewed. Certain other changes to these regulations are being made by a final rule, also published in today's **Federal Register**.

DATES: *Comments Due Date:* March 13, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Interested persons may also submit comments electronically through the HUD electronic Web site at: *www.regulations.gov*. Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Copies are also available for inspection and downloading at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grants Administration, Department of Housing and Urban Development, 451 Seventh St. SW., Washington, DC 20410–8000, telephone 202–708–3000. (This not a toll-free number.) For hearing- and speech-impaired persons, this number may be accessed through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On September 11, 1998, HUD published an interim rule (63 FR 48926) that implemented certain provisions of the Multifamily Assisted Housing Reform and Affordability Act (42 U.S.C. 1437f note) (MAHRA). The September 11, 1998, interim rule established a new 24 CFR part 401, entitled ''Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark-to-Market),'' and a new 24 CFR part 402, entitled ''Project-Based Section 8 Contract Renewal without Restructuring (Under Section 524(a) of MAHRA).'' Part 402 implemented section 524 of MAHRA, which relates to Section 8 contract renewals, and part 401 implemented the other portions of MAHRA, which involve mortgage restructuring in HUD-assisted projects with expiring assistance contracts.

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for Fiscal Year 1999 (Pub. L. 105–276, approved October 21, 1998) revised section 524(a)(2) of MAHRA to make renewal of expiring contracts under that section subject to section 516 of MAHRA. Section 516 of MAHRA provides discretionary authority to prohibit mortgage restructuring and consideration of requests for contract renewals in cases where the project owner commits certain bad acts or omissions. The Departments of Veterans Affairs, Housing and Urban Development, and Independent Agencies Appropriations Act for Fiscal Year 2000 (Pub. L. 106–74, approved October 20, 1999) (the FY 2000 Appropriations Act) extensively revised section 524 of MAHRA. Among other changes, the FY 2000 Appropriations Act revised the method for calculating rents when an expiring or terminating Section 8 contract is renewed, and requires reduction to comparable market rents for certain projects that, prior to expiration or termination, had rents that exceeded such comparable market rents. The FY 2000 Appropriations Act also revised the language in Section 8 of the U.S. Housing Act of 1937 (the Section 8 statute) regarding the notice that the owner must provide to tenants in the event of termination of a contract for project-based assistance (see 42 U.S.C. 1437f(c)(8)(A)). The Section 8 statute, as revised, requires the notice to include a statement that, if Congress provides funds, the owner and HUD may agree to renew the contract to avoid termination. The notice must also provide that in the event of termination, HUD will provide tenant-based assistance to eligible tenants, enabling them to choose the place they wish to rent, which is likely to include the unit in which they currently reside.

On March 22, 2000, HUD published its final rule on 24 CFR part 401, and sections of 24 CFR part 402 (65 FR 15485) (the 2000 final rule). The sections of 24 CFR part 402 that were made final are § 402.1, a statement of the purpose of part 402; § 402.4, related to renewals of expiring section 8 project-based assistance contracts and incorporating many of the statutory changes to section 524 of MAHRA; and one paragraph of § 402.6, which states the actions a project owner must take to request Section 8 contract renewal. With respect to § 402.4(a)(2), the preamble to the 2000 final rule stated, ''when the complete part 402 is published in final form, HUD will make any further changes to § 402.4(a)(2) that are needed to reflect HUD's final resolution of the comments on this section.'' At the time of publication of the 2000 final rule, the public was provided notice that further changes based on public comments to § 402.4(a)(2) would be addressed in a future rule. This proposed rule also advises of other changes to other provisions of § 402.4, which were not contemplated at the time of the 2000, final rule.

HUD is also publishing in today's **Federal Register** a final rule based on the interim rule of 1998 and that addresses the public comments received in response to the interim rule. The final rule being published today revises 24 CFR 401.2 to reference that the definition of ''eligible project'' is addressed in § 401.100. The final rule also revises 24 CFR 401.600 to permit HUD to grant extensions of a contract for Section 8 assistance for longer than one year at current rents in the case of a project for which a Restructuring Plan has not yet been implemented. This change removes the need for case-by-case waivers, and is therefore less administratively burdensome.

II. This Proposed Rule

In this rule, HUD is proposing additional changes to implement recent statutory changes regarding the renewal of expiring Section 8 project-based assistance contracts, and to provide clarification of certain existing regulations. The proposed would amend §§ 401.602 and 402.4 as follows:

A. Section 401.602

This proposed rule would revise 24 CFR 401.602 with respect to the provisions regarding notices to be provided by the project owner. Section

401.602(a) (i) requires the owner to give the notice required under Section 8(c)(8) of the United States Housing Act of 1937. The notice required by Section 8(c)(8) pertains to termination of a Section 8 contract. The FY 2000 Appropriations Act amended Section 8(c)(8) as discussed in Section I of this preamble. Therefore, § 401.602(a)(ii) would be revised to clarify that an owner who has given notice but who later decides not to undergo mortgage restructuring, or who is rejected for restructuring, is not required to give a new 12-month notice of a decision to opt out of the Section 8 program. Current § 401.602(a)(1)(ii) requires an owner who elects not to renew a Section 8 assistance contract to give an additional notice 120 days before the expiration of the contract. Section 401.602(a)(1)(ii) would be redesignated as § 401.602(a)(1)(iii).

Section 401.602(a)(2) would be revised to comply with statutory tenant notification requirements in the event of termination of a Section 8 contract, and would provide for a notification process similar to the one in § 402.8. Currently, § 401.602(a)(2) requires an owner whose Restructuring Plan has been rejected to give the appropriate 12-month notice under Section 8, unless project-based assistance is renewed under the provisions of 24 CFR 402.4, which implements section 524 of MAHRA. This proposed rule also would impose this obligation on an owner who is eligible for restructuring but who has not requested restructuring.

Finally, a revision would be made to § 401.602(c)(1)(i) to include the failure of the owner to extend the assistance contract as well as failure to renew, as a basis for tenants residing in the affected units to be eligible for tenant-based assistance.

B. Section 402.4

To reflect recent statutory revisions, this proposed rule would revise § 402.4 to:

- Use mandatory rather than discretionary language regarding renewals;
- Incorporate the various statutory directions on the required rent levels in different circumstances;
- Contain the statutory provisions for periodic comparison and adjustment of rents to market levels;
- Provide that budget-based adjustments will be used instead of operating cost adjustment factors (OCAF) only at the request of the owner, and will be subject to HUD approval;
- Generally refer to terminating contracts in addition to expiring contracts; and
- Clarify that renewal requests from owners of moderate rehabilitation projects entitled to exception rents will always be governed by § 402.5(c).

III. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this proposed rule are currently approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0533. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid control number.

Environmental Impact

A finding of no significant impact with respect to the environment was made regarding this rule in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). Accordingly, the initial finding of no significant impact remains applicable, and is available for public inspection between 8 a.m. and 5 p.m. weekdays in the office of the Regulations Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this rule is a ''significant regulatory action'' (but not economically significant) as defined in section 3(f) of the Order. Any changes made in this proposed rule subsequent to its submission to OMB are identified in the docket file. The docket file is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule affects only multifamily Section 8 owners. There are very few multifamily Section 8 owners who are small entities. Therefore, this rule would not affect a substantial number of small entities. Therefore, the undersigned certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Notwithstanding the determination that this rule would not have a significant impact on a substantial number of small entities, HUD specifically invites any comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This proposed rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects

24 CFR Part 401

Grant programs—Housing and Community Development, Housing, Housing assistance payments, Housing standards, Insured loans, Loan programs—Housing and community development, Low and moderate income housing, Mortgage insurance, Mortgages, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 402

Housing, Housing assistance payments, Low and moderate income housing, Rent subsidies.

The Catalogue of Federal Domestic Assistance number for the programs affected by this rule is 14.871.

For the reasons set forth in the preamble, HUD proposes to amend 24 CFR parts 401 and 402 as follows:

PART 401—MULTIFAMILY HOUSING MORTGAGE AND HOUSING ASSISTANCE RESTRUCTURING PROGRAM (MARK-TO-MARKET)

1. The authority citation for part 401 is revised to read as follows:

Authority: 12 U.S.C. 1715z–1 and 1735f–19(b); 42 U.S.C. 1437f(c)(8), 1437f(t), 1437f note, and 3535(d).

2. Revise § 401.602 to read as follows:

§ 401.602 Tenant protections if an expiring contract is not renewed.

(a) *Required notices.* (1)(i) An owner is required to give a 12-month notice of contract expiration or termination under section 8(c)(8) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(8)). This one-year notification must state whether or not the owner intends to renew at the time of the contract's expiration.

(ii) An owner is not required to give a new 12-month notice under paragraph (a)(1)(i) of this section if:

(A) The owner properly gives the one-year notice required by paragraph (a)(1)(i) of this section and elects to enter into restructuring negotiations but later voluntarily decides not to undergo restructuring; or

(B) The owner requests restructuring and the request is rejected under §§ 401.101, 401.403, 401.405, or 401.451.

(iii) Not less than 120 days before the contract expiration, any owner described in paragraph (a)(1)(ii) of this section must notify all affected tenants and HUD's local Hub, Program Center Director, or Contract Administrator (whichever is applicable) in writing of the owner's ultimate decision to renew or opt out of their Section 8 contract.

(2) The owner of a Mark-to-Market eligible project who has not requested a Restructuring Plan, or an owner who requested a Restructuring Plan but who has been rejected under §§ 401.101, 401.403, 401.405, or 401.451, must provide 12 months advance notice of the expiration of the project-based assistance under section 8(c)(8)(A) of the United States Housing Act of 1937 (or notice as otherwise provided in section 8(c)(8)(C) of such Act), unless project-based assistance is renewed under § 402.4.

(3) Notices required by paragraphs (a)(1) and (a)(2) of this section must be provided to tenants and to HUD or the contract administrator. HUD will prescribe the form of notices under paragraph (a)(3) of this section to the extent that the form is not prescribed by section 8(c)(8) of the United States Housing Act of 1937.

(b) *If owner does not give notice.* If an owner described in paragraph (a)(1) or (a)(2) of this section does not give timely notice of non-renewal or termination, the owner must permit the tenants in assisted units to remain in their units and may not increase the tenants' rent payment until the owner has provided the notice and one year has elapsed.

(c) *Availability of tenant-based assistance.* (1) Subject to the availability of amounts provided in advance in appropriations and the eligibility requirements of the tenant-based assistance program regulations, HUD will make tenant-based assistance available under the following circumstances:

(i) If the owner of an eligible project does not extend or renew the project-based assistance, any eligible tenant residing in a unit assisted under the expiring contract on the date of expiration will be eligible to receive assistance on the later of the date of expiration or the date the owner's obligations under paragraph (b) of this section expire; and

(ii) If a request for a Restructuring Plan is rejected under § 401.101, § 401.403, § 401.405, or § 401.451, and project-based assistance is not otherwise renewed, any eligible tenant who is a low-income family or who resides in a project-based assisted unit on the date of Restructuring Plan rejection will be eligible to receive assistance on the later of the date the Restructuring Plan is rejected, or the date the owner's obligations under paragraph (b) of this section expire.

(2) If the tenant was assisted under the expiring contract, assistance under this paragraph will be in the form of enhanced vouchers as provided in section 8(t) of the United States Housing Act of 1937.

PART 402—PROJECT BASED SECTION 8 CONTRACT RENEWAL WITHOUT RESTRUCTURING (UNDER SECTION 524(a) OF MAHRA)

3. The authority citation for part 402 is revised to read as follows:

Authority: 42 U.S.C. 1437f(c)(8), 1437f note and 3535(d).

4. Amend 24 CFR 402.4 as follows:

a. Revise the section heading;

b. Revise paragraph (a)(1);

c. Add paragraph (a)(3), (4), and (5); and

d. Revise paragraph (b).

§ 402.4 Contract renewals under section 524(a) of MAHRA.

(a) *Renewal.* (1) *Offer to renew.* At the request of the owner, HUD will offer to renew any expiring or terminating project-based assistance contract, except as provided in this paragraph and § 402.7. The rent level for an eligible project will be as provided in paragraphs (a)(3), (4), or (5) of this section, as applicable, except that the rent level for a project with a moderate rehabilitation contract described in section 524(b)(3) of MAHRA will always be determined under § 402.5(b)(3).

* * * * *

(3) *Marking up to market under section 524(a)(4)(A) and (D) of MAHRA.*

(i) Paragraph (a)(3) of this section applies if rent levels under the expiring or terminating contract do not exceed comparable market rents for the market area and the project meets the other requirements of section 524(a)(4)(A) of MAHRA (including any HUD adjustments to percentages in that section as authorized by that section of MAHRA).

(ii) HUD will approve rent levels at the lesser of:

(A) Comparable market rents; or

(B) 150 percent of fair market rents (or a HUD-adjusted percentage as authorized by section 524(a)(4)(A) of MAHRA).

(iii) If paragraph (a)(3)(ii) of this section would restrict rents for a project to 150 percent of fair market value (or a HUD-adjusted percentage as authorized by section 524(a)(4)(A) of MAHRA), the owner may request, and HUD may approve higher rents up to comparable market rents if the project satisfies at least one of the requirements stated in paragraph (a)(4)(ii) of this section.

(4) *Approval of rents at or below market under sections 524(a)(4)(C) of MAHRA.*

(i) If rent levels under the expiring or terminating contract do not exceed comparable market rents and the project does not meet the requirements of paragraph (a)(3) of this section, or the owner requests approval of rents higher than allowed by paragraph (a)(3), HUD will approve rent levels that:

(A) Are not less than either existing rents as adjusted by an operating cost adjustment factor (OCAF) or budget-based rents; and

(B) Are not greater than comparable market rents.

(ii) When considering approval of rent levels under paragraph (a)(4) of this section that are higher than budget-based rents, HUD will give greater consideration to approving higher rents based on the number of the following criteria that the project meets:

(A) The project has residents who are a particularly vulnerable population, as demonstrated by a high percentage of units being rented to elderly families, disabled families, or large families;

(B) The project is located in an area in which tenant-based assistance would be difficult to use, as demonstrated by a low vacancy rate for affordable housing, a high turnback rate for vouchers, or a lack of comparable rental housing; or

(C) The project is a high priority for the local community, as demonstrated by a contribution of state or local funds to the property.

(5) *Reduction of rents to market under section 524(a)(4)(B) of MAHRA.* If rent levels under the expiring or terminating contract exceed comparable market rents, HUD will approve rent levels at comparable market rents, provided that, in the case of an eligible project, HUD first determines that renewal without a Restructuring Plan is sufficient under paragraph (a)(2) of this section.

(b) *Rent adjustments.* (1) After rents have been established under this section, any rent adjustments will be determined by using an OCAF, except that rents may be re-determined using a budget-based rent adjustment from time to time at the request of the owner and subject to the approval of HUD.

(2) HUD will compare existing rents under a contract with comparable market rents at the expiration of each five-year period, and may make an additional comparison once during each five-year period. On the basis of such a comparison, HUD may reduce rents to a level no greater than comparable market rents, or increase rents to such a level.

Dated: December 16, 2005.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 06–287 Filed 1–11–06; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Thursday,
January 12, 2006

Part IV

The President

Notice of January 10, 2006—Continuation of the National Emergency Relating to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

Federal Register
Vol. 71, No. 8
Thursday, January 12, 2006

Presidential Documents

Title 3—

The President

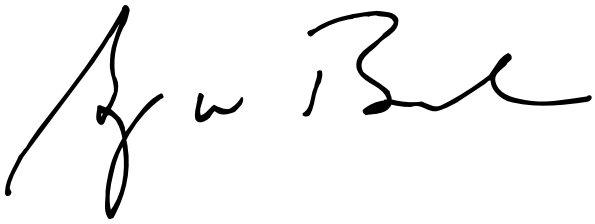
Notice of January 10, 2006

Continuation of the National Emergency Relating to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

On March 1, 1996, by Proclamation 6867, a national emergency was declared to address the disturbance or threatened disturbance of international relations caused by the February 24, 1996, destruction by the Cuban government of two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba. In July 1996 and on subsequent occasions, the Cuban government stated its intent to forcefully defend its sovereignty against any U.S.-registered vessels or aircraft that might enter Cuban territorial waters or airspace while involved in a flotilla or peaceful protest. Since these events, the Cuban government has not demonstrated that it will refrain from the future use of reckless and excessive force against U.S. vessels or aircraft that may engage in memorial activities or peaceful protest north of Cuba. On February 26, 2004, by Proclamation 7757, the scope of the national emergency was expanded in order to deny monetary and material support to the repressive Cuban government, which had taken a series of steps to destabilize relations with the United States, including threatening to abrogate the Migration Accords with the United States and to close the United States Interests Section.

Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Cuba and the emergency authority relating to the regulation of the anchorage and movement of vessels set out in Proclamation 6687, as amended and expanded by Proclamation 7757.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
Washington, January 10, 2006.

[FR Doc. 06–376
Filed 1–11–06; 11:53 am]
Billing code 3195–01–P

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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H.R. 4637/P.L. 109–168

To make certain technical corrections in amendments made by the Energy Policy Act of 2005. (Jan. 10, 2006; 119 Stat. 3580)

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