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WHEN: Tuesday, May 9, 2006
9:00 a.m.–Noon

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Proclamation 8003 of April 19, 2006**The President****National Physical Fitness and Sports Month, 2006****By the President of the United States of America****A Proclamation**

For 50 years, the President's Council on Physical Fitness and Sports has helped individuals, schools, communities, businesses, and organizations promote healthy lifestyles. During this year's National Physical Fitness and Sports Month, we celebrate the Council's 50th anniversary and underscore our Nation's strong commitment to health, physical activity, and fitness.

President Dwight D. Eisenhower founded the President's Council on Youth Fitness in 1956 to encourage America's youth to make fitness a priority. He wrote that year, "Our young people must be physically as well as mentally and spiritually prepared for American citizenship." The Council later became the President's Council on Physical Fitness and Sports, including people of all ages and abilities and promoting fitness through sports and games.

Today, the Council continues to play an important role in promoting fitness and healthy living in America. My HealthierUS Initiative provides simple steps to help citizens live longer and better lives, and millions of young people and adults have participated in the President's Challenge awards program. The Council's website, fitness.gov, has information about these programs and other ways Americans can improve their health through physical activity. By exercising regularly and maintaining healthy eating habits, individuals can feel better and reduce their risk of chronic health conditions like obesity, diabetes, heart disease, and cancer. An active lifestyle also creates opportunities for friends and family to spend time together and enjoy various forms of exercise, such as biking, hiking, and team sports. The medical benefits, increased self-confidence, and stress reduction that can come from athletic activity help contribute to a healthier, more productive Nation.

I urge children, teens, and all Americans to make time every day for exercise and to encourage family, friends, and neighbors to live healthier lives by participating in physical fitness activities. As President Kennedy said at the 1961 Youth Fitness Conference, "We do not want in the United States a nation of spectators. We want a nation of participants in the vigorous life."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 2006 as National Physical Fitness and Sports Month. I call upon the people of the United States to make daily exercise a priority. I encourage individuals, community organizations, and schools to celebrate with physical and athletic activities and to work toward the great national goal of an active, fit America.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of April, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.

A handwritten signature in black ink, appearing to read "G. W. Bush". The signature is written in a cursive, flowing style with a large initial "G" and a distinct "W".

[FR Doc. 06-3914

Filed 4-21-06; 8:49 am]

Billing code 3195-01-P

Presidential Documents

Proclamation 8004 of April 19, 2006

National Volunteer Week, 2006

By the President of the United States of America

A Proclamation

Throughout our country, volunteers make America stronger and better by reaching out to help their neighbors in need. During National Volunteer Week, we recognize the millions of individuals who dedicate their time, talents, and energy to making a difference in the lives of others and reaffirm our commitment to supporting these soldiers in the armies of compassion.

In the 1830s, a Frenchman named Alexis de Tocqueville visited our Nation and saw that the secret to America's success was our talent for bringing people together for the common good and our willingness to serve a cause greater than self. Today, the great strength of America is still found in the hearts and souls of our people. By making a commitment to service, integrity, and good citizenship, our Nation's volunteers show their gratitude for the blessings of freedom and help build a more hopeful future for our children and grandchildren.

Since we created USA Freedom Corps in 2002, my Administration has matched millions of willing volunteers with opportunities to serve in their communities. These kind-hearted individuals help people who hurt, mentor children who need love, feed those who are hungry, and shelter those who need homes. In the aftermath of the devastating hurricanes of 2005, people throughout our great Nation opened their hearts to help the Gulf Coast recover and rebuild. We will continue to foster the efforts of the millions who care deeply about the future of our country and the plight of their fellow citizens. Americans can find more information about volunteer service opportunities in their own hometowns by visiting the USA Freedom Corps website at volunteer.gov.

Our Nation is a force for freedom and prosperity, and our greatness is measured by our character and how we treat one another. During National Volunteer Week, and throughout the year, we appreciate the millions of volunteers across America and strive to be a more compassionate and decent society.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 23 through April 29, 2006, as National Volunteer Week. I call upon all Americans to recognize and celebrate the important work that volunteers do every day throughout our country. I also encourage citizens to explore ways to help their neighbors in need and serve a cause greater than themselves.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of April, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.

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[FR Doc. 06-3915

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Rules and Regulations

Federal Register

Vol. 71, No. 78

Monday, April 24, 2006

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

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 05–012F; FDMS No. FSIS–2005–0034]

RIN 0583–AD20

Addition of the People's Republic of China to the List of Countries Eligible To Export Processed Poultry Products to the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is adding the People's Republic of China to the list of countries eligible to export processed poultry products to the United States. Reviews of the People's Republic of China's laws, regulations, and other materials show that its poultry processing system includes requirements equivalent to the provisions of the Poultry Products Inspection Act (PPIA) and its implementing regulations.

Processed poultry products from the People's Republic of China may be imported into the United States only if they are processed in certified establishments in the People's Republic of China from poultry slaughtered in certified slaughter establishments in other countries eligible to export poultry to the United States. China is not currently eligible to export poultry products to the United States that include birds that were slaughtered in China's domestic establishments. All poultry products exported from China must comply with all other U.S. requirements, including the restrictions under the Animal and Plant Health Inspection Service (APHIS). All poultry products exported from the People's

Republic of China to the United States will be subject to reinspection at the U.S. ports of entry by FSIS inspectors as required by law.

DATES: *Effective Date:* May 24, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Sally White, Director, International Equivalence Staff, Office of International Affairs; (202) 720–6400.

SUPPLEMENTARY INFORMATION:

Background

On November 23, 2005, FSIS proposed to amend the Federal poultry products inspection regulations to add the People's Republic of China to the list of countries eligible to export processed poultry products to the United States (70 FR 70746). As discussed in that proposed rulemaking, in response to a request from the People's Republic of China for approval to export processed poultry products to the United States, FSIS conducted a review of the People's Republic of China's poultry processing inspection system to determine if it was equivalent to the U.S. poultry inspection system. Although the People's Republic of China requested approval to export processed poultry products, it will initially only export fully cooked, shelf-stable product (*see* 70 FR at 70747). FSIS evaluated the People's Republic of China's poultry inspection laws and regulations and compared them with U.S. requirements. FSIS concluded that the requirements contained in the People's Republic of China's poultry inspection laws and regulations are equivalent to those mandated by the PPIA and implementing regulations. FSIS also conducted an on-site review of the People's Republic of China's poultry processing inspection system in operation. The FSIS review team concluded that the People's Republic of China's implementation of poultry processing standards and procedures is equivalent to that of the United States. The full report on the audit of the People's Republic of China poultry inspection system can be found on the FSIS Web site at http://www.fsis.usda.gov/regulations/foreign_audit_reports/index.asp.

Listing the People's Republic of China as eligible to export poultry products to the United States would expand international markets and enhance the free flow of trade with the People's Republic of China. This rule is

consistent with U.S. obligations under the WTO and will support U.S. trade initiatives and USDA's policy with respect to agricultural trade with the People's Republic of China. Under the World Trade Organization Agreement on the Application of Sanitary and Phyto-Sanitary Measures, FSIS makes equivalence determinations of the inspection systems of foreign countries that have requested to import meat, poultry, or egg products into the United States.

As a country eligible to export processed poultry products to the United States, the government of the People's Republic of China will certify to FSIS those establishments wishing to export such products to the U.S. and operating according to U.S. requirements. FSIS will retain the right to verify that establishments certified by the government of the People's Republic of China government are meeting the U.S. requirements. This will be done through on-site reviews of the establishments while they are in operation.

Products from a country eligible to export poultry products must also comply with all other U.S. requirements, including those of the U.S. Customs and Border Protection and the restrictions under Title 9, part 94 of the (APHIS) regulations that relate to the importation of poultry and poultry products from foreign countries into the United States. APHIS has classified China as a region where the highly pathogenic avian influenza (HPAI) subtype H5N1 is considered to exist (9 CFR 94.6(d)). Those products that APHIS has restricted from entering the United States because of animal disease conditions in the country of origin will be refused entry before reaching an FSIS import inspection facility. FSIS and APHIS work closely to ensure that poultry and poultry products imported into the United States comply with the regulatory requirements of both agencies. APHIS and FSIS communicate regularly to ensure that the products APHIS has restricted from entering the United States because of animal disease concerns are not imported into the United States.

Response to Comments

FSIS received 34 comments in response to the proposed rule. Commenters included individual U.S.

citizens, the U.S. poultry industry, the South Dakota Department of Agriculture, and the South Dakota Animal Industry Board. FSIS also received a comment from the China Chamber of Commerce for Import/Export of Food Stuffs, Native Produce and Animal By-Products, and comments from individuals from the People's Republic of China and from the Chinese food industry.

In addition, the Department of Agriculture received 5 letters from members of Congress opposed to the rule. The Department also received 6 letters from members of Congress that forwarded letters from their constituents concerning the proposal.

The China Chamber of Commerce for Import/Export of Food Stuffs, Native Produce and Animal By-Products and other comments from individuals and food industry representatives from the People's Republic of China supported the proposed rule. All other commenters opposed adding the People's Republic of China to the list of countries eligible to export processed poultry products to the United States.

Comment: Most commenters opposed to the rule stated that China should not be added to the list of countries eligible to export processed poultry and poultry products to the United States because of outbreaks of the infectious H5N1 strain of avian influenza in the country's poultry.

Response: USDA has determined that this rule will not adversely affect human health. FSIS is relying on a systematic equivalence determination of the poultry processing system in China to ensure the processing procedures in place in China are adequate to destroy the avian influenza virus in the preparation of shelf-stable, fully cooked poultry products.

Additionally, USDA has determined this rule will not adversely affect animal health. APHIS is the USDA Agency primarily responsible for preventing the introduction and dissemination of foreign animal diseases into the United States. Under Title 9, part 94 of its regulations (9 CFR 94), APHIS sets restrictions on the importation of certain fresh, frozen, and chilled poultry, poultry products, and edible products from countries in which certain animal diseases exist. APHIS has classified China as a region where the highly pathogenic avian influenza (HPAI) subtype H5N1 is considered to exist (9 CFR 94.6(d)). In addition, the United States Department of Health and Human Service, Centers for Disease Control and Prevention, restricts the entry of birds and unprocessed bird products from China because of concerns over the

human health risks these items may pose (42 CFR 71.32(b), emergency order dated February 4, 2004). Even if a foreign country is listed in FSIS regulations as eligible to export poultry products, those poultry products must also comply with all other applicable U.S. requirements. Before a shipment of processed poultry or poultry products may be presented for reinspection at the port of entry by FSIS, it must have first met the requirements for both U.S. Customs and Border Protection and APHIS. Therefore, because APHIS has classified China as a region where the highly pathogenic avian influenza (HPAI) subtype H5N1 is considered to exist (9 CFR 94.6(d)), APHIS has restricted the importation of fresh, frozen, and chilled poultry, and poultry products to protect animal health in the United States. China's slaughter establishments have not at this time been determined equivalent for the slaughtering of poultry intended to be processed in China as shelf-stable, fully cooked poultry.

Comment: Commenters opposed to the rule questioned how FSIS will ensure that poultry products processed in China for export to the United States will contain no poultry that was raised or slaughtered in China. Similarly, several commenters questioned whether FSIS can be certain that poultry plants in China are consistently cooking their products sufficiently to kill the avian influenza virus, that no improperly cooked poultry products will be shipped to the U.S., and that adequate safety measures are in place to guarantee that poultry sent to China for processing would be safe for consumption in the U.S. A commenter stated that annual inspections will do very little to make certain that Chinese plants meet U.S. requirements for exporting their product to the U.S. One commenter was concerned that shipping containers could contain microbes that should not be transferred into the U.S.

Response: Under FSIS' regulations, maintenance of eligibility of a country for importation of poultry products into the United States depends on the results of FSIS' periodic reviews (audits) of the foreign poultry inspection system in operation, and the timely submission of such documents and other information related to the conduct of the foreign inspection system as FSIS may find pertinent to and necessary for the determinations concerning a foreign country's eligibility (§ 381.196(a)(2)(iii)). These are standard procedures that FSIS carries out for all countries for continuing evaluation of equivalence. These are similar to the procedures used by other countries in evaluating foreign

systems for equivalency and continuing eligibility. The process inherently has the ability to adjust verification scope and frequency based on findings.

Equivalency requirements for the sanitary handling of product must be maintained to ensure that product is protected during processing, handling, storage, loading and unloading, at and during transportation from official establishments.

Under the regulations, only those establishments that an official of the People's Republic of China's poultry inspection system certifies as fully complying with requirements equivalent to the provisions of the PPIA and the regulations issued thereunder will be eligible to have their products imported to the United States. The People's Republic of China will be required to renew these certifications annually (§ 381.196(a)(3)). China has agreed that it will require, and have procedures in place to ensure, that there is separation by time or space of product destined for export to the United States separate from product intended for distribution domestically. Appropriate records will be available for audit by U.S. officials.

During FSIS' audits of certified establishments in the People's Republic of China, FSIS will review records, including supplier sheets and import and export records, to determine the origin of incoming poultry product received for further processing and the final destination of the product. Through these audits, FSIS will verify that any poultry product received for further processing in a certified establishment and ultimately exported to the U.S. was derived from poultry slaughtered in certified slaughter establishments in other countries eligible to export poultry to the United States.

The regulations also require that a foreign inspection system, such as that in the People's Republic of China, maintains a program to assure that the requirements equivalent to those in the U.S. are met. To assure that these requirements are being met, the regulations require that a representative of the foreign inspection system periodically visit each establishment certified as complying with requirements equivalent to those of the PPIA and implementing regulations. The regulations also require that this representative prepare written reports documenting findings concerning requirements equivalent to those of the poultry inspection system in the United States (§ 381.196(a)(2)(iv)). FSIS will evaluate these reports during audits.

Furthermore, each consignment containing any slaughtered poultry or other poultry product consigned to the United States from a foreign country, such as the People's Republic of China, must be accompanied with a foreign inspection certificate that certifies that the products are sound, healthful, wholesome, clean and otherwise fit for human food; are not adulterated and have not been treated with and do not contain any dye, chemical, preservative, or ingredient not permitted by FSIS' regulations; that the poultry products have been handled only in a sanitary manner in the foreign country; and are otherwise in compliance with requirements at least equal to those in the PPIA and FSIS' regulations (§ 381.197). Thus, a representative of the Chinese government must certify that the product is not adulterated and has undergone adequate cooking and processing.

In addition to relying on its initial determination of a country's eligibility and performing ongoing reviews to ensure that products shipped to the U.S. are safe, wholesome and properly labeled and packaged, all poultry products exported to the United States from the People's Republic of China will be subject to reinspection at the ports of entry for transportation damage, labeling, proper certification, general condition, and accurate count. Other types of inspection will also be conducted, including examining the product for defects and performing laboratory analyses that will detect chemical residues on the product or determine whether the product is microbiologically contaminated.

Products that pass reinspection will be stamped with the official mark of inspection and allowed to enter U.S. commerce. If they do not meet U.S. requirements, they will be "Refused Entry" and must be re-exported, destroyed or converted to animal food.

Comment: One commenter questioned whether FSIS will visit each Chinese plant annually. This same commenter stated that the USDA's Office of Inspector General (OIG) found that problems identified by FSIS in Canada's meat and poultry inspection system went uncorrected for two years or more. Another commenter stated that an initial FSIS equivalence audit of the People's Republic of China revealed numerous serious deficiencies involving sanitation, cross contamination, and complete failure to understand FSIS' requirements.

Response: The final report regarding FSIS' audit of the People's Republic of China is found at <http://www.fsis.usda.gov/regulations/>

foreign_audit_reports/index.asp. This report highlights that the predominance of deficiencies were in slaughter facilities. However, this rule addresses the segment of the industry that is responsible for further processing of poultry. The few deficiencies that were identified in further processing were corrected by China and detailed corrective action plans were submitted by the Chinese government to FSIS. Regarding the violations that were found in the slaughter plants, the Chinese government continues to work with FSIS. Therefore, no equivalency determination has been made at this time for the slaughter segment of the system. The final report does indicate that the People's Republic of China's implementation of poultry processing standards and procedures for fully cooked, shelf stable processed poultry products are equivalent to those of the United States. The OIG findings concerning Canada's meat and poultry inspection system are not related to FSIS' audits of the People's Republic of China.

During audits of the People's Republic of China's inspection system, FSIS will conduct at least annual random audits of the establishments certified by the People's Republic of China as complying with requirements equivalent to those in the PPIA and implementing regulations. While every establishment may not be visited annually, FSIS will conduct audits of one or more establishments annually or when deemed necessary. FSIS determines which establishments to visit based on performance history from re-inspection at import, audit history, information from other Federal agencies, and number of certified establishments.

Comment: Several commenters expressed concerns regarding reports of illegal smuggling of poultry products from China and other areas affected by avian flu.

Response: This rule is not expected to have any impact on illegal entry of products. The U.S. Customs and Border Protection, rather than FSIS, addresses smuggling. U.S. Customs and Border Protection works closely with FSIS on identifying illegal entry products and other ineligible products. Additionally, U.S. Customs and Border Protection serves as a first line of defense for all products entering the country. Products are first presented to U.S. Customs and Border Protection and if products are found to contain amenable product, FSIS is notified as appropriate.

Comment: Numerous commenters objected to the rule for economic reasons. Commenters stated that the

public perception of poultry imports from China and other Asian countries has been extremely negative and that the rule could undermine U.S. consumers' confidence in poultry products. Several commenters stated that the proposal could negatively affect the U.S. poultry industry, particularly the smaller sectors of the U.S. poultry industry, such as duck, goose, and squab. According to these commenters, low grade Chinese products are produced at a fraction of the price of U.S. products because of lower wages and benefits. Some commenters stated that FSIS underestimated the volume of product that would be imported into the U.S. from the People's Republic of China.

One commenter that supported the rule stated that the benefits outlined in the proposal have been severely understated. This commenter opined that the rule would bring about greater competition and efficiency within the industry and lower prices for consumers.

Response: Import quotas cannot be established to limit the potential economic impacts speculated upon by certain of the commenters. Economic and market realities, however, make it very unlikely that substantially larger amounts of processed poultry product than those estimated in the preliminary analysis would be available for the People's Republic of China to export to the U.S. The People's Republic of China's internal market is experiencing a major growth in demand for poultry that is unlikely to abate for some time. The main prospective growth area for the People's Republic of China's agricultural exports is East Asia rather than North America. Energy costs, predicted to rise steadily in the foreseeable future, would also limit the economic capability of the People's Republic of China to export significant amounts of processed poultry product to the U.S. However, in response to comments that stated that the preliminary analysis underestimated the volume of product that would be imported from the People's Republic of China, FSIS estimated a range for the volume of fully cooked, shelf-stable poultry product that would be imported into the U.S. from the People's Republic of China. In the final analysis, FSIS estimates that the volume of imported poultry product from China would range from 2,500,000 pounds (1,134 metric tons) to 6,250,000 pounds (2,835 metric tons) per year, for the next four years. Then, the growth would likely level off. The annual volume of imported poultry product from China would range from approximately 0.007

percent to 0.018 percent of the total poultry products production in the U.S. Although U.S. firms that produce products such as duck and geese products may compete with the People's Republic of China's imports and could conceivably face short-run difficulty, such firms will likely adjust their product mix and be able to compete effectively.

FSIS does not believe that this rule will adversely affect the U.S. poultry industry, because the volume of trade that results from this rule will likely be small and have little effect on supply and prices or on U.S. consumers' confidence in poultry products. In addition, consumers will not be required to purchase poultry products produced and processed in the People's Republic of China.

FSIS does not believe that it underestimated the benefits in the preliminary analysis. The preliminary and final analyses recognize that the any significant effects of the rule will come through efficiency gains.

Comment: One commenter stated that the proposed rule was not disclosed to the public. Another commenter stated that the proposal was not given the public exposure that it warranted.

Response: The proposed rule was published in the **Federal Register**. In addition, FSIS made the proposed rule available on its Web site. FSIS also made copies of the proposal available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, and regulations that could affect or would be of interest to FSIS' constituents and stakeholders.

Comment: One commenter was opposed to allowing any foreign country to process food products for the U.S., several commenters recommended requiring country of origin labeling, and one comment stated that Chinese companies that do business with the

U.S. should practice humane handling of poultry.

Response: These comments were beyond the scope of this regulation. They are not being addressed in the regulation, but the Agency appreciates the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule was reviewed by the Office of Management and Budget under Executive Order 12866 and was determined to be significant.

There are 10 to 25 establishments (based on recent information from the U.S. Embassy in Beijing, China) in the People's Republic of China that may be exporting product to the U.S. when this rule is effective. The establishments will export shelf-stable, fully cooked poultry products. U.S. imports from these establishments are expected to total 2,500,000 pounds (1,134 metric tons) to 6,250,000 pounds (2,835 metric tons) per year, for the next four years. Then, the growth would likely level off. In 2005, the U.S. produced about 35,365,000,000 pounds (16,041,459 metric tons) of poultry products. Thus, the annual volume of imported poultry product from China would range from 0.007 percent (1,134.0 metric tons/16,041,459 metric tons) to 0.018 percent (2,835 metric tons/16,041,459 metric tons) of the poultry products production in the U.S.

U.S. firms export large amounts of poultry and poultry products to the People's Republic of China. Table A reflects U.S. exports of poultry and poultry products to the People's Republic of China for the years 1998–2003.

This final rule will facilitate trade between the U.S. and the People's Republic of China in poultry products in a manner consistent with U.S. obligations under the WTO, which will result in benefits. U.S. consumers will

not be required to purchase poultry products produced and processed in the People's Republic of China, although they may choose to do so. Expected benefits from this type of rule will theoretically accrue to consumers in the form of lower prices. The volume of trade stimulated by this rule, however, will likely be so small as to have little effect on supply and prices. Consumers, apart from any change in prices, will also benefit from increased choices in the marketplace.

The costs of this rule will theoretically accrue to producers in the form of greater competition from the People's Republic of China. Again, it must be noted that the volume of trade stimulated by this rule will likely be small and have little effect on supply and prices. Nonetheless, it is possible that U.S. firms that produce products, such as duck and geese products, that will compete with the People's Republic of China imports could face increased competition. However, in the long run, such firms will likely adjust their product mix and be able to compete effectively.

Any significant benefits of this rule will likely come through efficiency gains and potentially greater choice of products for consumers. FSIS reviewed the costs and benefits of the rule and determined that benefits will outweigh costs. The rule will not affect the safety of poultry products consumed in the U.S. Products will only be imported from the People's Republic of China if the People's Republic of China establishments can produce the products more efficiently than their U.S. counterparts. Then, U.S. firms will have the incentive to specialize in the production of products in which they are relatively more efficient. In the long run, this improved efficiency will make U.S. producers more competitive both domestically and internationally.

TABLE A.—U.S. EXPORTS OF POULTRY PRODUCTS TO THE PEOPLE'S REPUBLIC OF CHINA, 1998–2003

[Data shown in metric tons]

Product	1998	1999	2000	2001	2002	2003
Poultry Meats	41493.0	61948.9	64787.2	62413.8	86871.4	136494.9
Chickens, Fresh/Frozen	39007.7	58762.5	61181.2	48786.6	70670.3	129617.8
Poultry, Misc	18391.9	15603.1	16204.1	19110.2	13962.8	47911.3
Poultry Meats, Prep	46.6	1518.1	1860.9	8562.6	8831.4	3796.6
Turkeys, Fresh/Frozen	2437.5	1624.7	1624.0	4764.1	6986.2	2236.6
Other Poultry Fresh/Frozen	1.2	43.6	121.2	300.4	383.5	843.9

The data in Table A have been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.

Effect on Small Entities

The Administrator, FSIS, has determined that this final 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). This rule would add the People's Republic of China to the list of countries eligible to export

poultry products into the United States. Once the People's Republic of China begins to export poultry products into the United States, the volume of shelf-stable, fully cooked poultry products available in the U.S. market will likely increase by approximately 2,500,000 pounds (1,134.0 metric tons) to 6,250,000 pounds (2,835 metric tons) per year. However, this small volume of trade is unlikely to impact the supply and prices of these products. Therefore, this rule should have no significant impact on small entities that produce these types of products domestically.

Paperwork Requirements

No new paperwork requirements are associated with this final rule. Foreign countries wanting to export poultry products to the United States are required to provide information to FSIS certifying that its inspection system provides standards equivalent to those of the United States and that the legal authority for the system and its implementing regulations are equivalent to those of the United States before they may start exporting such product to the United States. FSIS collects this information one time only. FSIS gave the People's Republic of China questionnaires asking for detailed information about the country's inspection practices and procedures to assist the country in organizing its materials. This information collection was approved under OMB number 0583-0094. The rule contains no other paperwork requirements.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. When this final rule is adopted: (1) All state and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that this final 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/regulations_&_policies/2006_Interim_&_Final_Rules_Index/index.asp.

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 e-mail subscription service that provides automatic and customized access to selected food safety news and information. This service is available at http://www.fsis.usda.gov/news_and_events/email_subscription/. 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.

List of Subjects 9 CFR Part 381

Imports, Intergovernmental relations, Poultry and poultry products.

■ For the reasons set out in the preamble, FSIS is amending 9 CFR part 381 as follows:

PART 381—IMPORTED POULTRY PRODUCTS

■ 1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

§ 381.196 [Amended]

■ 2. Section 381.196 is amended by adding “People's Republic of China” in alphabetical order to the list of countries in paragraph (b).

Done at Washington, DC, on: April 20, 2006.

Barbara J. Masters,
Administrator.

[FR Doc. 06–3889 Filed 4–20–06; 10:16 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23713; Airspace
Docket No. 06–AAL–06]

Revision of Class E Airspace; Togiak Village, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action revises Class E airspace at Togiak Village, AK to provide adequate controlled airspace to contain aircraft executing two new and two amended Standard Instrument Approach Procedures (SIAPs). This rule results in revised Class E airspace established upward from 700 feet (ft.) above the surface at Togiak Village, AK. **EFFECTIVE DATE:** 0901 UTC, August 3, 2006.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: gary.ctr.rolf@faa.gov. Internet address: <http://www.alaska.faa.gov/at>.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, February 15, 2006, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from 700 ft. above the surface at Togiak, AK (71 FR 7888). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing two new and two amended SIAPs for the Togiak Airport. For clarification, the airspace action title uses the term “Togiak Village” after the town's name, and the airport name is “Togiak Airport”. The amended approaches are (1) Non Directional Beacon (NDB)/Distance Measuring Equipment (DME)–A, Amendment (Amdt) 1 and (2) NDB–B, Amdt 1. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV (GPS)) RWY 03, Original; and (2) RNAV (GPS) RWY 21, Original. Class E controlled airspace

extending upward from 700 ft. above the surface in the Togiak Airport area is revised by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the Togiak Airport, Alaska. This Class E airspace is revised to accommodate aircraft executing two new and two revised SIAPs, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rule (IFR) operations at Togiak Airport, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section

40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Togiak Airport and represents the FAA’s continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Togiak Village, AK [Revised]

Togiak Airport, AK
(Lat. 59°03’10” N., long. 160°23’49” W.)
Togiak NDB
(Lat. 59°03’50” N., long. 160°22’27” W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Togiak Airport, and within 4 miles west and 8 miles east of the 218° bearing of the Togiak NDB extending from the 6.5-mile radius to 20 miles southwest of the Togiak NDB, and within 4 miles west and 8 miles east of the 019° bearing of the Togiak NDB extending from the 6.5-mile radius to 16 miles northeast of the Togiak NDB.

* * * * *

Issued in Anchorage, AK, on April 14, 2006.

Anthony M. Wylie,
Manager, Safety, Area Flight Service Operations.

[FR Doc. 06–3860 Filed 4–21–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–23276; Airspace Docket No. 05–AAL–41]

Establishment of Class E Airspace; Minchumina, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; correction.

SUMMARY: This action corrects an error in the airspace description contained in a Final Rule that was published in the **Federal Register** on Wednesday, April 5, 2006 (71 FR 16997). Airspace Docket No. 05–AAL–41.

DATES: *Effective Date:* 0901 UTC, June 8, 2006.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: gary.ctr.rolf@faa.gov. Internet address: <http://www.alaska.faa.gov/at>.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 06–3249, Airspace Docket No. 05–AAL–41, published on Wednesday, April 5, 2006 (71 FR 16997), listed the legal description as a revision to Class E airspace at Minchumina, AK. The airspace is new and the legal description should be written accordingly. This action corrects that error.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the airspace description of the Class E airspace published in the **Federal Register**, Wednesday, April 5, 2006 (71 FR 16997), (FR Doc 06–3249, page 16997, column 3) is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AAL AK E5 Minchumina, AK [New]

Minchumina, AK
(Lat. 63°53’10” N., Long. 152°18’07” W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Minchumina Airport.

* * * * *

Issued in Anchorage, AK, on April 14, 2006.

Anthony M. Wylie,
Manager, Safety, Area Flight Service
Operations.

[FR Doc. 06-3859 Filed 4-21-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2006-23712; Airspace
Docket No. 06-AAL-05]

Establishment of Class E Airspace; Kuparuk, AK

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action establishes Class E airspace at Kuparuk, AK to provide adequate controlled airspace to contain aircraft executing eight Special Standard Instrument Approach Procedures (SIAPs). This rule results in new Class E airspace established upward from 700 feet (ft.) above the surface at Ugnu-Kuparuk Airport, AK.

DATES: *Effective Date:* 0901 UTC, August 3, 2006.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL-538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587; telephone number (907) 271-5898; fax: (907) 271-2850; e-mail: gary.ctr.rolf@faa.gov. Internet address: <http://www.alaska.faa.gov/at>.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, February 15, 2006, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace upward from 700 ft. above the surface at Ugnu-Kuparuk Airport, AK (71 FR 7890). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing eight Special SIAPs for the Ugnu-Kuparuk Airport. The Special approaches were listed as being new and revised in the Notice of Proposed Rulemaking (NPRM). However, all eight Special SIAPs were already in existence. Thus, there are no instrument approach procedure changes. This action is taken to fulfill the FAA policy of establishing

controlled airspace at private airfields with existing instrument procedures. Class E controlled airspace extending upward from 700 ft. above the surface in the Ugnu-Kuparuk Airport area is created by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed. Additionally, the airspace action title in the NPRM should have been listed as "Establishment of Class E Airspace; Kuparuk, AK" instead of using the term "Ugnu-Kuparuk". The legal description title is taken from the geographic location, not the airport's name.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 creates Class E airspace at Kuparuk, Alaska. This Class E airspace is established to accommodate aircraft executing existing Special SIAPs. The intended effect of this rule is to provide controlled airspace for Instrument Flight Rule (IFR) operations at Ugnu-Kuparuk Airport, Kuparuk, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code.

Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Ugnu-Kuparuk Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Kuparuk, AK [New]

Ugnu-Kuparuk Airport, AK
(Lat. 70°19'51" N., long. 149°35'51" W.)
Pitsand NDB
(Lat. 70°19'41" N., long. 149°38'07" W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Ugnu-Kuparuk Airport, and within 8 miles north and 4 miles south of the 078° bearing of the Pitsand NDB extending from the 7-mile radius to 16 miles east of the Pitsand NDB and within 8 miles north and 4 miles south of the 258° bearing of the

Pitsand NDB extending from the 7-mile radius to 16 miles west of the Pitsand NDB.
* * * * *

Issued in Anchorage, AK, on April 14, 2006.

Anthony M. Wylie,

Manager, Safety, Area Flight Service Operations.

[FR Doc. 06-3861 Filed 4-21-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2006-23711; Airspace Docket No. 06-AAL-04]

Revision of Class E Airspace; Middleton Island, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Middleton Island, AK to provide adequate controlled airspace to contain aircraft executing two new and two amended Standard Instrument Approach Procedures (SIAPs). This rule results in revised Class E airspace established upward from 700 feet (ft.) and 1,200 ft. above the surface at Middleton Island, AK.

DATES: Effective Date: 0901 UTC, August 3, 2006.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL-538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587; telephone number (907) 271-5898; fax: (907) 271-2850; e-mail: gary.ctr.rolf@faa.gov. Internet address: http://www.alaska.faa.gov/at.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, February 15, 2006, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace upward from 700 ft. and 1,200 ft. above the surface at Middleton Island, AK (71 FR 7891). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing two new and two amended SIAPs for the Middleton Island Airport. The amended approaches are (1) Very High Frequency Omni-directional Range (VOR) Runway (RWY) 01, Amendment (Amdt) 2; and (2) VOR/Distance Measuring Equipment (DME) RWY 19, Amdt 5. The new approaches are (1) Area Navigation

(Global Positioning System) (RNAV (GPS)) RWY 01, Original; and (2) RNAV (GPS) RWY 19, Original. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Middleton Island Airport area is revised by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the Middleton Island Airport, Alaska. This Class E airspace is revised to accommodate aircraft executing two new and two revised SIAPs, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rule (IFR) operations at Middleton Island Airport, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs,

describes in more detail the scope of the agency’s authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Middleton Island Airport and represents the FAA’s continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Middleton Island, AK [Revised]

Middleton Island Airport, AK (Lat. 59°27'00" N., long. 146°18'26" W.) Middleton Island VOR/DME (Lat. 59°25'19" N., long. 146°21'00" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Middleton Island Airport, and within 4 miles either side of the 038° radial of the Middleton Island VOR/DME extending from the 6.5-mile radius to 12 miles northeast of the VOR/DME, and that airspace extending upward from 1,200 feet above the surface within a 42-mile radius of the Middleton Island VOR/DME.

* * * * *

Issued in Anchorage, AK, on April 14, 2006.

Anthony M. Wylie,

Manager, Safety, Area Flight Service Operations.

[FR Doc. 06-3862 Filed 4-21-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2005-22857; Airspace Docket No. 05-AAL-37]

Establishment of Class E Airspace; Galbraith Lake, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Galbraith Lake, AK to provide adequate controlled airspace to contain aircraft executing two amended Special Standard Instrument Approach Procedures (SIAPs). This rule results in new Class E airspace established upward from 700 feet (ft.) above the surface at Galbraith Lake, AK.

DATES: *Effective Date:* 0901 UTC, August 3, 2006.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL-538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587; telephone number (907) 271-5898; fax: (907) 271-2850; e-mail: gary.ctr.rolf@faa.gov. Internet address: <http://www.alaska.faa.gov/at>.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, February 15, 2006, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace upward from 700 ft. above the surface at Galbraith Lake, AK (71 FR 7887). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing two amended Special SIAPs for the Galbraith Lake Airport. The approaches are (1) Non-directional Beacon (NDB) Distance Measuring Equipment (DME) Runway (RWY) 12, amendment (Amdt) 2 and (2) Microwave Landing System (MLS) Runway 12, Amdt 1. The Notice of Proposed Rulemaking airport coordinate notation was not accurate. The correction has been made in this document. Class E controlled airspace extending upward from 700 ft. above the surface in the Galbraith Lake Airport area is created by this action. Interested

parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 creates Class E airspace at Galbraith Lake, Alaska. This Class E airspace is established to accommodate aircraft executing two revised Special SIAPs. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rule (IFR) operations at Galbraith Lake Airport, Galbraith Lake, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the

navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Galbraith Lake Airport and represents the FAA’s continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

* * * * *
Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Galbraith Lake, AK [New]

Galbraith Lake Airport, AK
(Lat. 68°28'48" N., long. 149°29'14" W.)

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of the Galbraith Lake Airport.

* * * * *

Issued in Anchorage, AK, on April 14, 2006.

Anthony M. Wylie,

Manager, Safety, Area Flight Service Operations.

[FR Doc. 06-3863 Filed 4-21-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket FAA 2004–19684; Airspace Docket 04–ANM–24]

Revision of Class E Airspace; Herlong, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule will revise the Class E airspace area at Herlong, CA. Additional controlled airspace is necessary for the safety of Instrument Flight Rules (IFR) aircraft during airborne holding. Holding airspace is designed with specific altitudes and lateral boundaries within controlled airspace. This airborne holding procedure is also an integral part of a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at the Amedee Army Air Field (AAF), Herlong, CA.

DATES: *Effective Date:* 0901 UTC, August 3, 2006.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Western En Route and Oceanic Area Office, Airspace Branch, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–2527.

SUPPLEMENTARY INFORMATION:**History**

On July 12, 2005, the FAA proposed to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Herlong, CA (70 FR 39973). The proposed action would provide additional controlled airspace for the safety of IFR aircraft executing airborne holding due to weather, traffic congestion, or other operational reasons. This additional controlled airspace is also necessary for the safety of aircraft transitioning to a new RNAV (GPS) and ILS SIAP at Amedee AAF, Herlong, CA.

Interested parties were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9N, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at Herlong, CA, by providing additional controlled airspace for the safety of IFR aircraft during airborne holding. Holding occurs during adverse weather conditions, traffic congestion, or for other operational reasons. This holding procedure is also an integral part of a new RNAV (GPS) (SIAP) at the Amedee AAF, Herlong, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep the regulations current. Therefore, this regulation: (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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS.

■ 1. The authority citation for 14 CFR part 71 continues to read follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 01, 2005, and effective September 15, 2005, is amended as follows: Paragraph 6005. Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CA E5 Herlong, CA [Revised]
Amedee VOR/DME

(Lat. 40°16'04" N., long. 120°09'07" W.)

That airspace extending upward from 700 feet above the surface of the earth within an area bounded by a line beginning at lat. 40°20'15" N., long. 119°48'27" W.; to lat. 40°07'58" N., 119°51'47" W.; to lat. 40°11'30" N., long. 120°16'47" W.; to lat. 40°20'32" N., long. 120°14'34" W.; thence to the point of beginning. That airspace extending upward from 1,200 feet above the surface of the earth beginning at lat. 40°00'00" N., long. 120°00'00" W.; west to V452; to lat. 40°30'00" N.; east to lat. 40°30'00" N., long. 119°16'00" W.; south to lat. 40°00'00" N., long. 119°16'00" W.; west to point of beginning.

* * * * *

Issued in Seattle, Washington, on March 31, 2006.

R.D. Engelke,

Acting Area Director, Western En Route and Oceanic Operations.

[FR Doc. 06–3864 Filed 4–21–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE**Bureau of Industry and Security**

15 CFR Parts 730, 732, 734, 738, 740, 742, 743, 746, 748, 750, 752, 762, 770, 772 and 774

[Docket No. 060404096–6096–01]

RIN 0694–AD66

Implementation of New Formula for Calculating Computer Performance: Adjusted Peak Performance (APP) in Weighted TeraFLOPS; Bulgaria; XP and MT Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the Export Administration Regulations to implement the Wassenaar Arrangement's December 2005 agreement to revise the formula for calculating computer performance from Composite Theoretical Performance (CTP) measured in Millions of Theoretical Operations Per Second (MTOPS) to Adjusted Peak Performance (APP) measured in Weighted TeraFLOPS (Trillion Floating point Operations Per Second) (WT). This rule also establishes new control levels in Category 4 of the Commerce Control List (CCL) expressed in WT. In addition, this rule renames License Exception CTP to License Exception APP (Adjusted Peak Performance) to correspond to the new formula. This rule also makes conforming changes to the EAR based on the new computer parameter, such as, revising the parameters for eligibility of License Exception APP.

This rule also moves Bulgaria from Computer Tier 3 to Computer Tier 1, removes High Performance Computer (XP) and Missile Technology (MT) controls from certain Export Control Classification Numbers (ECCNs) in Category 4 of the CCL, and removes the section of the EAR dedicated to various requirements for high performance computers.

DATES: *Effective Dates:* This rule is effective on April 24, 2006, with the exception of the movement of Bulgaria from Computer Tier 3 to Computer Tier 1 in section 740.7 of the EAR, which will be effective June 3, 2006.

FOR FURTHER INFORMATION CONTACT: For questions of a general nature contact Sharron Cook, Office of Exporter Services, Regulatory Policy Division at (202) 482-2440 or E-Mail: scook@bis.doc.gov.

For questions of a technical nature contact Joseph Young, Office of National Security and Technology Transfer Controls at 202-482-4197 or E-Mail: jyoung@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Wassenaar Arrangement

The United States is one of 40 states participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement contributes to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations of such items. Participating states have committed to exchange information on exports of dual-use goods and technologies to non-participating states for the purposes of enhancing transparency and assisting in developing common understandings of the risks associated with the transfers of these items. In December 2005, the Wassenaar Arrangement met in Plenary session and agreed to implement a new computer performance formula and associated control levels for export control purposes.

Composite Theoretical Performance (CTP) to Adjusted Peak Performance (APP)

For more than a decade, Composite Theoretical Performance (CTP) has been used for measuring computer performance for the purpose of export control. CTP, expressed in millions of

theoretical operations per second (MTOPS), is difficult to calculate and, because of remarkable changes in computer architecture and semiconductor technology, has significant shortcomings in the ranking of computers. As a result of the limitations of CTP and the continued growth of commodity cluster systems, the Administration conducted a comprehensive review of export controls on computer hardware. In 2004, the Departments of Defense and Energy conducted an assessment of U.S. Government requirements and benchmark tests. The review identified a controllable class of high-end proprietary computer systems, a more effective metric for controlling such systems, and a new proposed control level. As a result, the interagency group concerned, including the Departments of Defense, State, Energy and Commerce, concluded that CTP (measured in MTOPS) has been unable to keep up with advances in computer architecture technology, and no longer meets national security objectives. Specifically, the CTP formula does not adequately distinguish between generic commodity systems and vector systems. The CTP formula imprecisely equates off-the-shelf systems based on low-cost widely available microprocessors—computers with lesser national security significance—with high-end special order high performance computers such as vector systems, which have greater national security significance.

The CTP calculation takes into account short word length operations. As state-of-the-art computers have evolved, capabilities to perform this class of operations have become ubiquitous in multi-media extensions (MMX) in low-cost commodity microprocessors. The requirement to include these operations when using the CTP formula complicates the calculation and overstates the scientific computational capability of these systems by as much as a factor of two.

Even as a formula for this class of computers, CTP has several problems. The CTP formula does not distinguish between architectures, and arguably understates the performance of vector supercomputers relative to aggregations of scalar processors. The inclusion of short word length operations and the current formula for aggregation make the CTP formula unnecessarily complicated to calculate for modern computing architectures, with no offsetting benefit to national security.

Since 1999, a number of alternatives to the CTP formula have been suggested. These ranged from dispensing with a “formula” and simply counting the

number of processors in a computer to implementing more rigorous formulas for measuring computer performance, such as incorporating memory and/or interconnect bandwidth. All of these alternatives raised definitional problems or required even more vendor-proprietary data than is currently necessary for CTP calculations.

The Administration's assessment identified a controllable class of high end proprietary computer systems with the most significant national security applications, a more effective formula for identifying such systems, and a new proposed control level. A formula was needed to draw a clear distinction between vector systems which have significantly more value in national security applications and non-vector systems. It was determined that double precision floating-point computation (DP FP) was the most meaningful measure of HPC performance for export control purposes to distinguish between vector and non-vector systems. This distinction is critical to achieving the nation's computer export control policy objectives. By using DP FP performance as the basis for export controls, the inflation introduced by short word length operands in the formula used for calculating CTP is eliminated and the playing field leveled for competing microprocessor architectures.

The new control formula based on DP FP is Adjusted Peak Performance (APP) measured in Weighted TeraFLOPS (WT). The APP formula allows for much more targeted control of the high-end, special order HPCs, such as vector systems and proprietary cluster systems, which are of the greatest national security significance. The APP formula is derived from existing industry standards and is easier to calculate than the CTP formula. The APP formula will maintain controls on high-end high performance computers (HPCs) capable of computationally intensive national security operations. The APP formula places more weight on vector systems than non-vector systems. Considering the superior performance of vector supercomputers for some important applications and an analysis of applications and the High Performance Linpack benchmarks, a weighting of 0.9 was selected for vector processors. Currently available HPC systems exhibit a wide range of efficiencies. A weighting factor of 0.3 was appropriate for other classes of non-vector export controlled HPC systems. The 0.3 weighting factor is a rough approximation of the relative performance observed between vector and non-vector HPCs over a representative range of applications.

APP provides more consistent treatment for all comparable systems than CTP.

Setting of the Control Thresholds

The Administration's assessment determined that the appropriate control level for computers using the APP formula is 0.75 WT, which was proposed in the April 2005 meeting of the Wassenaar Arrangement and agreed to at the December 2005 Wassenaar Arrangement Plenary meeting. This determination was based on the Departments of Defense and Energy HPC benchmarks, procurement and usage; the government's ability to control state-of-the-art technology (i.e., proprietary and vector systems); the ability of Tier 3 countries to achieve a given level of performance for range of architectures; and maintenance of a level playing field among comparable products.

The 0.75 WT control level recognizes the foreign availability of the computing capacity illustrated by the Chinese commodity cluster systems currently ranked on the Top-500 List of fastest HPCs in the world. The 0.75 WT level continues to control high-end proprietary HPCs, such as those used by the Department of Defense and the Department of Energy for advanced research, development, and simulation, while removing controls on the lower-end, more widely available systems.

The Wassenaar Arrangement agreed to set the Basic List control level for computer software and technology at 0.04 WT, and this was based on computer chip manufacturer projections of what chips would be in production by the end of 2007, e.g., a 4 GHz, dual core Itanium processor would have an APP of 0.0384 WT. The Wassenaar Sensitive List threshold for computer development and production technology and software was set at 0.1 WT to limit the production of multi-board computer vector systems, such as the 8 way Cray X1 or the 4 way Cray XE.

The EAR also set forth several other computer control levels, for purposes of unilateral anti-terrorism controls and License Exception eligibility, that do not have Wassenaar Arrangement equivalents. This final rule makes conforming changes in these provisions by establishing control levels expressed in WT using the APP formula. These control thresholds were obtained by finding a computer chip that had a CTP equivalent to the CTP threshold control level in the EAR, performing the APP formula on the chip, and then rounding up. For instance, in ECCN 4A994 the CTP threshold is 6 MTOPS. This is very similar in performance to the Intel 386 microprocessor. When the APP formula

is applied to the Intel 386, the APP equals 0.00001 WT (after rounding up).

National Defense Authorization Act (NDAA) Congressional Notification Requirement

Subsections 1211(d) and (e) of the National Defense Authorization Act (NDAA) for FY 1998 (Pub. L. 105-85, November 18, 1997, 111 Stat. 1932) provides that the President must submit a report to Congress 60 days before adjusting the composite theoretical performance level above which exports of digital computers to Tier 3 countries require a license. The President sent a report to Congress on February 3, 2006 that establishes and provides justification for the 0.75 WT control level using the APP formula.

Bulgaria

This rule removes Bulgaria from Computer Tier 3 and places it in Computer Tier 1. However, due to the requirements in the 1998 National Defense Authorization Act (NDAA), removing Bulgaria from Computer Tier 3 is not effective until 120 days after the Congress receives a report justifying such a removal. This report was sent to Congress on February 3, 2006. Therefore, the movement of Bulgaria from Computer Tier 3 to Computer Tier 1 will become effective on June 3, 2006.

Bulgaria is a member of the Wassenaar Arrangement, the Missile Technology Control Regime, the Australia Group, and the Nuclear Suppliers Group. Bulgaria is also a member of the North Atlantic Treaty Organization (NATO). Because of the Bulgarian Government's success in strengthening its export control system, it has been determined that moving Bulgaria from Computer Tier 3 to Computer Tier 1 will not decrease the national security of the United States, and may in fact strengthen it by building stronger coalitions with nations that understand the importance of a strong export control program. This revision will result in fewer license applications, because Bulgaria will be eligible for License Exception APP. In addition, the EAR will no longer require NDAA-based recordkeeping and post shipment verification reporting of exports of high performance computers to Bulgaria.

XP Reason for Control

This rule removes the reason for control related to high performance computers (XP) from ECCNs 4A001, 4A003, 4D001, 4D002, and 4E001. XP controls were implemented on March 25, 1996, 61 FR 12714, in the regulation entitled, "Simplification of Export

Administration Regulations." At the present time, XP controls do not enhance license requirements or license review policies that are already in place under the national security (NS) controls described in § 742.4 of the EAR, the anti-terrorism (AT) controls in various parts of 742, or any other controls in the EAR. The XP control creates more of a burden to the public than assistance. In addition, placing special reporting and recordkeeping requirements in this section is not consistent with the organizational format of the EAR. The EAR has specific parts for special reporting and recordkeeping. For these reasons, this rule removes the reason for control XP from the aforementioned ECCNs. Conforming changes are also made to § 738.2(d)(2)(i)(A) and § 746.3(a)(1) of the EAR.

Missile Technology Controls

This rule removes the missile technology (MT) control from ECCN 4A003. The MT control in 4A003 applies to digital computers used as ancillary equipment for test facilities and equipment that are controlled by ECCNs 9B005 or 9B005 (both non-MT controlled commodities). This MT control has no corresponding entry on the Missile Technology Control Regime's (MTCR) Annex. The computers that are described on the Missile Technology Control (MTCR) Annex fall under two entries 13.A.1 and 16.A.1. The 13.A.1 entry on the MTCR Annex is for ruggedized or radiation hardened computers and is controlled on the Commerce Control List (CCL) under ECCN 4A101 for MT and AT reasons. The 16.A.1 entry on the MTCR Annex is for hybrid computers for modeling, simulation or design integration of missile or rocket systems or subsystems specified on the MTCR Annex, which is controlled on the CCL under ECCN 4A102 for MT and AT reasons. Therefore, because these computers are controlled under other ECCNs, this rule removes the MT control under ECCN 4A003. Corresponding amendments associated with the removal of the MT controls under ECCN 4A003, include:

a. Removing the last sentence of § 740.7(a)(1) of the EAR, which states that computers controlled for missile technology (MT) reasons are not eligible for License Exception APP. Because the only computers eligible for License Exception APP are classified under 4A003 and this rule removes all MT controls from 4A003, this sentence is not necessary.

b. Removing the phrase "and software" from the last sentence in

§ 740.7(a)(2) of the EAR, which states, "Technology and software for computers controlled for missile technology (MT) reasons are not eligible for License Exception CTP." However, the only eligible software eligible for License Exception APP is classified under 4D001, and there are no existing MT controls in 4D001. However, there are MT controls in 4E001 for technology for items controlled by 4A001.a and 4A101.

c. For the same reasons stated in paragraph (a) above, the last sentence of the first paragraph in § 770.2(l)(1) is removed, which stated, "Computers controlled in this entry for MT reasons are not eligible for License Exception regardless of the CTP of the computer."

d. For the same reasons stated in paragraph (a) above, the phrase "parameters of Missile Technology concern, or" is removed from the first sentence of the second paragraph in § 770.2(l)(1).

e. For the same reasons stated in paragraph (a) above, the second sentence of the second paragraph in § 770.2(l)(1) is removed, which stated, "This License Exception does not authorize the export or reexport of computers controlled for MT purposes regardless of the CTP."

Section 742.12 "High Performance Computers"

The EAR has contained a section for high performance computers (HPCs) for over a decade. The rapid advance in technology created a high demand for information about export controls for computers among those who were not acquainted with the EAR, i.e., individuals using personal computers. Now that the HPC controls are raised to a level such that only high performance computers of the greatest national security concern require a license for export, BIS expects that it will receive fewer license applications for computers. As a result of this shift, there will be less burden on individual users of personal computers. The license requirements that are stated in 742.12 are redundant to those stated in other parts of the EAR, such as national security (§ 742.4 of the EAR), anti-terrorism (various sections of part 742), or nonproliferation controls found in part 744. For these reasons, this rule removes section 742.12. However, this rule will preserve the recordkeeping requirement for computers, mandated by the National Defense Authorization Act for FY 1998 (section 1212), by combining it with the special reporting requirements in part 743. In addition, this rule moves the post shipment verification reporting and recordkeeping

requirements, mandated by the National Defense Authorization Act of FY 1998 (section 1213) to part 743 "Special Reporting," under a new section 743.2 "High Performance Computers: Post Shipment Verification Reporting." In addition, this rule revises § 762.2(b)(6) of the EAR that referred to the recordkeeping requirements that were in § 742.12 of the EAR, to reference section 743.2 where the recordkeeping requirement has been moved.

In conformance with the removal of § 742.12, this rule revises a phrase in § 734.4(a)(1) of the EAR. The phrase stated "to Computer Tier 4 countries described in § 742.12 of the EAR" and is revised to read "to Cuba, Iran, Libya, North Korea, Sudan, and Syria." All references to Computer Tier 4 are no longer necessary, because the license requirements and license review policy for these countries is found in either part 736, part 746, or part 742 of the EAR depending generally on its status as a country that supports terrorism or its embargo status.

In addition, this rule removes Supplement No. 3 to part 742 "High Performance Computers; Safeguard Conditions and Related Information," because a sample security safeguard plan can be found on BIS's Web site at <http://www.bis.doc.gov/hpcs/SecuritySafeguardPlans.html>. The requirement for this security safeguard plan is added to paragraph (c)(2) of Supplement No. 2 to part 748 "Unique Application and Submission Requirements" of the EAR.

Section 740.7 License Exception APP (Formerly License Exception CTP)

Because this rule changes the computer formula for determining computer performance from Composite Theoretical Performance (CTP) to Adjusted Peak Performance (APP), this rule revises the license exception symbol for License Exception CTP to "APP." Hereafter, License Exception CTP will be known as License Exception APP. This rule also makes conforming changes throughout the EAR as a result of this change.

This rule also makes "use" technology equal to or less than 0.75 WT eligible for export under License Exception APP to Computer Tier 3 destinations and to Computer Tier 1 destinations, other than the destinations that are listed in § 740.7(c)(3)(i) of the EAR. The 0.75 WT control threshold is consistent with levels agreed to by the Wassenaar Arrangement. The Wassenaar Arrangement agreed that development and production technology and source code for computers with an APP exceeding 0.1 Weighted TeraFLOPS

(WT) is sensitive for conventional arms purposes. Therefore, eligibility under License Exception APP for development and production technology and source code to Computer Tier 3 destinations and to Computer Tier 1 destinations, other than the destinations that are listed in § 740.7(c)(3)(i) of the EAR, is set at an APP of less than or equal to 0.1 WT.

However, eligibility under License Exception APP for development and production technology and source code to Computer Tier 1 destinations listed in § 740.7(c)(3)(i) of the EAR is set at an APP of less than or equal to 0.75 WT, because these destinations are of lesser national security concern.

Supplement No. 2 to Part 748

This rule clarifies the phrase "according to the principal function of the equipment," by replacing it with references to Notes in Category 5 part 1 and part 2, where the applicant can find information to guide them about Category 5 telecommunication and information security functions. In paragraph (c), this rule deletes the phrase "certifiable multi-level security or certifiable user isolation functions" because this former 5A002 sub-item has been deleted.

This rule also removes paragraph (c)(2), because Category 4 has not contained Advisory Notes for over a decade. In place of text that was in paragraph (c)(2), this rule adds a paragraph describing the security safeguard plan requirement. The United States requires security safeguards for exports, reexports, and in-country transfers of High Performance Computers (HPCs) to ensure that they are used for peaceful purposes. If you are submitting a license application for an export, reexport, or in-country transfer of a high performance computer to or within a destination in Computer Tier 3 (see § 740.7(c)(1) of the EAR) or to Cuba, Iran, Libya, North Korea, Sudan, or Syria you must include with your license application a security safeguard plan signed by the end-user, who may also be the ultimate consignee. This requirement also applies to exports, reexports, and in-country transfers of components or electronic assemblies to upgrade existing "computer" installations in those countries. A sample security safeguard plan is posted on BIS's webpage at <http://www.bis.doc.gov/hpcs/SecuritySafeguardPlans.html>. In addition, this rule makes conforming changes to the table "Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers" in Supplement No. 1 to part

730 to change the reference to where the safeguard requirements are located in the EAR.

Section 750.4(b) Actions Not Included in Processing Time Calculations

On May 11, 1995, BIS published a proposed rule for the simplification of the EAR (60 FR 25270) that contained the Acting Secretary of State's determination of December 28, 1993, that five categories of multilaterally controlled items would be controlled under section 6(j). License applications for certain items would be reviewed under the 6(j) procedures. This rule was made final on March 25, 1996 (61 FR 12714). One category of items subject to the new 6(j) procedure was those subject to national security controls, except national security controlled digital computers with a Composite Theoretical

Performance (CTP) of 500 Million Theoretical Operations Per Second (MTOPS) or less. At the time, and until 1998, the NS control level for computers was 260 MTOPS (then it increased to 2,000 MTOPS). So until 1998, computers controlled for NS reasons were not subject to 6(j) requirements if they were between 260 and 500 MTOPS. Although the NS control level for computers was increased several times, this computer level in this section was repeatedly overlooked. This rule corrects this error by removing the exemption for computers with a CTP of 500 MTOPS from a Congressional 30-day notification requirement under section 6(j) of the Export Administration Act, as amended (EAA), prior to the issuance of the license for any digital computers destined to the military, police, intelligence or other sensitive

end-users located in designated terrorist-supporting countries. This exemption has been overtaken by technological advancements, i.e., computers controlled for NS reasons with a CTP of 500 MTOPS no longer exist today. This rule does not change the requirement for Congressional notification for all items controlled for national security reasons to end users set forth above. Computers classified by ECCN 4A003 are controlled for national security reasons when the APP exceeds 0.75 WT, as implemented by this rule.

Conforming Changes

This rule makes the following conforming changes:

- With regard to License Exception CTP being changed to License Exception APP:

EAR citation	Subject matter
§ 732.4(b)(3)(iii) and (b)(3)(iv)	Steps regarding License Exceptions.
§ 740.7	License Exception CTP.
§ 743.1(b)(1)	Wassenaar Arrangement special reporting requirements.
§ 746.3(c)	License Exceptions for Iraq.
ECCN 4A003	License Exception section, License Exception CTP.
ECCN 4D001	License Exception section, License Exception CTP.
ECCN 4E01	License Exception section, License Exception CTP.

- With regard to references to the computer metric CTP, without reference to a specific MTOPS limit:

EAR citation	Subject matter
§ 740.11(a)(4)	License Exception GOV.
§ 740.11(c)(4)	License Exception GOV.
§ 743.1(c)(2)	Reference to formula for calculating APP.
§ 743.2 (c)(7)	Information that must be included in the Post Shipment Verification Report.
Supplement No. 1 to part 748, Block 22(b)	Multipurpose Application Instructions.
Supplement No. 2 to part 748, paragraph (c)	Digital Computers, telecommunications, and related equipment.
Supp. No. 1 to part 752, (b)	Instructions for completing form BIS-748P-A.
§ 770.2(l)	Interpretation 12: Computers.
ECCN 4A003.c	Electronic Assemblies.
ECCN 4A994 Note 1 to 4A994.c	Electronic Assemblies.
ECCN 4D001.b.2	Electronic Assemblies.
ECCN 4E001.b.2	Electronic Assemblies.

- With regard to a change in computer metric changes from CTP to APP:

EAR citation	Subject matter	Prior CTP in MTOPS	New APP in WT
§ 734.4(a)(1)	<i>De minimis</i> eligibility for foreign-made computers going to Computer Tier 3 destinations.	190,000	0.75.
§ 734.4(a)(1)	<i>De minimis</i> eligibility for foreign-made computers going to Cuba, Iran, Libya, North Korea, Sudan, and Syria.	28,000	.002.
§ 740.7(c)(3)(ii)	Development and Production technology and source code eligible for deemed exports under License Exception APP to foreign nationals of Tier 1 destinations, other than the destinations that are listed in § 740.7(c)(3)(i).	190,000	0.1.

EAR citation	Subject matter	Prior CTP in MTOPS	New APP in WT
§ 740.7(c)(3)(iii) (new paragraph)	Use technology and source code eligible for deemed exports under License Exception APP to foreign nationals of Tier 1 destinations, other than the destinations that are listed in § 740.7(c)(3)(i).	190,000	0.75.
§ 740.7(d)(3)(i)	Development and Production technology and source code eligible for deemed exports under License Exception APP to foreign nationals of Tier 3 destinations.	190,000	0.1.
§ 740.7(d)(3)(ii) new paragraph	Use technology and source code eligible for deemed exports under License Exception APP to foreign nationals of Tier 3 destinations.	190,000	0.75.
740.9(a)(2)(i)(B)(1)	License Exception TMP, Tools of Trade, Sudan, eligible computers under 4A994.	6,500	0.0015.
§ 740.19(a)(2)(iv)	License Exception USPL, eligible AT controlled computers (4A994) to U.S. persons in Libya.	12,000	0.003.
Supp. No. 2 to part 742(c)(24)	Heading for digital computer license policy destined to designated terrorist supporting countries.	6	0.00001.
Supp. No. 2 to part 742(c)(24)(iv)(A) and (B).	N. Korea license policy for digital computers	2,000	0.0004.
§ 743.1(c)(2)	Wassenaar Arrangement Special Reporting Requirements for computer technology and software for the development and production of computers.	190,000	0.1.
§ 743.2 (new), moved from 742.12(b)(3)(iv).	Post Shipment Verification Reporting and recordkeeping for Computer Tier 3 destinations.	190,000	0.75.
750.4(b)(6)(ii)(A)	Digital Computers not subject to a Congressional 500 notification requirement when the issuance of the license for any military, police, intelligence or other sensitive end-user in designated terrorist-supporting country.	Less than 500 ..	Removed.
ECCN 4A003	License Requirement section, AT controls (refer to ECCN 4A994).	6 and 190,000 ..	0.00001 and 0.75.
ECCN 4A003	License Requirement section, XP controls	190,000	Removed.
ECCN 4A003	Note in License Requirement section	190,000	0.75 (two times).
ECCN 4A994	ECCN 4A994.b	6	0.00001.
ECCN 4A994	ECCN 4A994.f equipment for signal processing or image enhancement.	8.5	0.00001.
ECCN 4D001	License Exception section, TSR	190,000	0.1.
ECCN 4E001	License Exception section, TSR	190,000	0.1.

• With regard to the placement of the CTP formula:

Because BIS has decided to move the formula for CTP from the end of Category 4 to the end of Category 3, this rule revises the definition of “Composite Theoretical Performance” (“CTP”) to remove references to Category 4, and revises the information about where the formula for CTP may be found. The formula for CTP is no longer necessary in Category 4, because CTP has been replaced by APP throughout Category 4. However, the formula for CTP is still necessary for Category 3, because it is used in 3A991 (License Requirement Note and 3A991.a.1), 3E001 (License Exception CIV), and 3E002 (Heading and License Exception CIV).

• With regard to “computing elements”:

This rule implements an amendment to 4A003.c to revise the term “computing elements” (“CE”) to read “processors.” There are two conforming changes to this revision in § 740.11(a)(4) and § 740.11(c)(4) under License Exception GOV.

Category 3—Electronics

This rule moves the technical note on how to calculate the Composite Theoretical Performance (CTP) from the end of Category 4 to the end of Category 3, because the implementation of Adjusted Peak Performance removed all references to CTP in Category 4 and CTP only remains in Category 3.

ECCN 3A991 is amended by revising License Requirement Note 1 to: (1) Spell out the acronym CTP, and (2) Add a reference about where to find information on how to calculate CTP.

ECCNs 3E001 and 3E002 are amended by revising License Exception CIV text to spell out the acronym CTP, for clarification and to indicate that Composite Theoretical Performance is a defined term in section 772.1.

Implementation of Wassenaar Arrangement Agreements

The following revisions are consistent with agreements made by the Wassenaar Arrangement to replace the CTP formula for calculating composite theoretical performance with the APP formula:

Category 4—Computers

Category 4 is amended by adding the formula for Adjusted Peak Performance (APP) after EAR99.

ECCN 4A001 is amended by:

- a. Removing High Performance Computer (XP) controls from the License Requirements section for reasons set forth above in this background section of the rule; and
- b. Adding in the License Requirement Note a reference to the paragraph (4A001.a.2) that triggers the Wassenaar reporting requirement in § 743.1 of the EAR.

ECCN 4A003 is amended by:

- a. Removing the Missile Technology (MT) and High Performance Computer (XP) controls paragraph in the License Requirement section for reasons set forth above in the background section of this rule;
- b. Revising the parameter and value in 4A003.b from CTP to APP and from 190,000 MTOPS to 0.75 WT; and
- c. Revising the text and parameter in 4A003.c (electronic assemblies) from “computing elements (CE)” to “processors.”

ECCN 4A994 is amended by:

a. Revising the parameter and value in 4A994.b from CTP to APP and from 6 MTOPS to 0.00001 WT;

b. Replacing the reference to CTP with APP in Note 1 to 4A994.c; and

c. Revising the parameter and value in 4A994.f from CTP to APP and from 8.5 MTOPS to 0.00001 WT, because there is little difference between the APP in 4A994.b and this paragraph and BIS believes that it is easier to comply with regulations when numbers are harmonized.

ECCN 4D001 is amended by revising:

a. Removing the High Performance Computer (XP) controls paragraph in the License Requirement section for reasons set forth above in the background section of this rule;

b. Revising the parameter and value in 4D001.b.1 from CTP to APP and from 75,000 MTOPS to 0.04 WT; and

c. Revising the text and parameter in 4D001.b.2 from "computing elements (CE)" to "processors" and the parameter CTP to APP.

ECCN 4D002 is amended by removing the High Performance Computer (XP) controls paragraph in the License Requirement section for reasons set forth above in the background section of this rule.

ECCN 4E001 is amended by revising:

a. Removing the High Performance Computer (XP) controls paragraph in the License Requirement section for reasons set forth above in the background section of this rule;

b. Revising the parameter and value in 4E001.b.1 from CTP to APP and from 75,000 MTOPS to 0.04 WT; and

c. Revising the text and parameter in 4E001.b.2 from "computing elements (CE)" to "processors" and the parameter CTP to APP.

Definitions

This rule amends 772.1, Definitions of Terms as Used in the Export Administration Regulations (EAR) by adding the definition of "Adjusted Peak Performance" ("APP").

Effect on License Applications

BIS expects that the implementation of the new computer metric Adjusted Peak Performance (APP) will decrease the number of high performance computer (ECCN 4A003.b) license applications received by BIS by about 90 percent (i.e., 6 fewer applications projected) over the next 6 months. The new licensing threshold provides a relaxation of HPC export controls because all computers that are equal to or below 190,000 MTOPS are also below 0.75 WT, while certain computers with performance currently measured as exceeding 190,000 MTOPS do not

exceed 0.75 WT. The amount of relaxation that may occur for any particular family of computers will depend on the technical specifics of the system architecture and the processor used in the family.

Other Revisions

This rule also makes an editorial correction to § 770.2(l)(2), Interpretation 12: Computers by removing reference to 4A003.d and 4A003.f, which are currently reserved and not in use.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 2, 2005, 70 FR 45273 (August 5, 2005), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves three collections of information subject to the PRA. The first collection has been approved by OMB under control number 0694-0088, "Multi-Purpose Application," and carries a burden hour estimate of 58 minutes for a manual or electronic submission. The second collection has been approved by OMB under control number 0694-0106, "Reporting and Recordkeeping Requirements under the Wassenaar Arrangement," and carries a burden hour estimate of 21 minutes for a manual or electronic submission. The third collection has been approved by OMB under control number 0694-0073, "Export Controls of High Performance Computers," and carries a burden hour estimate of 78 hours for a manual or electronic submission. This rule is expected to result in an immediate decrease in license applications, and in associated reporting and support documentation requirements, for high performance computers; however, this decrease may be reduced over time as higher performance systems are marketed. Send comments regarding these burden estimates or any other aspect of these collections of

information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Parts 732, 740, 748, 750, and 752

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research Science and technology.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Parts 746 and 774

Exports, Reporting and recordkeeping requirements.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

15 CFR Parts 738, 770 and 772

Exports.

■ Accordingly, parts 730, 732, 734, 738, 740, 742, 743, 746, 748, 750, 752, 762, 770, 772 and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 730—[AMENDED]

■ 1. The authority citation for part 730 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 2151 note, Pub. L. 108–175; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005); Notice of October 25, 2005, 70 FR 62027 (October 27, 2005).

■ 2. Supplement No. 1 to part 730 is amended by revising “§ 742.12, Supplement No. 3 to part 742, and § 762.2(b)” to read “Supplement No. 2 to part 748, paragraph (c)(2), and § 762.2(b)” in the third column “Reference in the EAR” of row “0694–0073”.

PART 732—[AMENDED]

■ 3. The authority citation for part 732 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

§ 732.4 [Amended]

■ 4. Section 732.4 is amended by

■ a. Revising the phrase “List-based License Exceptions (LVS, GBS, CIV, TSR, and CTP)” to read “List-based License Exceptions (LVS, GBS, CIV, TSR, and APP) in paragraph (b)(3)(iii); and

■ b. Revising the phrase “under License Exceptions GBS, CIV, LVS, CTP, TSR, or GOV,” to read “under License Exceptions GBS, CIV, LVS, APP, TSR, or GOV,” in paragraph (b)(3)(iv).

PART 734—[AMENDED]

■ 1. The authority citation for part 734 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of November 4, 2004, 69 FR 64637 (November 8, 2004); Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 2. Section 734.4 is amended by revising paragraph (a)(1) to read as follows:

§ 734.4 De minimis U.S. content.

(a) *Items for which there is no de minimis level.* (1) There is no *de minimis* level for the export from a foreign country of a foreign-made computer with an Adjusted Peak Performance (APP) exceeding 0.75 Weighted TeraFLOPS (WT) containing U.S.-origin controlled semiconductors (other than memory circuits) classified under ECCN 3A001 to Computer Tier 3; or exceeding an APP of 0.002 WT containing U.S.-origin controlled semiconductors (other than memory circuits) classified under ECCN 3A001 or high speed interconnect devices (ECCN 4A994.j) to Cuba, Iran, Libya, North Korea, Sudan, and Syria.

* * * * *

PART 738—[AMENDED]

■ 1. The authority citation for part 738 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C.

287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

§ 738.2 [Amended]

■ 2. Section 738.2 is amended by removing the phrase “XP Computers” from the list at the end of paragraph (d)(2)(i)(A).

PART 740—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 4. Section 740.7 is revised to read as follows:

§ 740.7 Computers (APP).

(a) *Scope.* (1) Commodities. License Exception APP authorizes exports and reexports of computers, including “electronic assemblies” and specially designed components therefor controlled by ECCN 4A003, *except* ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a), exported or reexported separately or as part of a system for consumption in Computer Tier countries as provided by this section. When evaluating your computer to determine License Exception APP eligibility, use the APP parameter to the exclusion of other technical parameters in ECCN 4A003.

(2) Technology and software. License Exception APP authorizes exports of technology and software controlled by ECCNs 4D001 and 4E001 specially designed or modified for the “development”, “production”, or “use” of computers, including “electronic assemblies” and specially designed components therefor classified in ECCN 4A003, *except* ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a), to Computer Tier countries as provided by this section. Technology for computers controlled for missile technology (MT) reasons are not eligible for License Exception APP.

(b) *Restrictions.* (1) Related equipment controlled under ECCN 4A003.g may not be exported or reexported under this License Exception when exported or reexported separately from eligible

computers authorized under this License Exception.

(2) Access and release restrictions. (i) *Computers and software.* Computers and software eligible for License Exception APP may not be accessed either physically or computationally by nationals of Cuba, Iran, Libya, North Korea, Sudan, or Syria, except that commercial consignees described in Supplement No. 3 to part 742 of the EAR are prohibited only from giving such nationals user-accessible programmability.

(ii) *Technology and source code.* Technology and source code eligible for License Exception APP may not be released to nationals of Cuba, Iran, Libya, North Korea, Sudan, or Syria.

(3) Computers and software eligible for License Exception APP may not be reexported or transferred (in country) without prior authorization from BIS, *i.e.*, a license, a permissive reexport, another License Exception, or “No License Required”. This restriction must be conveyed to the consignee, via the Destination Control Statement, see § 758.6 of the EAR. Additionally, the end-use and end-user restrictions in paragraph (b)(5) of this section must be conveyed to any consignee in Computer Tier 3.

(4) You may not use this License Exception to export or reexport items that you know will be used to enhance the APP beyond the eligibility limit allowed to your country of destination.

(5) License Exception APP does not authorize exports and reexports for nuclear, chemical, biological, or missile end-users and end-uses subject to license requirements under § 744.2, § 744.3, § 744.4, and § 744.5 of the EAR. Such exports and reexports will continue to require a license and will be considered on a case-by-case basis. Reexports and transfers (in country) to these end-users and end-uses in eligible countries are strictly prohibited without prior authorization.

(6) Foreign nationals in an expired visa status are not eligible to receive deemed exports of technology or source code under this License Exception. It is the responsibility of the exporter to ensure that, in the case of deemed exports, the foreign national maintains a valid U.S. visa, if required to hold a visa from the United States.

(c) *Computer Tier 1 destinations.* (1) Eligible destinations. The destinations that are eligible to receive exports and reexports under paragraph (c) of this section include: Antigua and Barbuda, Argentina, Aruba, Australia, Austria, Bahamas (The), Bangladesh, Barbados, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei, Bulgaria,

Burkina Faso, Burma, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo (Democratic Republic of the), Congo (Republic of the), Costa Rica, Cote d'Ivoire, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, East Timor, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia (The), Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, Indonesia, Ireland, Italy, Jamaica, Japan, Kenya, Kiribati, Korea (Republic of), Latvia, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mozambique, Namibia, Nauru, Nepal, Netherlands, Netherlands Antilles, New Zealand, Nicaragua, Niger, Nigeria, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Rwanda, St. Kitts & Nevis, St. Lucia, St. Vincent and the Grenadines, Sao Tome & Principe, Samoa, San Marino, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Surinam, Swaziland, Sweden, Switzerland, Taiwan, Tanzania, Togo, Tonga, Thailand, Trinidad and Tobago, Turkey, Tuvalu, Uganda, United Kingdom, Uruguay, Vatican City, Venezuela, Western Sahara, Zambia, and Zimbabwe.

(2) Eligible commodities. All computers, including electronic assemblies and specially designed components therefore are eligible for export or reexport under License Exception APP to Tier 1 destinations, subject to the restrictions in paragraph (b) of this section.

(3) Eligible technology and software. (i) Technology and software described in paragraph (a)(2) of this section for computers of unlimited APP are eligible for export or reexport under License Exception APP to: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, or the United Kingdom; and

(ii) “Development” and “production” technology and source code described in paragraph (a)(2) of this section for computers with a APP less than or equal to 0.1 Weighted TeraFLOPS (WT) are eligible for deemed exports under License Exception APP to foreign nationals of Tier 1 destinations, other

than the destinations that are listed in paragraph (c)(3)(i) of this section, subject to the restrictions in paragraph (b) of this section.

(iii) “Use” technology and source code described in paragraph (a)(2) of this section for computers with a APP less than or equal to 0.75 WT are eligible for deemed exports under License Exception APP to foreign nationals of Tier 1 destinations, other than the destinations that are listed in paragraph (c)(3)(i) of this section, subject to the restrictions in paragraph (b) of this section.

(d) *Computer Tier 3 destinations.* (1) Eligible destinations. Eligible destinations under paragraph (d) of this section are: Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Cambodia, China (People's Republic of), Comoros, Croatia, Djibouti, Egypt, Georgia, India, Iraq, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Lebanon, Macau, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova, Mongolia, Morocco, Oman, Pakistan, Qatar, Russia, Serbia and Montenegro, Saudi Arabia, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, and Yemen.

(2) Eligible commodities. None.

(3) Eligible technology and source code. (i) “Development,” and “production” technology and source code described in paragraph (a)(2) of this section for computers with a APP less than or equal to 0.1 Weighted TeraFLOPS (WT) are eligible for deemed exports under License Exception APP to foreign nationals of Tier 3 destinations as described in paragraph (d)(1) of this section, subject to the restrictions in paragraph (b) and the provisions of paragraph (d)(4) of this section.

(ii) “Use” technology and source code described in paragraph (a)(2) of this section for computers with an APP less than or equal to 0.75 WT are eligible for deemed exports under License Exception APP to foreign nationals of Tier 3 destinations as described in paragraph (d)(1) of this section, subject to the restrictions in paragraph (b) and the provisions of paragraph (d)(4) of this section.

(4) Foreign National Review (FNR) requirement for deemed exports. (i) *Submission requirement.* Prior to disclosing eligible technology or source code to a foreign national of a Computer Tier 3 country that is not also a country listed in Country Group B in Supplement No. 1 to part 740 of the EAR under this License Exception, you must submit a Foreign National Review

(FNR) request to BIS, as required under § 748.8(s) of the EAR. Your FNR request must include information about the foreign national required under § 748.8(t) of the EAR and set forth in Supplement No. 2 of part 748 of the EAR.

(ii) *Confirmation of eligibility.* You may not use License Exception APP, until you have obtained confirmation of eligibility by calling the System for Tracking Export License Applications (STELA), see § 750.5 for how to use STELA, or electronically from the Simplified Network Application Procedure (SNAP), see <http://www.bis.doc.gov/SNAP/index.htm> for more information about SNAP.

(iii) *Action by BIS.* Within nine business days of the registration of the FNR request, BIS will electronically refer the FNR request for interagency review, or if necessary return the FNR request without action (e.g., if the information provided is incomplete). Processing time starts at the point at which the notification is registered into BIS's electronic system.

(iv) *Review by other departments or agencies.* The Departments of Defense, State, Energy, and other agencies, as appropriate, may review the FNR request. Within 30 calendar days of receipt of the BIS referral, the reviewing agency will provide BIS with a recommendation either to approve or deny the FNR request. A reviewing agency that fails to provide a recommendation within 30 days shall be deemed to have no objection to the final decision of BIS.

(v) *Action on the FNR Request.* After the interagency review period, BIS will promptly notify the applicant regarding the FNR request, i.e., whether the FNR request is approved, denied, or more time is needed to consider the request.

(e) *Reporting requirements.* See § 743.1 of the EAR for reporting requirements of certain items under License Exception APP.

■ 5. Section 740.9 is amended by revising the phrase "Personal computers (including laptops) controlled under ECCN 4A994 that do not exceed a composite theoretical performance of 6,500 millions of theoretical operations per second" to read "Personal computers (including laptops) controlled under ECCN 4A994 that do not exceed Adjusted Peak Performance (APP) of 0.0015 Weighted TeraFLOPS (WT)" in paragraph (a)(2)(i)(B)(1).

■ 6. Section 740.11 is amended by revising paragraphs (a)(4) and (c)(4) to read as follows:

§ 740.11 Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV).

* * * * *

(a) * * *

(4) *Restrictions.* Nationals of countries in Country Group E:1 may not physically or computationally access computers that have been enhanced by "electronic assemblies", which have been exported or reexported under License Exception GOV and have been used to enhance such computers by aggregation of processors so that the APP of the aggregation exceeds the APP parameter set forth in ECCN 4A003.b. of the Commerce Control List in Supplement No. 1 to part 774 of the EAR, without prior authorization from the Bureau of Industry and Security.

* * * * *

(c) * * *

(4) *Restrictions.* Nationals of countries in Country Group E:1 may not physically or computationally access computers that have been enhanced by "electronic assemblies", which have been exported or reexported under License Exception GOV and have been used to enhance such computers by aggregation of processors so that the APP of the aggregation exceeds the APP parameter set forth in ECCN 4A003.b. of the Commerce Control List in Supplement No. 1 to part 774 of the EAR, without prior authorization from the Bureau of Industry and Security.

* * * * *

§ 740.19 [Amended]

■ 7. Section 740.19 is amended by revising the sentence "4A994, for items with CTP levels up to 12,000 MTOPS; and" to read "4A994, for items with an Adjusted Peak Performance (APP) equal to or less than 0.003 Weighted TeraFLOPS; and" in paragraph (a)(2)(iv).

PART 742—[AMENDED]

■ 8. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of November 4, 2004, 69 FR 64637 (November 8, 2004); Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

§ 742.12 [Removed]

■ 9. Section 742.12 is removed and reserved.

§ 742.19 [Removed]

■ 10. Section 742.19 is amended by revising the sentence "Digital computers with a CTP above 2000." to read "Digital computers with an Adjusted Peak Performance (APP) exceeding 0.0004 Weighted TeraFLOPS (WT)." in paragraph (b)(1)(xviii).

■ 11. Supplement No. 2 is amended by:

■ a. Revising the phrase "Digital computers with a CTP of 6 or above," to read "Digital computers with an APP of .00001 WT or above," in the heading to paragraph (c)(24);

■ b. Revising the phrase "Computers with a CTP above 2000 MTOPS:" to read "Computers with an APP exceeding 0.0004 WT:" in paragraph (c)(24)(iv)(A); and

■ c. Revising the phrase "Computers with a CTP at or below 2000 MTOPS:" to read "Computers with an APP equal to or less than 0.0004 WT:" in paragraph (c)(24)(iv)(B).

■ 12. Supplement No. 3 is removed and reserved.

PART 743—[AMENDED]

■ 13. The authority citation for part 743 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. 106–508; 50 U.S.C. 1701 *et seq.*; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 14. Section 743.1 is amended by revising the phrase "License Exceptions GBS, CIV, TSR, LVS, CTP," to read "License Exceptions GBS, CIV, TSR, LVS, APP," in paragraph (b)(1).

■ 15. Section 743.1 is amended by revising paragraph (c)(2) to read as follows:

§ 743.1 Wassenaar arrangement.

* * * * *

(c) * * *

(2) Reports for "software" controlled by 4D001 (that is specially designed), and "technology" controlled by 4E001 (according to the General Technology Note in Supplement No. 2 to part 774 of the EAR) are required for the "development" or "production" of computers controlled under 4A001.a.2, or for the "development" or "production" of "digital computers" having an "Adjusted Peak Performance" ("APP") exceeding 0.1 Weighted TeraFLOPS (WT). For the calculation of APP, see the Technical Note for Category 4 in the Commerce Control List

(Supplement No. 2 to part 774 of the EAR).

* * * * *

■ 16. Part 743 is amended by adding section 743.2 to read as follows:

§ 743.2 High Performance Computers: Post Shipment Verification Reporting.

(a) *Scope.* This section outlines special post-shipment reporting requirements for exports of certain computers to destinations in Computer Tier 3, see § 740.7(d) for a list of these destinations. Post-shipment reports must be submitted in accordance with the provisions of this section, and all relevant records of such exports must be kept in accordance with part 762 of the EAR.

(b) *Requirement.* Exporters must file post-shipment reports and keep records in accordance with recordkeeping requirements in part 762 of the EAR for high performance computer exports to destinations in Computer Tier 3, as well as, exports of commodities used to enhance computers previously exported or reexported to Computer Tier 3 destinations, where the “Adjusted Peak Performance” (“APP”) is greater than 0.75 Weighted TeraFLOPS (WT).

(c) *Information that must be included in each post-shipment report.* No later than the last day of the month following the month in which the export takes place, the exporter must submit the following information to BIS at the address listed in paragraph (d) of this section:

- (1) Exporter name, address, and telephone number;
- (2) License number;
- (3) Date of export;
- (4) End-user name, point of contact, address, telephone number;
- (5) Carrier;
- (6) Air waybill or bill of lading number;
- (7) Commodity description, quantities—listed by model numbers, serial numbers, and APP level in WT; and
- (8) Certification line for exporters to sign and date. The exporter must certify that the information contained in the report is accurate to the best of his or her knowledge.

Note to Paragraph (c) of this Section: Exporters are required to provide the PRC End-User Certificate Number to BIS as part of their post-shipment report. When providing the PRC End-User Certificate Number to BIS, you must identify the transaction in the post shipment report to which that PRC End-User Certificate Number applies.

(d) *Mailing address.* A copy of the post-shipment report[s] required under paragraph (b) of this section shall be

delivered to one of the following addresses. Note that BIS will not accept reports sent C.O.D.

(1) For deliveries by U.S. postal service: U.S. Department of Commerce, Bureau of Industry and Security, P.O. Box 273, Washington, DC 20044, Attn: Office of Enforcement Analysis HPC Team, Room 4065.

(2) For courier deliveries: U.S. Department of Commerce, Office of Enforcement Analysis, HPC Team, 14th Street and Constitution Ave., NW., Room 4065, Washington, DC 20230.

PART 746—[AMENDED]

■ 17. The authority citation for part 746 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12854, 58 FR 36587, 3 CFR 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

§ 746.3 [Amended]

■ 18. Section 746.3 is amended by revising the phrase “NS, MT, NP, CW, CB, RS, CC, EI, SI, or XP reasons.” to read “NS, MT, NP, CW, CB, RS, CC, EI, or SI reasons.” in paragraph (a)(1).

■ 19. Section 746.3 is amended by revising the phrase “following License Exceptions: CIV, CTP, TMP, RPL, GOV, GFT, TSU, BAG, AVS, ENC or KMI.” to read “following License Exceptions: CIV, APP, TMP, RPL, GOV, GFT, TSU, BAG, AVS, ENC or KMI.” in paragraph (c).

PART 748—[AMENDED]

■ 20. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 21. Supplement No. 1 to part 748 is amended by revising paragraph (b) under Block 22 to read as follows:

Supplement No. 1 to Part 748—BIS–748P, BIS–748P–A: Item Appendix, and BIS–748P–B: End-User Appendix; Multipurpose Application Instructions

* * * * *

Block 22: * * *
(b) CTP. You must enter the “Adjusted Peak Performance” (“APP”) in this Block if your application includes a digital computer or

equipment containing a computer as described in Supplement No. 2 to this part. Instructions on calculating the APP are contained in a Technical Note at the end of Category 4 in the CCL.

* * * * *

■ 22. Supplement No. 2 to part 748 is amended by revising paragraph (c) to read as follows:

Supplement No. 2 to Part 748—Unique Application and Submission Requirements

* * * * *

(c) *Computers, telecommunications, information security items, and related equipment.* If your license application includes items controlled by both Category 4 and Category 5, your license application must be submitted under Category 5 of the Commerce Control List (§ 774.1 of the EAR)—see Category 5 Part 1 Notes 1 and 2 and Part 2 Note 1. License applications including computers controlled by Category 4 must identify an “Adjusted Peak Performance” (“APP”) in Block 22(b). If the principal function is telecommunications, an APP is not required. Computers, related equipment, or software performing telecommunication or local area network functions will be evaluated against the telecommunications performance characteristics of Category 5 Part 1, while information security commodities, software and technology will be evaluated against the information security performance characteristics of Category 5 Part 2.

If your license application involves items controlled by both Category 4 and Category 5, your license application must be submitted under Category 5—see Category 5 Part 1 Notes 1 and 2 and Part 2 Note 1. License applications involving computers controlled by Category 4 must identify an Adjusted Peak Performance (APP) in Block 22(b). If the principal function is telecommunications, an APP is not required. Computers, related equipment, or software performing telecommunication or local area network functions will be evaluated against the telecommunications performance characteristics of Category 5 Part 1, while information security commodities, software and technology will be evaluated against the information security performance characteristics of Category 5 Part 2.

(1) Requirements for license applications that include computers. If you are submitting a license application to export or reexport computers or equipment containing computers to destinations in Country Group D:1 (See

Supplement No. 1 to part 740 of the EAR), or to upgrade existing computer installations in those countries, you must also include technical specifications and product brochures to corroborate the data supplied in your license application, in addition to the APP in Block 22(b).

(2) Security Safeguard Plan requirement. The United States requires security safeguards for exports, reexports, and in-country transfers of High Performance Computers (HPCs) to ensure that they are used for peaceful purposes. If you are submitting a license application for an export, reexport, or in-country transfer of a high performance computer to or within a destination in Computer Tier 3 (see § 740.7(c)(1) of the EAR) or to Cuba, Iran, Libya, North Korea, Sudan, or Syria you must include with your license application a security safeguard plan signed by the end-user, who may also be the ultimate consignee. This requirement also applies to exports, reexports, and in-country transfers of components or electronic assemblies to upgrade existing "computer" installations in those countries. A sample security safeguard plan is posted on BIS's Web page at <http://www.bis.doc.gov/hpcs/SecuritySafeguardPlans.html>.

PART 750—[AMENDED]

■ 23. The authority citation for part 750 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec 1503, Pub.L. 108–11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

§ 750.4 [Amended]

■ 24. Section 750.4 is amended to remove the phrase “, except digital computers with a Composite Theoretical Performance (CTP) less than 500 MTOPS” in paragraph (b)(6)(ii)(A).

PART 752—[AMENDED]

■ 25. The authority citation for part 752 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 26. Supplement No. 2 to part 752 is amended by revising Block 22 paragraph (b) to read as follows:

Supplement No. 1 to Part 752— Instructions for Completing Form BIS– 748P–B, “Item Annex”

* * * * *

Block 22: * * *

(b) CTP. You must enter the “Adjusted Peak Performance” (“APP”) in this block if you intend to export or reexport a computer or equipment that contains a computer. Instructions on calculating the APP are contained in a Technical Note at the end of Category 4 in the CCL.

* * * * *

PART 762—[AMENDED]

■ 27. The authority citation for part 762 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 28. Section 762.2 is amended by revising (b)(6) to read as follows:

§ 762.2 Records to Be Retained.

* * * * *

(b) * * *

(6) § 743.2, High Performance Computers

* * * * *

PART 770—[AMENDED]

■ 29. The authority citation for part 770 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 30. Section 770.2 is amended by revising paragraph (l) to read as follows:

§ 770.2 Item Interpretations.

* * * * *

(l) *Interpretation 12: Computers.* (1) Digital computers or computer systems classified under ECCN 4A003.a, .b, or .c, that qualify for “No License Required” (NLR) must be evaluated on the basis of Adjusted Peak Performance (APP) alone, to the exclusion of all other technical parameters.

Digital computers or computer systems classified under ECCN 4A003.a, .b, or .c that qualify for License Exception APP must be evaluated on the basis of APP, to the exclusion of all other technical parameters, except for ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a). Assemblies performing analog-to-digital conversions are evaluated under Category 3—Electronics, ECCN 3A001.a.5.a.

(2) Related equipment classified under ECCN 4A003.e or .g may be exported or reexported under License Exceptions GBS or CIV. When related equipment is exported or reexported as part of a computer system, NLR or License Exception APP is available for the computer system and the related equipment, as appropriate.

* * * * *

PART 772—[AMENDED]

■ 31. The authority citation for part 772 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 32. Section 772.1 is amended by:

■ a. Adding in alphabetical order the definitions of “Adjusted Peak Performance (APP)”, and “APP”, as set forth below; and

■ b. Revising the definition of “Composite theoretical performance (CTP)”, as set forth below.

§ 772.1 Definitions of Terms as Used in the Export Administration Regulations (EAR).

* * * * *

“APP” See “Adjusted Peak Performance.” This term may also appear without quotation marks.

“Adjusted Peak Performance” (APP). (Cat 4) An adjusted peak rate at which “digital computers” perform 64-bit or larger floating point additions and multiplications. The formula to calculate APP is contained in a technical note at the end of Category 4 of the Commerce Control List.

* * * * *

“Composite theoretical performance”.

(CTP) (Cat 3)—A measure of computational performance given in millions of theoretical operations per second (MTOPS), calculated using the aggregation of “computing elements (CE)”. (see Category 3, Technical Note.) This term may also appear without quotation marks. The formula to calculate the CTP is contained in a technical note titled “Information on How to Calculate “Composite Theoretical Performance” at the end of Category 3 of the CCL.

* * * * *

PART 774—[AMENDED]

■ 33. The authority citation for part 774 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app.

466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 34. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, ECCN 3A991 is amended by adding License Requirement notes 1 and 2, to read as follows:

3A991 Electronic devices and components not controlled by 3A001.

* * * * *

License Requirements

Reason for Control: AT

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

See §§ 740.19 and 742.20 of the EAR for additional information on Libya.

License Requirements Notes: 1. Microprocessors with a “Composite Theoretical Performance” (“CTP”) below 550 MTOPS listed in subparagraphs (a)(2) or (a)(3) of this entry may be shipped NLR (No License Required) when destined to North Korea, provided restrictions set forth in other sections of the EAR (e.g., end-use restrictions), do not apply. See “Information on How to Calculate “Composite Theoretical Performance” (“CTP”)” at the end of Category 3.

2. See 744.17 of the EAR for additional license requirements for commodities classified as 3A991.a.1.

* * * * *

■ 35. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, ECCN 3E001 is amended by revising the CIV paragraph of the License Exception section, to read as follows:

3E001 “Technology” according to the General Technology Note for the “development” or “production” of equipment or materials controlled by 3A (except 3A292, 3A980, 3A981, 3A991 or 3A992), 3B (except 3B991 or 3B992) or 3C.

* * * * *

License Exceptions

CIV: Yes for deemed exports, as described in § 734.2(b)(2)(ii) of the EAR, of technology for the development or production of microprocessor microcircuits, micro-computer microcircuits, and microcontroller microcircuits having the characteristics described in 3A001.a.3.c with a “Composite Theoretical Performance”

(“CTP”) less than or equal to 40,000 MTOPS (regardless of word length or access width). Deemed exports under License Exception CIV are subject to a Foreign National Review (FNR) requirement, see § 740.5 of the EAR for more information about the FNR. License Exception CIV does not apply to ECCN 3E001 technology for 3A001.a.3.c required for the development or production of other items controlled under ECCNs beginning with 3A, 3B, or 3C, or to ECCN 3E001 technology also controlled under ECCN 3E003.

TSR: * * *

* * * * *

■ 36. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, ECCN 3E002 is amended by revising the CIV paragraph of the License Exception section, to read as follows:

3E002 “Technology” according to the General Technology Note other than that controlled in 3E001 for the “development” or “production” of “microprocessor microcircuits”, “micro-computer microcircuits” and microcontroller microcircuits having a “composite theoretical performance” (“CTP”) of 530 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bits or more.

* * * * *

License Exceptions

CIV: Yes, for deemed exports, as described in § 734.2(b)(2)(ii) of the EAR, of “technology” for the “development” or “production” of general purpose microprocessors with a “Composite Theoretical Performance” (“CTP”) less than or equal to 40,000 MTOPS (regardless of word length or access width). Deemed exports under License Exception CIV are subject to a Foreign National Review (FNR) requirement, see § 740.5 of the EAR for more information about the FNR. License Exception CIV does not apply to ECCN 3E002 technology also required for the development or production of items controlled under ECCNs beginning with 3A, 3B, or 3C, or to ECCN 3E002 technology also controlled under ECCN 3E003.

TSR: * * *

* * * * *

■ 37. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics is amended by adding a technical note after EAR99, to read as follows:

Category 3—Electronics

* * * * *

Information on How To Calculate “Composite Theoretical Performance” (“CTP”)

Technical Note:

“Composite Theoretical Performance” (“CTP”)

Abbreviations Used in This Technical Note

- “CE” “computing element” (typically an arithmetic logical unit)
- FP floating point
- XP fixed point
- t execution time
- XOR exclusive OR
- CPU central processing unit
- TP theoretical performance (of a single “CE”)
- “CTP” “composite theoretical performance” (multiple “CEs”)
- R effective calculating rate
- WL word length
- L word length adjustment
- * multiply

Execution time t is expressed in microseconds, TP and “CTP” are expressed in millions of theoretical operations per second (MTOPS) and WL is expressed in bits.

Outline of “CTP” Calculation Method

“CTP” is a measure of computational performance given in MTOPS. In calculating the “CTP” of an aggregation of “CEs” the following three steps are required:

1. Calculate the effective calculating rate R for each “CE”;
2. Apply the word length adjustment (L) to the effective calculating rate (R), resulting in a Theoretical Performance (TP) for each “CE”;
3. If there is more than one “CE”, combine the TPs, resulting in a “CTP” for the aggregation.

Details for these steps are given in the following sections.

Note 1: For aggregations of multiple “CEs” that have both shared and unshared memory subsystems, the calculation of “CTP” is completed hierarchically, in two steps: First, aggregate the groups of “CEs” sharing memory; second, calculate the “CTP” of the groups using the calculation method for multiple “CEs” not sharing memory.

Note 2: “CEs” that are limited to input/output and peripheral functions (e.g., disk drive, communication and video display controllers) are not aggregated into the “CTP” calculation.

The following table shows the method of calculating the Effective Calculating Rate R for each “CE”:

Step 1: The effective calculating rate R

<p>For simple logic processors not implementing any of the specified arithmetic operations.</p>	<p>1 ----- $3 * t_{log}$ Where t_{log} is the execute time of the XOR, or for logic hardware not implementing the XOR, the fastest simple logic operation. See Notes X & Z</p>
<p>For special logic processors not using any of the specified arithmetic or logic operations.</p>	<p>$R = R' * WL/64$ Where R' is the number of results per second, WL is the number of bits upon which the logic operation occurs, and 64 is a factor to normalize to a 64 bit operation.</p>

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Note W: For a pipelined “CE” capable of executing up to one arithmetic or logic operation every clock cycle after the pipeline is full, a pipelined rate can be established. The effective calculating rate (R) for such a “CE” is the faster of the pipelined rate or non-pipelined execution rate.

Note X: For a “CE” that performs multiple operations of a specific type in a single cycle (e.g., two additions per cycle or two identical logic operations per cycle), the execution time t is given by:

$$t = \frac{\text{cycle time}}{\text{the number of identical operations per machine cycle}}$$

“CEs” that perform different types of arithmetic or logic operations in a single machine cycle are to be treated as multiple separate “CEs” performing simultaneously (e.g., a “CE” performing an addition and a multiplication in one cycle is to be treated as two “CEs”, the first performing an addition in one cycle and the second performing a multiplication in one cycle). If a single “CE” has both scalar function and

vector function, use the shorter execution time value.

Note Y: For the “CE” that does not implement FP add or FP multiply, but that performs FP divide:

$$R_{fp} = \frac{1}{t_{fpdivide}}$$

If the “CE” implements FP reciprocal but not FP add, FP multiply or FP divide, then

$$R_{fp} = \frac{1}{t_{fpreciprocal}}$$

If none of the specified instructions is implemented, the effective FP rate is 0.

Note Z: In simple logic operations, a single instruction performs a single logic manipulation of no more than two operands of given lengths. In complex logic operations, a single instruction performs multiple logic manipulations to produce one or more results from two or more operands.

Rates should be calculated for all supported operand lengths considering both pipelined operations (if supported), and non-pipelined operations using the fastest executing instruction for each operand length based on:

1. Pipelined or register-to-register operations. Exclude extraordinarily short execution times generated for operations on a predetermined operand or operands (for example, multiplication by 0 or 1). If no register-to-register operations are implemented, continue with (2).

2. The faster of register-to-memory or memory-to-register operations; if these also do not exist, then continue with (3).

3. Memory-to-memory.
In each case above, use the shortest execution time certified by the manufacturer.

Step 2: TP for each supported operand length WL

Adjust the effective rate R (or R') by the word length adjustment L as follows:

$$TP = R * L, \text{ where } L = (1/3 + WL/96)$$

Note: The word length WL used in these calculations is the operand length in bits. (If an operation uses operands of different lengths, select the largest word length.) The combination of a mantissa ALU and an

exponent ALU of a floating point processor or unit is considered to be one "CE" with a Word Length (WL) equal to the number of bits in the data representation (typically 32 or 64) for purposes of the "CTP" calculation.

This adjustment is not applied to specialized logic processors that do not use XOR instructions. In this case TP = R.

Select the maximum resulting value of TP for:

- Each XP-only "CE" (R_{xp});
- Each FP-only "CE" (R_{fp});
- Each combined FP and XP "CE" (R);
- Each simple logic processor not implementing any of the specified arithmetic operations; and
- Each special logic processor not using any of the specified arithmetic or logic operations.

Step 3: "CTP" for aggregations of "CEs", including CPUs.

For a CPU with a single "CE", "CTP" = TP (for "CEs" performing both fixed and floating point operations TP = max (TP_{fp}, TP_{xp}))

"CTP" for aggregations of multiple "CEs" operating simultaneously is calculated as follows:

Note 1: For aggregations that do not allow all of the "CEs" to run simultaneously, the possible combination of "CEs" that provides the largest "CTP" should be used. The TP of each contributing "CE" is to be calculated at its maximum value theoretically possible before the "CTP" of the combination is derived.

N.B.: To determine the possible combinations of simultaneously operating "CEs", generate an instruction sequence that initiates operations in multiple "CEs", beginning with the slowest "CE" (the one needing the largest number of cycles to complete its operation) and ending with the fastest "CE". At each cycle of the sequence, the combination of "CEs" that are in operation during that cycle is a possible combination. The instruction sequence must take into account all hardware and/or architectural constraints on overlapping operations.

Note 2: A single integrated circuit chip or board assembly may contain multiple "CEs".

Note 3: [RESERVED]

Note 4: [RESERVED]

Note 5: "CTP" values must be aggregated for multiple "CEs" specially designed to enhance performance by aggregation, operating simultaneously and sharing memory—or multiple memory/"CE"—combinations operating simultaneously utilizing specially designed hardware.

$$\text{"CTP"} = TP_1 + C_2 * TP_2 + \dots + C_n * TP_n$$

Where the TPs are ordered by value, with TP₁ being the highest, TP₂ being the second highest, . . . and TP_n being the lowest. C_i is a coefficient determined by the strength of the interconnection between "CEs", as follows:

For multiple "CEs" operating simultaneously and sharing memory:

$$C_2 = C_3 = C_4 = \dots = C_n = 0.75$$

Note 1: When the "CTP" calculated by the above method does not exceed 194 MTOPS, the following formula may be used to calculate C_i:

0.75

$$C_i = \frac{0.75}{\sqrt{m}} \quad (i = 2, \dots, n)$$

\sqrt{m}

Where m = the number of "CEs" or groups of "CEs" sharing access.

Provided:

1. The TP₁ of each "CE" or group of "CEs" does not exceed 30 MTOPS;
2. The "CEs" or groups of "CEs" share access to main memory (excluding cache memory) over a single channel; and
3. Only one "CE" or group of "CEs" can have use of the channel at any given time.

N.B.: This does not apply to items controlled under Category 3.

Note 2: "CEs" share memory if they access a common segment of solid state memory. This memory may include cache memory, main memory or other internal memory. Peripheral memory devices such as disk drives, tape drives or RAM disks are not included.

For Multiple "CEs" or groups of "CEs" not sharing memory, interconnected by one or more data channels:

$$C_i = 0.75 * k_i \quad (i = 2, \dots, 32) \text{ (see Note below)}$$

$$= 0.60 * k_i \quad (i = 33, \dots, 64)$$

$$= 0.45 * k_i \quad (i = 65, \dots, 256)$$

$$= 0.30 * k_i \quad (i > 256)$$

The value of C_i is based on the number of "CE"s, not the number of nodes.

Where k_i = min (S_i/K_r, 1), and K_r = normalizing factor of 20 MByte/s. S_i = sum of the maximum data rates (in units of MByte/s) for all data channels connected to the ith "CE" or group of "CEs" sharing memory.

When calculating a C_i for a group of "CEs", the number of the first "CE" in a group determines the proper limit for C_i. For example, in an aggregation of groups consisting of 3 "CEs" each, the 22nd group will contain "CE"₆₄, "CE"₆₅ and "CE"₆₆. The proper limit for C_i for this group is 0.60.

Aggregation (of "CEs" or groups of "CEs") should be from the fastest-to-slowest; i.e.:

TP₁ ≥ TP₂ ≥ . . . > TP_n, and in the case of TP_i = TP_{i + 1}, from the largest to smallest; i.e.: C_i ≥ C_{i + 1}

Note: The k_i factor is not to be applied to "CEs" 2 to 12 if the TP_i of the "CE" or group of "CEs" is more than 50 MTOPS; i.e., C_i for "CEs" 2 to 12 is 0.75.

■ 38. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A001 is

amended by revising the License Requirements section, to read as follows:

4A001 Electronic computers and related equipment, and "electronic assemblies" and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, AT, NP.

Control(s)	Country chart
NS applies to entire entry ...	NS Column 2.
MT applies to items in 4A001.a when the parameters in 4A101 are met or exceeded.	MT Column 1.
AT applies to entire entry	AT Column 1.

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions for 4A001.a.2.

* * * * *

■ 39. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control

Classification Number (ECCN) 4A003 is amended by revising the License Requirements section, the License Exceptions section, and the “items” paragraph in the List of Items Controlled section, to read as follows:

4A003 “Digital computers”, “electronic assemblies”, and related equipment therefor, as follows, and specially designed components therefor.

License Requirements

Reason for Control: NS, CC, AT, NP.

Control(s)	Country chart
NS applies to 4A003.b and .c.	NS Column 1.
NS applies to 4A003.a, .e, and .g.	NS Column 2.
CC applies to “digital computers” for computerized finger-print equipment.	CC Column 1.
AT applies to entire entry (refer to 4A994 for controls on “digital computers” with a APP ≥ 0.00001 but ≤ to 0.75 WT).	AT Column 1.

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

Note 1: For all destinations, except those countries in Country Group E:1 of Supplement No. 1 to part 740 of the EAR, no license is required (NLR) for computers with an “Adjusted Peak Performance” (“APP”) not exceeding 0.75 Weighted TeraFLOPS (WT) and for “electronic assemblies” described in 4A003.c that are not capable of exceeding an “Adjusted Peak Performance” (“APP”) exceeding 0.75 Weighted TeraFLOPS (WT) in aggregation, except certain transfers as set forth in § 746.3 (Iraq). Computers controlled in this entry for MT reasons are not eligible for NLR.

Note 2: Special Post Shipment Verification reporting and recordkeeping requirements for exports of computers to destinations in Computer Tier 3 may be found in § 743.2 of the EAR.

License Exceptions

LVS: * * *
GBS: * * *

APP: Yes, for computers controlled by 4A003.a or .b, and “electronic assemblies” controlled by 4A003.c, to the exclusion of other technical parameters, with the exception of 4A003.e (equipment performing analog-to-digital conversions exceeding the limits of 3A001.a.5.a). See § 740.7 of the EAR.

CIV: * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *
Related Definitions: * * *
Items:

Note 1: 4A003 includes the following:

- a. Vector processors;
- b. Array processors;
- c. Digital signal processors;
- d. Logic processors;
- e. Equipment designed for “image enhancement”;
- f. Equipment designed for “signal processing”.

Note 2: The control status of the “digital computers” and related equipment described in 4A003 is determined by the control status of other equipment or systems provided:

- a. The “digital computers” or related equipment are essential for the operation of the other equipment or systems;
- b. The “digital computers” or related equipment are not a “principal element” of the other equipment or systems; and

N.B. 1: The control status of “signal processing” or “image enhancement” equipment specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the “principal element” criterion.

N.B. 2: For the control status of “digital computers” or related equipment for telecommunications equipment, see Category 5, Part 1 (Telecommunications).

- c. The “technology” for the “digital computers” and related equipment is determined by 4E.

- a. Designed or modified for “fault tolerance”;

Note: For the purposes of 4A003.a., “digital computers” and related equipment are not considered to be designed or modified for “fault tolerance” if they utilize any of the following:

- 1. Error detection or correction algorithms in “main storage”;
- 2. The interconnection of two “digital computers” so that, if the active central processing unit fails, an idling but mirroring central processing unit can continue the system’s functioning;
- 3. The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system’s functioning; or
- 4. The synchronization of two central processing units by “software” so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

- b. “Digital computers” having an “Adjusted Peak Performance” (“APP”) exceeding 0.75 weighted TeraFLOPS (WT);

- c. “Electronic assemblies” specially designed or modified to be capable of enhancing performance by aggregation

of processors so that the “APP” of the aggregation exceeds the limit in 4A003.b.;

Note 1: 4A003.c applies only to “electronic assemblies” and programmable interconnections not exceeding the limit in 4A003.b. when shipped as unintegrated “electronic assemblies”. It does not apply to “electronic assemblies” inherently limited by nature of their design for use as related equipment controlled by 4A003.e.

Note 2: 4A003.c does not control “electronic assemblies” specially designed for a product or family of products whose maximum configuration does not exceed the limit of 4A003.b.

- d. [RESERVED]
- e. Equipment performing analog-to-digital conversions exceeding the limits in 3A001.a.5;
- f. [RESERVED]
- g. Equipment specially designed to provide external interconnection of “digital computers” or associated equipment that allows communications at data rates exceeding 1.25 Gbyte/s.

Note: 4A003.g does not control internal interconnection equipment (e.g., backplanes, buses) passive interconnection equipment, “network access controllers” or “communication channel controllers”.

■ 40. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A994 is amended by revising the “items” paragraph in the List of Items Controlled section, to read as follows:

4A994 Computers, “electronic assemblies”, and related equipment not controlled by 4A001 or 4A003, and specially designed components therefor

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

Note 1: The control status of the “digital computers” and related equipment described in 4A994 is determined by the control status of other equipment or systems provided:

- a. The “digital computers” or related equipment are essential for the operation of the other equipment or systems;
- b. The “digital computers” or related equipment are not a “principal element” of the other equipment or systems; and

N.B. 1: The control status of “signal processing” or “image enhancement” equipment specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the “principal element” criterion.

N.B. 2: For the control status of “digital computers” or related equipment for

telecommunications equipment, see Category 5, Part 1 (Telecommunications).

c. The “technology” for the “digital computers” and related equipment is determined by 4E.

a. Electronic computers and related equipment, and “electronic assemblies” and specially designed components therefor, rated for operation at an ambient temperature above 343 K (70° C);

b. “Digital computers” having an “Adjusted Peak Performance” (“APP”) equal to or greater than 0.00001 Weighted TeraFLOPS (WT);

c. “Electronic assemblies” that are specially designed or modified to enhance performance by aggregation of processors, as follows:

c.1. Designed to be capable of aggregation in configurations of 16 or more processors; or

c.2. Having a sum of maximum data rates on all channels available for connection to associated processors exceeding 40 million Byte/s;

Note 1: 4A994.c applies only to “electronic assemblies” and programmable interconnections with a “APP” not exceeding the limits in 4A994.b, when shipped as unintegrated “electronic assemblies”. It does not apply to “electronic assemblies” inherently limited by nature of their design for use as related equipment controlled by 4A994.g and 4A994.k.

Note 2: 4A994.c does not control any “electronic assembly” specially designed for a product or family of products whose maximum configuration does not exceed the limits of 4A994.b.

d. Disk drives and solid state storage equipment:

d.1. Magnetic, erasable optical or magneto-optical disk drives with a “maximum bit transfer rate” exceeding 25 million bit/s;

d.2. Solid state storage equipment, other than “main storage” (also known as solid state disks or RAM disks), with a “maximum bit transfer rate” exceeding 36 million bit/s;

e. Input/output control units designed for use with equipment controlled by 4A994.d;

f. Equipment for “signal processing” or “image enhancement” having an “Adjusted Peak Performance” (“APP”) equal to or greater than 0.00001 Weighted TeraFLOPS (WT);

g. Graphics accelerators or graphics coprocessors that exceed a “three dimensional vector rate” of 400,000 or, if supported by 2-D vectors only, a “two dimensional vector rate” of 600,000;

Note: The provisions of 4A994.g do not apply to work stations designed for and limited to:

a. Graphic arts (e.g., printing, publishing); and

b. The display of two-dimensional vectors.

h. Color displays or monitors having more than 120 resolvable elements per cm in the direction of the maximum pixel density;

Note 1: 4A994.h does not control displays or monitors not specially designed for electronic computers.

Note 2: Displays specially designed for air traffic control (ATC) systems are treated as specially designed components for ATC systems under Category 6.

i. Equipment containing “terminal interface equipment” exceeding the limits in 5A991.

Note: For the purposes of 4A994.i, “terminal interface equipment” includes “local area network” interfaces, modems and other communications interfaces. “Local area network” interfaces are evaluated as “network access controllers”.

j. Equipment specially designed to provide external interconnection of “digital computers” or associated equipment that allows communications at data rates exceeding 80 Mbyte/s.

Note: 4A994.j does not control internal interconnection equipment (e.g., backplanes, buses) passive interconnection equipment, “network access controllers” or “communication channel controllers”.

k. “Hybrid computers” and “electronic assemblies” and specially designed components therefor, as follows:

k.1. Containing “digital computers” controlled by 4A003;

k.2. Containing analog-to-digital converters having all of the following characteristics:

k.2.a. 32 channels or more; and

k.2.b. A resolution of 14 bit (plus sign bit) or more with a conversion rate of 200,000 conversions/s or more.

■ 41. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4D001 is amended by revising the License Requirements section, the License Exceptions section, and the “items” paragraph in the List of Items Controlled section, to read as follows:

4D001 “Software” specially designed or modified for the “development”, “production” or “use” of equipment or “software” controlled by 4A001 to 4A004, or 4D (except 4D980, 4D993 or 4D994), and other specified software, see List of Items Controlled.

License Requirements

Reason for Control: NS, CC, AT, NP.

Control(s)	Country chart
NS applies to “software” for commodities or software controlled by 4A001 to 4A004, 4D001 to 4D003.	NS Column 1.
CC applies to “software” for computerized finger-print equipment controlled by 4A003 for CC reasons.	CC Column 1.
AT applies to entire entry	AT Column 1.

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

License Exceptions

CIV: N/A.

TSR: Yes, except “software” for commodities controlled by ECCN 4A003.b or ECCN 4A003.c is limited to “software” for computers or “electronic assemblies” with an “Adjusted Peak Performance” (“APP”) equal to or less than 0.1 Weighted TeraFLOPS (WT).

APP: Yes to specific countries (see § 740.7 of the EAR for eligibility criteria)

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. “Software” specially designed or modified for the “development”, “production” or “use” of equipment or “software” controlled by 4A001 to 4A004, or 4D (except 4D980, 4D993 or 4D994).

b. “Software”, other than that controlled by 4D001.a, specially designed or modified for the “development” or “production” of:

b.1. “Digital computers” having an “Adjusted Peak Performance” (“APP”) exceeding 0.04 Weighted TeraFLOPS (WT); or

b.2. “Electronic assemblies” specially designed or modified for enhancing performance by aggregation of processors so that the “APP” of the aggregation exceeds the limit in 4D001.b.1.

■ 42. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4D002 is amended by revising the License Requirements section, to read as follows:

4D002 “Software” specially designed or modified to support “technology” controlled by 4E (except 4E980, 4E992, and 4E993).

License Requirements

Reason for Control: NS, AT, NP.

Control(s)	Country chart
NS applies to entire entry ...	NS Column 1.
AT applies to entire entry	AT Column 1.

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

* * * * *

■ 43. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4E001 is amended by revising the License Requirements section, the License Exceptions section, and the “items” paragraph in the List of Items Controlled section, to read as follows:

4E001 “Technology” according to the General Technology Note, for the “development,” “production” or “use” of equipment or “software” controlled by 4A (except 4A980, 4A993 or 4A994) or 4D (except 4D980, 4D993, 4D994), and other specified technology, see List of Items Controlled.

License Requirements

Reason for Control: NS, MT, CC, AT, NP.

Control(s)	Country chart
NS applies to “technology” for commodities or software controlled by 4A001 to 4A004, 4D001 to 4D003.	NS Column 1.
MT applies to “technology” for items controlled by 4A001.a and 4A101 for MT reasons.	MT Column 1.
CC applies to “technology” for computerized fingerprint equipment controlled by 4A003 for CC reasons.	CC Column 1.
AT applies to entire entry	AT Column 1.

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

License Exceptions

CIV: N/A

TSR: Yes, except technology for commodities controlled by ECCN 4A003.b or ECCN 4A003.c is limited to technology for computers or electronic assemblies with an “Adjusted Peak Performance” (“APP”) exceeding 0.1 Weighted TeraFLOPS (WT).

APP: Yes to specific countries (see § 740.7 of the EAR for eligibility criteria).

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. “Technology” according to the General Technology Note, for the “development,” “production,” or “use” of equipment or “software” controlled by 4A (except 4A980, 4A993 or 4A994) or 4D (except 4D980, 4D993, 4D994).

b. “Technology”, other than that controlled by 4E001.a, specially designed or modified for the “development” or “production” of:

b.1. “Digital computers” having an “Adjusted Peak Performance” (“APP”) exceeding 0.04 Weighted TeraFLOPS (WT); or

b.2. “Electronic assemblies” specially designed or modified for enhancing performance by aggregation of processors so that the “APP” of the aggregation exceeds the limit in 4D001.b.1.

■ 44. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers is amended by:

■ (a) Removing the Technical Note “Information on How to Calculate “Composite Theoretical Performance (“CTP”)” that appears after EAR99; and

■ (b) Adding a Technical Note on “Adjusted Peak Performance (APP)” after EAR99, to read as follows:

Technical Note on “Adjusted Peak Performance” (“APP”)

APP is an adjusted peak rate at which “digital computers” perform 64-bit or larger floating point additions and multiplications.

Abbreviations Used in This Technical Note

n number of processors in the “digital computer”

i processor number (i,...n)

ti processor cycle time (ti = 1/Fi)

Fi processor frequency

Ri peak floating point calculating rate

Wi architecture adjustment factor

APP is expressed in Weighted TeraFLOPS (WT), in units of 1012 adjusted floating point operations per second,

Outline of “APP” Calculation Method

1. For each processor i, determine the peak number of 64-bit or larger floating-point operations, FPOi, performed per cycle for each processor in the “digital computer”.

Note: In determining FPO, include only 64-bit or larger floating point additions and/or multiplications. All floating point operations must be expressed in operations per processor cycle; operations requiring

multiple cycles may be expressed in fractional results per cycle. For processors not capable of performing calculations on floating-point operands of 64-bits or more the effective calculating rate R is zero.

2. Calculate the floating point rate R for each processor

$$R_i = FPO_i/t_i$$

3. Calculate APP as

$$APP = W_1 \times R_1 + W_2 \times R_2 + \dots + W_n \times R_n$$

4. For “vector processors”, Wi = 0.9. For non-“vector processors”, Wi = 0.3.

Note 1: For processors that perform compound operations in a cycle, such as an addition and multiplication, each operation is counted.

Note 2: For a pipelined processor the effective calculating rate R is the faster of the pipelined rate, once the pipeline is full, or the non-pipelined rate.

Note 3: The calculating rate R of each contributing processor is to be calculated at its maximum value theoretically possible before the “APP” of the combination is derived. Simultaneous operations are assumed to exist when the computer manufacturer claims concurrent, parallel, or simultaneous operation or execution in a manual or brochure for the computer.

Note 4: Do not include processors that are limited to input/output and peripheral functions (e.g., disk drive, communication and video display) when calculating APP.

Note 5: APP values are not to be calculated for processor combinations (inter)connected by “Local Area Networks”, Wide Area Networks, I/O shared connections/devices, I/O controllers and any communication interconnection implemented by “software”.

Note 6: APP values must be calculated for (1) processor combinations containing processors specially designed to enhance performance by aggregation, operating simultaneously and sharing memory; or (2) multiple memory/processor combinations operating simultaneously utilizing specially designed hardware.

Note 7: A “vector processor” is defined as a processor with built-in instructions that perform multiple calculations on floating-point vectors (one-dimensional arrays of 64-bit or larger numbers) simultaneously, having at least 2 vector functional units and at least 8 vector registers of at least 64 elements each.

Dated: April 12, 2006.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 06–3647 Filed 4–21–06; 8:45 am]

BILLING CODE 3510-33-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[EPA-R01-OAR-2006-0119; A-1-FRL-8049-9]

Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants: Perchloroethylene Dry Cleaner Regulation Maine Department of Environmental Protection**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act (“CAA”), the Maine Department of Environmental Protection (“ME DEP”) submitted a request for approval to implement and enforce “Chapter 125: Perchloroethylene Dry Cleaner Regulation” in place of the National Emissions Standard for Hazardous Air Pollutants for Perchloroethylene Dry Cleaning Facilities (“Dry Cleaning NESHAP”) as it applies to area sources. EPA has reviewed this request and determined that it satisfies the requirements necessary for approval. Thus, EPA is hereby granting ME DEP the authority to implement and enforce its perchloroethylene dry cleaner regulation in place of the Dry Cleaning NESHAP for area sources. This approval makes the ME DEP rule federally enforceable. Major sources remain subject to the Federal Dry Cleaning NESHAP.

DATES: This action will be effective June 23, 2006, unless EPA receives relevant adverse comments by May 24, 2006. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 23, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2006-0119 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. E-mail: brown.dan@epa.gov.
3. Fax: (617) 918-0048.
4. Mail: “Docket Identification Number EPA-R01-OAR-2006-0119”, Dan Brown, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAP), Boston, MA 02114-2023.

5. Hand Delivery or Courier. Deliver your comments to: Dan Brown, Manager, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAP), Boston, MA 02114-2023. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30 excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R01-OAR-2006-0119. 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 through <http://www.regulations.gov>, or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an “anonymous access” systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [http://](http://www.regulations.gov)

www.regulations.gov or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30 excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan Lancey, Air Permits, Toxics and Indoor Programs Unit (CAP), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114, telephone number (617) 918-1656, fax number (617) 918-0656, e-mail lancey.susan@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information****A. How Can I Get Copies of This Document and Other Related Information?**

In addition to the publicly available docket materials available for inspection electronically in Regional Material in EDocket, and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section of this **Federal Register**, copies of the State submittal and EPA’s technical support document are also available for public inspection during normal business hours, by appointment at the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333-0017.

II. Rulemaking Information

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- A. Background and Purpose
- B. What Requirements Must a State Rule Meet To Substitute for a Section 112 Rule?
- C. EPA Determination of Rule Equivalency
 1. What Are the Major Differences Between Chapter 125 and the Dry Cleaning NESHAP?
 - a. How Do the Applicability Requirements Differ?
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 - c. How Do the Requirements for Refrigerated Condensers Differ?
 - d. How Do the Work Practice Standards Differ?
 - e. How Do the Testing and Monitoring Requirements Differ?
 - f. How Do the Reporting Requirements Differ?
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- h. How Does Maine's Regulation Address the General Provisions at 40 CFR Part 63, Subpart A?
- 2. What Is EPA's Action Regarding Chapter 125?
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 - I. Petitions for Judicial Review

A. Background and Purpose

Under CAA section 112(l), EPA may approve State or local rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules, emissions standards, or requirements. The Federal regulations governing EPA's approval of State and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E. *See* 58 FR 62262 (November 26, 1993), as amended by 65 FR 55810 (September 14, 2000). Under these regulations, a State air pollution control agency has the option to request EPA's approval to substitute a State rule for the applicable Federal rule (*e.g.*, the National Emission Standards for Hazardous Air Pollutants (NESHAP)). Upon approval by EPA, the State agency is authorized to implement and enforce its rule in place of the Federal rule.

EPA promulgated the Dry Cleaning NESHAP on September 22, 1993. *See* 58 FR 49354 (codified at 40 CFR part 63, subpart M, "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities"). On August 12, 2003, EPA received ME DEP's request to implement and enforce "Chapter 125: Perchloroethylene Dry Cleaner Regulation" *in lieu of* the Dry Cleaning NESHAP as applied to area sources. ME DEP's request for approval was submitted pursuant to the provisions of 40 CFR part 63, subpart E. On September 15, 2003, EPA determined that Maine's submittal was complete.

Maine adopted Chapter 125 in 1991 to regulate dry cleaning facilities that are area sources of perchloroethylene in the State of Maine. *See* Maine Chapter 125 of the Department of Environmental Protection Regulations. Chapter 125 was revised in 1997 and 2003 to coincide more closely with the Dry Cleaning NESHAP and to remove sections referring to obsolete practices and equipment. Chapter 125 requires area

source dry cleaning facilities to register with the State and to comply with control technology, leak detection and strict work practice standards to reduce perchloroethylene emissions from their operations. Chapter 125 contains certain requirements that differ from the Dry Cleaning NESHAP. As explained below, however, EPA has determined that Chapter 125 is no less stringent than the Dry Cleaning NESHAP as applied to area sources. A copy of Chapter 125 is available upon request or for public inspection at EPA's New England Regional Office at the address listed above.

B. What Requirements Must a State Rule Meet To Substitute for a Section 112 Rule?

Section 112(l)(5) of the CAA requires that a State's NESHAP program contain adequate authorities to assure compliance with each applicable Federal requirement, adequate resources for implementation, and an expeditious compliance schedule. These are also requirements for an adequate operating permits program under 40 CFR part 70. On October 18, 2001, EPA promulgated full approval of ME DEP's operating permits program. *See* 66 FR 52874. Under 40 CFR 63.91(d)(3), interim or final title V program approval satisfies the criteria set forth in § 63.91(d) for "up-front approval." Accordingly, ME DEP has satisfied the up-front approval criteria of 40 CFR 63.91(d).

Additionally, the "rule substitution" option requires EPA to "make a detailed and thorough evaluation of the State's submittal to ensure that it meets the stringency and other requirements" of 40 CFR 63.93. 58 FR at 62274. A rule will be approved if EPA finds: (1) The State and local rules are "no less stringent" than the corresponding Federal regulations, (2) the State and local government has adequate authorities to implement and enforce the rules, and (3) the schedule for implementation and compliance is "no less stringent" than the deadlines established in the otherwise applicable Federal rule. 40 CFR 63.93(b). After reviewing ME DEP's partial rule substitution request and equivalency demonstration for the Dry Cleaning NESHAP as it applies to area sources, EPA has determined this request meets all the requirements necessary for approval under CAA section 112(l) and 40 CFR 63.91 and 63.93.

C. EPA Determination of Rule Equivalency

1. What Are the Major Differences Between Chapter 125 and the Dry Cleaning NESHAP?

a. How Do the Applicability Requirements Differ?

The Dry Cleaning NESHAP classifies dry cleaning sources as major sources based on either annual perchloroethylene (perc) emissions or annual perc consumption. Major sources are those sources that: (1) Emit or have the potential to emit more than 10 tons per year of perc to the atmosphere, or (2) consume greater than 8000 liters (2100 gallons) of perc for dry-to-dry machines or greater than 6800 liters (1800 gallons) of perc for transfer machines or transfer and dry-to-dry machines. 40 CFR 63.320(g).

The Dry Cleaning NESHAP exempts certain area sources from specified requirements based on perc consumption levels and the types of dry cleaning machines used at the source. For example, an existing area source consisting of only dry-to-dry machines is exempt from specified operating standards and testing, monitoring, reporting and recordkeeping requirements of the Dry Cleaning NESHAP if the facility's total perc consumption is less than 140 gallons per year. 40 CFR 63.320(d). Similarly, an existing area source consisting of only transfer machine systems is exempt from these same requirements if the facility's total perc consumption is less than 200 gallons per year. 40 CFR 63.320(e). In addition, the Dry Cleaning NESHAP exempts all coin-operated machines from the requirements of the rule. 40 CFR 63.320(j).

Chapter 125 of the Maine Department of Environmental Protection regulations requires all area source dry cleaners to comply with the requirements of the rule, regardless of their perc consumption levels. Chapter 125, section 1. According to Maine's 2001 annual emissions inventory data, about 70% of dry cleaners in Maine use less than 140 gallons of perc per year. Under the Federal rule, these area source dry cleaners would be exempt from numerous operating standards and testing, monitoring, reporting and recordkeeping requirements of the Dry Cleaning NESHAP. Under Chapter 125, however, these smaller area sources are subject to the same standards that apply to larger area sources. As such, Chapter 125 imposes perc emission control requirements on a significantly larger number of area sources than does the Dry Cleaning NESHAP. In addition,

Chapter 125 contains no exemption for coin-operated machines. These applicability provisions are more stringent than the applicability provisions of the Dry Cleaning NESHAP.

b. How Do the Requirements for Transfer Machines Differ?

A transfer machine system is a multiple-machine dry cleaning operation in which washing and drying are performed in different machines. The Dry Cleaning NESHAP requires owners and operators of new transfer machine systems to eliminate any emissions of perc from clothing transfer between the washer and the dryer of transfer machine systems. 40 CFR 63.322(b)(2). In addition, the Dry Cleaning NESHAP allows for existing transfer machine systems and sets certain control standards and other requirements for existing transfer machine systems. *See, e.g.*, 40 CFR 63.322(a). Clothing transfer emissions are a significant portion of the overall emissions from transfer machine systems.

Chapter 125 prohibits the use and installation of all transfer machines. Chapter 125, section 3.B(4). As such, Chapter 125 is more stringent than the Dry Cleaning NESHAP.

c. How Do the Requirements for Refrigerated Condensers Differ?

The Dry Cleaning NESHAP prohibits any source that has a refrigerated condenser on a dry-to-dry machine, dryer, or reclaimer from using the same refrigerated condenser coil for the washer that is used by a dry-to-dry machine, dryer, or reclaimer. 40 CFR 63.322(f). Only transfer machine systems have separate dry-to-dry machine, dryer, or reclaimer systems. Because Chapter 125 prohibits the use or installation of transfer machines at dry cleaning facilities (Chapter 125, section 3.B(4)), this requirement is inapplicable and does not affect the stringency of the rule.

d. How Do the Work Practice Standards Differ?

The Dry Cleaning NESHAP requires all dry cleaning facilities to "drain cartridge filters in their housing, or other sealed container, for a minimum of 24 hours, or treat such filters in an equivalent manner, before removal from the dry cleaning facility." 40 CFR 63.322(i). Chapter 125 requires that the cartridges be drained in the filter housing for at least 24 hours or as approved by DEP and EPA. Chapter 125, section 3.C(1). In addition, the rule requires that "[w]hen any filtration

cartridge is removed from the filter housing, it must be placed in a sealed container which does not allow the solvent in the filter to be emitted to the atmosphere, and must be disposed in accordance with State and federal requirements." *Id.* These requirements for the handling of cartridge filters are more specific and more stringent than the requirements of the Dry Cleaning NESHAP.

The Dry Cleaning NESHAP also requires area sources to conduct weekly inspections for perceptible leaks. Area sources with lower perc consumption levels, however, are required to conduct such leak detections only biweekly. 40 CFR 63.322(k) through (l). Chapter 125 requires all dry cleaners, regardless of their perc consumption levels, to perform weekly inspections for perceptible leaks. Chapter 125, sections 3.C(3) and 4.D.

As such, the work practice standards of Chapter 125 are more stringent than the Dry Cleaning NESHAP.

e. How Do the Testing and Monitoring Requirements Differ?

The Dry Cleaning NESHAP states that, when a carbon adsorber is used to comply with the operating standards of the rule, the concentration of perc in the exhaust of the carbon adsorber must be equal to or less than 100 parts per million (ppm) by volume and must be measured with a colorimetric detector tube that is designed to measure a concentration of 100 ppm by volume of perc in the air to an accuracy of ± 25 ppm. 40 CFR 63.323(b).

Chapter 125 requires that any carbon adsorber used at a dry cleaning machine reduce perc emissions to no more than 50 ppm by volume and that the perc concentration be measured with a colorimetric detector tube designed to measure 10–500 ppmv of perc with an accuracy of ± 5 ppm. Chapter 125, section 4.A(1). Chapter 125 also requires that the sampling port for monitoring within the exhaust outlet of the carbon adsorber be easily accessible. Chapter 125, section 4.A(2). As such, the requirements of Chapter 125 for reduction and measurement of perc concentrations in carbon adsorber exhaust are more stringent than the corresponding requirements of the Dry Cleaning NESHAP.

f. How Do the Reporting Requirements Differ?

The Dry Cleaning NESHAP requires the owner or operator of any dry cleaning facility constructed or reconstructed after September 22, 1993, to file a certification of compliance status within 30 days of startup. 40 CFR

63.320(b) and 63.324(b). The certification must contain a calculation of the source's yearly perc solvent consumption limit and the source's compliance status with each applicable requirement of the Dry Cleaning NESHAP. 40 CFR 63.324(b)(1) through (3). This certification is a one-time requirement.

Chapter 125 requires the owner or operator of any new source to submit, within 30 days of startup, a calculation of the facility's perc solvent consumption limit based on a 12-month rolling total limit and an indication of compliance status. Chapter 125, section 6.B. Chapter 125 also requires the owner or operator of any dry cleaning facility to submit an annual registration containing information about the facility's total perc consumption for each of the previous twelve months, a certification of the facility's status as a major or area source, and an estimate of the waste that was shipped off-site, among other things. Chapter 125, section 125.6.A. These reporting requirements allow ME DEP to inventory and track annual perc consumption and emissions for all area source dry cleaners. As such, the reporting requirements of Chapter 125 are more stringent than the corresponding requirements of the Dry Cleaning NESHAP.

g. What Are the Title V Permit Requirements for Area Sources?

Chapter 140.1.D(2) of Maine's regulations exempts area sources from the requirement to obtain a title V operating permit if EPA exempts these sources. Chapter 140, section 140.1.D(2). On December 19, 2005, EPA permanently exempted five categories of area sources subject to NESHAPs from the title V operating permit program, including area source perchloroethylene dry cleaners. 70 FR 75320 (December 19, 2005). Therefore, both Federal law and Maine's regulation at Chapter 140 exempt area source dry cleaners from title V permitting requirements. Major source dry cleaners in Maine are still required to obtain title V operating permits.

h. How Does Maine's Regulation Address the General Provisions at 40 CFR Part 63, Subpart A?

Chapter 125 contains requirements that are generally equivalent to or more stringent than the General Provisions at 40 CFR part 63, subpart A. EPA notes that Chapter 125 does not contain a requirement that corresponds to the notification requirement in 40 CFR 63.9(j), which states that any change in the information provided to EPA under

the applicable notification requirements “shall be provided to the Administrator in writing within 15 calendar days after the change.” As explained above, however, Chapter 125 requires all dry cleaning facilities to submit annual reports containing specific information about perc consumption, major or area source status, and compliance with the requirements of the rule. Any changes in such reported information must, therefore, be included in the next annual report to ME DEP and EPA. Given the more-detailed and regular reporting requirements of Maine’s regulation, EPA has determined that the reporting requirements of Chapter 125 are, taken as a whole, more stringent than the requirements of subpart A.

2. What Is EPA’s Action Regarding Chapter 125?

After reviewing ME DEP’s request for approval of “Chapter 125: Perchloroethylene Dry Cleaner Regulation,” EPA has determined that Maine’s regulation meets all of the requirements necessary for partial rule substitution under section 112(l) of the CAA and 40 CFR 63.91 and 63.93. Chapter 125, taken as a whole, is no less stringent than the Federal Dry Cleaning NESHAP as applied to area sources. Therefore, EPA hereby approves Maine’s request to implement and enforce Chapter 125 in place of the Dry Cleaning NESHAP for area sources in Maine. As of the effective date of this action, Chapter 125 is enforceable by EPA and by citizens under the CAA. Although ME DEP has primary responsibility to implement and enforce Chapter 125, EPA retains the authority to enforce any requirement of the rule upon its approval under CAA 112. CAA section 112(l)(7).

3. How Do Amendments to the Dry Cleaning NESHAP Affect This Rulemaking?

On December 21, 2005 (70 FR 75884), EPA proposed amendments to the dry cleaning NESHAP. Under § 63.91(e)(3), if EPA amends or otherwise revises a promulgated section 112 rule or requirement in a way that increases its stringency, EPA will notify any state with a delegated alternative of the need to revise its equivalency demonstration. EPA will consult with the state to set a time frame for the state to submit a revised equivalency demonstration. EPA will then review and approve the revised equivalency demonstration according to the procedures in 40 CFR part 63, subpart E. More stringent NESHAP amendments to a delegated alternative apply to all sources until EPA determines that the approved or

revised alternative requirements are equivalent to the more stringent amendments.

In accordance with these requirements, upon EPA’s finalization of any amendments to the Dry Cleaning NESHAP that increase its stringency, EPA will determine whether these amendments necessitate a revision to Maine’s alternative requirements. If so, we will notify ME DEP of the need to submit a revised equivalency demonstration in accordance with the requirements of 40 CFR part 63, subpart E. In any event, the more stringent NESHAP amendments will apply until EPA publishes in the **Federal Register** a determination as to the equivalency of Maine’s requirements to the more stringent amendments.

III. Summary of EPA’s Action

Pursuant to section 112(l) of the CAA and 40 CFR 63.91 and 63.93, EPA is approving ME DEP’s request to implement and enforce “Chapter 125: Perchloroethylene Dry Cleaner Regulation” in place of the Federal Dry Cleaning NESHAP at 40 CFR part 63, subpart M, as it applies to area sources in Maine. This approval makes Chapter 125 federally enforceable and consolidates the compliance requirements for area source dry cleaners in Maine into one set of regulations. Major source dry cleaning facilities remain subject to the Federal requirements at 40 CFR part 63, subpart M and the Title V permitting requirements of 40 CFR part 70. Area source dry cleaning facilities are exempt from Title V permitting requirements as of December 19, 2005. 70 FR 75320.

EPA views this approval of Maine’s request to implement and enforce Chapter 125 in place of the Dry Cleaning NESHAP for area sources as a noncontroversial action, given that the state program has been effective for several years and is, taken as a whole, more stringent than the Dry Cleaning NESHAP. EPA anticipates no adverse comments. Therefore, EPA is publishing this direct final rule without prior proposal. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal for this action should relevant adverse comments be filed. This action will be effective on June 23, 2006, without further notice, unless EPA receives relevant adverse comments by May 24, 2006.

If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. All public comments

received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 23, 2006 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

A. Executive Orders 12866 and 13045

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled “Regulatory Planning and Review.” This rule is not subject to Executive Order 13045, entitled, “Protection of Children from Environmental Health Risks and Safety Risks,” because it is not an “economically significant” action under Executive Order 12866.

B. Executive Order 13211

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13175

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.”

This final rule does not have tribal implications. This action allows the State of Maine to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to area source drycleaners. This action will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

D. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action simply allows Maine to implement equivalent alternative requirements to replace a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental entities with jurisdiction over populations of less than 50,000. This final rule will not have a significant impact on a substantial number of small entities because approvals under 40 CFR 63.93 do not create any new requirements. Such approvals simply allow the State to implement and enforce equivalent requirements in place of the Federal requirements that EPA is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate, or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action allows Maine to implement equivalent alternative requirements *in lieu of* pre-existing requirements under Federal law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be

inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, the NTTAA does not apply to this rule.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 23, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: March 16, 2006.

Robert W. Varney,

Regional Administrator, EPA—New England.

■ 40 CFR part 63 is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—[Amended]

■ 2. Section 63.14 is amended by adding paragraph (d)(6) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(d) * * *

(6) Maine Regulations Applicable to Hazardous Air Pollutants (March 2006). Incorporation by Reference approved

for § 63.99(a)(19)(iii) of subpart E of this part.

* * * * *

Subpart E—[Amended]

■ 3. Section 63.99 is amended by adding paragraph (a)(19)(iii) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(19) * * *

(iii) Affected area sources within Maine must comply with the Maine Regulations Applicable to Hazardous Air Pollutants (incorporated by reference as specified in § 63.14) as described in paragraph (a)(19)(iii)(A) of this section:

(A) The material incorporated into the Maine Department of Environmental Protection regulations at Chapter 125 pertaining to dry cleaning facilities in the State of Maine's jurisdiction, and approved under the procedures in § 63.93 to be implemented and enforced in place of the Federal NESHAP for Perchloroethylene Dry Cleaning Facilities (subpart M of this part), effective as of December 19, 2005, for area sources only, as defined in § 63.320(h).

(B) [Reserved]

* * * * *

[FR Doc. 06-3855 Filed 4-21-06; 8:45 am]

BILLING CODE 6560-50-P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102-39

[FMR Amendment 2006-02; FMR Case 2006-102-3]

RIN 3090-AI26

Federal Management Regulation; Replacement of Personal Property Pursuant to the Exchange/Sale Authority

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration is amending the Federal Management Regulation (FMR) language that pertains to personal property by correcting references to outdated or superseded provisions of law or regulation; correcting text to be in conformance with revised laws, regulation, or Federal agency responsibilities; and clarifying text where the intended meaning could be updated or made clearer. The FMR and

any corresponding documents may be accessed at GSA's Web site at <http://www.gsa.gov/fmr>.

DATES: Effective Date: May 24, 2006.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GSA Building, Washington, DC, 20405, (202) 208-7312, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Robert Holcombe, Office of Governmentwide Policy, Office of Travel, Transportation, and Asset Management (MT), at (202) 501-3828 or e-mail at Robert.Holcombe@gsa.gov. Please cite Amendment 2006-02, FMR case 2006-102-3.

SUPPLEMENTARY INFORMATION:

A. Background

In the years since 41 CFR part 102-39 was published as a final rule, the references to other regulations which migrated from the Federal Property Management Regulations (FPMR) (41 CFR chapter 101) to the Federal Management Regulation (FMR) (41 CFR chapter 102) became outdated. Also, Public Law 107-217 revised and recodified certain provisions of the Federal Property and Administrative Services Act of 1949 (Property Act). For example, the Property Act provisions and topics previously found at 40 U.S.C. 471-514 will now generally be found at 40 U.S.C. 101-705. This revised regulation updates the title 40 U.S.C. citations to reflect the changes made by Public Law 107-217. Additionally, in the intervening years since these three regulations were published, several agencies have moved or changed names. Finally, updating or clarifying revisions were made where the revisions are seen as administrative or clerical in nature.

B. Executive Order 12866

The General Services Administration (GSA) has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for comment. Therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102-39

Government property management, Reporting and recordkeeping requirements, and Government property.

Dated: April 14, 2006.

David L. Bibb,

Acting Administrator of General Services.

■ For the reasons set forth in the preamble, GSA amends 41 CFR part 102-39 as set forth below:

PART 102-39—REPLACEMENT OF PERSONAL PROPERTY PURSUANT TO THE EXCHANGE/SALE AUTHORITY

■ 1. The authority citation for 41 CFR part 102-39 continues to read as follows:

Authority: 40 U.S.C. 503 and 121(c).

§ 102-39.45 [Amended]

■ 2. Amend § 102-39.45 in paragraph (l) by removing "40 U.S.C. 484(i) and adding "40 U.S.C. 548 in its place.

■ 3. Amend § 102-39.75 by revising paragraph (b) to read as follows:

§ 102-39.75 What information am I required to report?

* * * * *

(b) Submit your report electronically or by mail to the General Services Administration, Office of Travel, Transportation and Asset Management (MT), 1800 F Street, NW., Washington, DC 20405.

[FR Doc. 06-3845 Filed 4-21-06; 8:45 am]

BILLING CODE 6820-14-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 051209329-5329-01; I.D. 041406A]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the Quarter II Fishery for Loligo Squid

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

ACTION: Closure.

SUMMARY: NMFS announces that the directed fishery for *Loligo* squid in the Exclusive Economic Zone (EEZ) will be closed effective 0001 hours, April 21, 2006. Vessels issued a Federal permit to harvest *Loligo* squid may not retain or land more than 2,500 lb (1,134 kg) of *Loligo* squid per trip for the remainder of the quarter (through June 30, 2006). This action is necessary to prevent the fishery from exceeding its Quarter II quota and to allow for effective management of this stock.

DATES: Effective 0001 hours, April 21, 2006, through 2400 hours, June 30, 2006.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, 978-281-9221, Fax 978-281-9135.

SUPPLEMENTARY INFORMATION: Regulations governing the *Loligo* squid fishery are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological

catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing, and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described in § 648.21.

The 2006 specification of DAH for *Loligo* squid was set at 16,872.4 mt (71 FR 10621, March 2, 2006). This amount is allocated by quarter, as shown below.

TABLE. 1 *Loligo* SQUID QUARTERLY ALLOCATIONS.

Quarter	Percent	Metric Tons ¹	Research Set-aside
I (Jan-Mar)	33.23	5,606.70	N/A
II (Apr-Jun)	17.61	2,971.30	N/A
III (Jul-Sep)	17.3	2,918.90	N/A
IV (Oct-Dec)	31.86	5,375.60	N/A
Total	100	16,872.50	127.5

¹Quarterly allocations after 127.5 mt research set-aside deduction.

Section 648.22 requires NMFS to close the directed *Loligo* squid fishery in the EEZ when 80 percent of the quarterly allocation is harvested in Quarters I, II, and III, and when 95 percent of the total annual DAH has been harvested. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of *Loligo* squid permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in

the fishery; and publish notification of the closure in the **Federal Register**. The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, has determined that 80 percent of the DAH for *Loligo* squid in Quarter II will be harvested. Therefore, effective 0001 hours, April 21, 2006, the directed fishery for *Loligo* squid is closed and vessels issued Federal permits for *Loligo* squid may not retain or land more than 2,500 lb (1,134 kg) of *Loligo* during a calendar day. The directed fishery will reopen effective 0001 hours, July 1,

2006, when the Quarter III quota becomes available.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: April 17, 2006.

James P. Burgess,

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

[FR Doc. 06-3830 Filed 4-18-06; 3:38 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 71, No. 78

Monday, April 24, 2006

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. AO-192-A7; FV06-984-1]

Walnuts Grown in California; Hearing on Proposed Amendment of Marketing Agreement and Order No. 984

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to receive evidence on proposed amendments to Marketing Order No. 984, which regulates the handling of walnuts grown in California. The amendments are proposed by the Walnut Marketing Board (Board), which is responsible for local administration of order 984. The amendments would: Change the marketing year; include "pack" as a handler function; restructure the Board and revise nomination procedures; rename the Board and add authority to change Board composition; modify Board meeting and voting procedures; add authority for marketing promotion and paid advertising; add authority to accept contributions, and to carry over excess assessment funds; broaden the scope of the quality control provisions and add the authority to recommend different regulations for different market destinations; add authority for the Board to appoint more than one inspection service; replace outdated order language with current industry terminology; and other related amendments.

The USDA proposes three additional amendments: To establish tenure limitations for Board members, to require that continuance referenda be conducted on a periodic basis to ascertain producer support for the order, and to make any changes to the order as may be necessary to conform with any amendment that may result from the hearing.

The proposed amendments are intended to improve the operation and functioning of the marketing order program.

DATES: The hearing will be held on May 17, 2006, in Modesto, California, beginning at 8:30 a.m. and ending at 4:30 p.m. The hearing will continue, if necessary, on May 18, 2006, commencing at 8:30 a.m.

ADDRESSES: The hearing location is: Stanislaus County Farm Bureau, 1201 L Street, Modesto, CA, 95353, telephone: (209) 522-7278.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 1035, Moab, Utah; telephone: (435) 259-7988, Fax: (435) 259-4945; or Kathleen M. Finn, 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 this proceeding 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.

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any

State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposals.

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. 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 the 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.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendments are the result of a committee appointed by the Board to conduct a review of the order. The committee met several times in 2005 and drafted proposed amendments to the order and presented them at industry meetings. The proposed amendments were then forwarded to the Board, which unanimously approved them. The amendments are intended to streamline organization and administration of the marketing order program.

The Board's request for a hearing was submitted to USDA on March 3, 2004. The Board's proposed amendments to Marketing Order No. 984 (order) are summarized below.

1. Amend the order to change the marketing year from August 1 through July 31 to September 1 through August 31. This proposal would amend § 984.7, Marketing year, and would result in conforming changes being made to § 984.36, Term of Office, and § 984.48 Marketing estimates and recommendations.

2. Amend the order by specifying that the act of packing walnuts is considered a handling function. This proposal would amend § 984.13, To handle, as well as clarify the definition of "pack"

in § 984.15 by including the term "shell."

3. (a) Amend all parts of the order that refer to cooperative seats on the Board, redistribute member seats among districts, and provide designated seats for a major handler, if such handler existed. A major handler would have to handle 35 percent or more of the crop. This proposal would amend § 984.35, Walnut Marketing Board and § 984.14, Handler.

3. (b) Amend the Board member nomination process to reflect proposed changes in the Board structure, as outlined in 3(a). This proposal would amend § 984.37, Nominations, and § 984.40, Alternate.

4. Require Board nominees to submit a written qualification and acceptance statement prior to selection by USDA. This proposal would amend § 984.39, Qualify by acceptance.

5. Change the name of the Walnut Marketing Board to the California Walnut Board. This proposal would amend § 984.6, Board, and § 984.35, Walnut Marketing Board.

6. Add authority to reestablish districts, reapportion members among districts, and revise groups eligible for representation on the Board. This proposal would add a new paragraph (d) to § 984.35, Walnut Marketing Board.

7. Amend Board quorum and voting requirements to add percentage requirements, add authority for the Board to vote by "any other means of communication" (including facsimile) and add authority for Board meetings to be held by telephone or by "any other means of communication", providing that all votes cast at such meetings shall be confirmed in writing. This proposal would amend § 984.45, Procedure and would result in a conforming change in § 984.48(a), Marketing estimates and recommendations.

8. Amend the order to add authority to carry over excess assessment funds. This proposal would amend § 984.69, Assessments.

9. Amend the order by adding authority to accept contributions. This proposal would add a new § 984.70, Contributions.

10. Amend the order to clarify that members and alternate members may be reimbursed for expenses incurred while performing their duties and that reimbursement includes per diem. This proposal would amend § 984.42, Expenses.

11. Amend the order to add authority for the Board to appoint more than one inspection service as long as the functions performed by each service are separate and do not conflict with each other. This proposal would amend

§ 984.51, Inspection and certification of inshell and shelled walnuts.

12. (a) Amend the order by broadening the scope of the quality control provisions and by adding authority to recommend different regulations for different market destinations. This proposal would amend § 984.50, Grade and size regulations.

12. (b) Amend the order by adding authority that would allow for shelled walnuts to be inspected after having been sliced, chopped, ground or in any other manner changed from shelled walnuts, if regulations for such walnuts are in effect. This proposal would amend § 984.52, Processing of shelled walnuts.

13. Amend the order by adding authority for marketing promotion and paid advertising. This proposal would amend § 984.46, Research and development.

14. Amend the order to replace the terms "carryover" with "inventory," and "mammoth" with "jumbo," to reflect current day industry procedures. This proposal would amend § 984.21, Handler inventory, § 984.67, Exemption, and would also result in conforming changes being made to § 984.48, Marketing estimates and recommendations, and § 984.71, Reports of handler carryover.

15. (a) Amend the order to clarify the term "transfer" and to add authority for the Board to recommend methods and procedures, including necessary reports, for administrative oversight of such transfers. This proposal would amend § 984.59, Interhandler transfers.

15. (b) Amend the order to add authority to require reports of interhandler transfers. This proposal would amend § 984.73, Reports of walnut receipts.

16. Update and simplify the language in § 984.22, Trade demand, to state "United States and its territories," rather than name "Puerto Rico" and "The Canal Zone".

17. Amend the order by adding language that would acknowledge that the Board may deliberate, consult, cooperate and exchange information with the California Walnut Commission. Any information sharing would be kept confidential. This would add a new § 984.91, Relationship with the California Walnut Commission.

The Board works with USDA in administering the orders. These proposals have not received the approval of the Department. The Board believes that the proposed changes would improve the administration, operation, and functioning of the

programs in effect for walnuts grown in California.

In addition, USDA proposes adding three provisions that would help assure that the operation of the program conforms to current Department policy and that USDA can make any necessary conforming changes. These provisions would:

18. Establish tenure requirements for Board members. This proposal would amend § 984.36, Term of office.

19. Require that continuance referenda be conducted on a periodic basis to ascertain industry support for the order and add more flexibility in the termination provisions. This proposal would amend § 984.89 Effective time and termination.

20. Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except any designated employee of the General Counsel assigned to represent the Committee in this proceeding; and the Fruit and Vegetable Programs, AMS.

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

List of Subjects in 7 CFR Part 984

Walnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Walnut Marketing Board are as follows:

Proposal Number 1

3. Revise § 984.7 to read as follows:

§ 984.7 Marketing year.

Marketing year means the twelve months from September 1 to the following August 31, both inclusive, or any other such period deemed appropriate and recommended by the Board for approval by the Secretary.

4. Revise § 984.36 to read as follows:

§ 984.36 Term of office.

The term of office of Board members, and their alternates shall be for a period of two years ending on August 31 of odd-numbered years, but they shall serve until their respective successors are selected and have qualified.

5. Revise § 984.48 to read as follows:

§ 984.48 Marketing estimates and recommendations.

(a) Each marketing year the Board shall hold a meeting, prior to October 20, for the purpose of recommending to the Secretary a marketing policy for such year. Each year such recommendation shall be adopted by the affirmative vote of at least six members of the Board and shall include the following, and where applicable, on a kernelweight basis:

(1) Its estimate of the orchard-run production in the area of production for the marketing year;

(2) Its estimate of the handler carryover on September 1 of inshell and shelled walnuts;

(3) Its estimate of the merchantable and substandard walnuts in the production;

(4) Its estimate of the trade demand for such marketing year for shelled and inshell walnuts, taking into consideration trade carryover, imports, prices, competing nut supplies, and other factors;

(5) Its recommendation for desirable handler carryover of inshell and shelled walnuts on August 31 of each marketing year;

(6) Its recommendation as to the free and reserve percentages to be established for walnuts;

(7) Its recommendation of the percentage of reserve walnuts that may be exported pursuant to § 984.56, when it determines that the quantity of reserve walnuts that may be exported should be limited;

(8) Its opinion as to whether grower prices are likely to exceed parity; and

(9) Its recommendation for change, if any, in grade and size regulations.

(b) [Reserved].

Proposal Number 2

6. Revise § 984.13 to read as follows:

§ 984.13 To handle.

To handle means to pack, sell, consign, transport, or ship (except as a common or contract carrier of walnuts owned by another person), or in any other way to put walnuts, inshell or shelled, into the current of commerce either within the area of production or from such area to any point outside thereof, or for a manufacturer or retailer within the area of production to purchase directly from a grower: The term “to handle” shall not include sales and deliveries within the area of production by growers to handlers, or between handlers.

7. Revise § 984.15 to read as follows:

§ 984.15 Pack.

Pack means to bleach, clean, grade, shell or otherwise prepare walnuts for market as inshell or shelled walnuts.

Proposal Number 3(a)

8. Revise § 984.35 to read as follows:

§ 984.35 Walnut Marketing Board.

(a) A Walnut Marketing Board is hereby established consisting of 10 members selected by the Secretary, each of whom shall have an alternate nominated and selected in the same way and with the same qualifications as the member. The members and their alternates shall be selected by the Secretary from nominees submitted by each of the following groups or from other eligible persons belonging to such groups:

(1) Two handler members from District 1;

(2) Two handler members from District 2;

(3) Two grower members from District 1;

(4) Two grower members from District 2;

(5) One member nominated at-large from the production area; and,

(6) One member and alternate who shall be selected after the selection of

the nine handler and grower members and after the opportunity for such members to nominate the tenth member and alternate. The tenth member and his or her alternate shall be neither a walnut grower nor a handler.

(b) In the event that one handler handles 35% or more of the crop the membership of the Board shall be as follows:

(1) Two handler members to represent the handler that handles 35% or more of the crop;

(2) Two members to represent growers who market their walnuts through the handler that handles 35% or more of the crop;

(3) Two handler members to represent handlers that do not handle 35% or more of the crop;

(4) One member to represent growers from District 1 who market their walnuts through handlers that do not handle 35% or more of the crop;

(5) One member to represent growers from District 2 who market their walnuts through handlers that do not handle 35% or more of the crop;

(6) One member to represent growers who market their walnuts through handlers that do not handle 35% or more of the crop shall be nominated at large from the production area; and,

(7) One member and alternate who shall be selected after the selection of the nine handler and grower members and after the opportunity for such members to nominate the tenth member and alternate. The tenth member and his or her alternate shall be neither a walnut grower nor a handler.

(c) Grower Districts:

(1) *District 1.* District 1 encompasses the counties in the State of California that lie north of a line drawn on the south boundaries of San Mateo, Alameda, San Joaquin, Calaveras, and Alpine Counties.

(2) *District 2.* District 2 shall consist of all other walnut producing counties in the State of California south of the boundary line set forth in paragraph (c)(1) of this section.

9. Revise § 984.14 to read as follows:

§ 984.14 Handler.

Handler means any person who handles inshell or shelled walnuts.

Proposal Number 3(b)

10. Revise § 984.37 to read as follows:

§ 984.37 Nominations.

(a) Nominations for all grower members shall be submitted by ballot pursuant to an announcement by press releases of the Board to the news media in the walnut producing areas. Such releases shall provide pertinent voting

information, including the names of candidates and the location where ballots may be obtained. Ballots shall be accompanied by full instructions as to their markings and mailing and shall include the names of incumbents who are willing to continue serving on the Board and such other candidates as may be proposed pursuant to methods established by the Board with the approval of the Secretary. Each grower, regardless of the number and location of his or her walnut orchard(s), shall be entitled to cast only one ballot in the nomination and each vote shall be given equal weight. If the grower has orchard(s) in both grower districts, he or she shall advise the Board of the district in which he/she desires to vote. The person receiving the highest number of votes for each grower position shall be the nominee.

(b) Nominations for handler members shall be submitted on ballots mailed by the Board to all handlers in their respective Districts. All handlers' votes shall be weighted by the kernelweight of walnuts certified as merchantable by each handler during the preceding marketing year. Each handler in the production area may vote for handler member nominees and their alternates. However, no handler with less than 35% of the crop shall have more than one member and one alternate member. The person receiving the highest number of votes for each handler member position shall be the nominee for that position.

(c) In the event that one handler handles 35% or more of the crop the membership of the Board, nominations shall be as follows:

(1) Nominations of growers who market their walnuts to the handler that handles 35% or more of the crop shall be conducted by that handler in such a manner that is consistent with the requirements of nominations of growers conducted by the Board. The two persons receiving the highest number of votes for the grower positions attributed to that handler (Group (b)(2) of § 984.35) shall be the nominees. The two persons receiving the third and fourth highest number of votes shall be designated as alternates.

(2) Nominations for the two handler members representing the major handler shall be conducted by the major handler in such a manner that is consistent with the requirements of nominations of handlers conducted by the Board. The two (2) persons receiving the highest number of votes for the major handler positions shall be the nominees. The two persons receiving the third and fourth highest number of votes shall be designated as alternates.

(3) Nominations on behalf of all other grower members (Groups (b) (4), (5) and (6) of § 984.35) shall be submitted after ballot by such growers pursuant to an announcement by press releases of the Board to the news media in the walnut producing areas. Such releases shall provide pertinent voting information, including the names of candidates and the location where ballots may be obtained. Ballots shall be accompanied by full instructions as to their markings and mailing and shall include the names of incumbents who are willing to continue serving on the Board and such other candidates as may be proposed pursuant to methods established by the Board with the approval of the Secretary. Each grower in Groups (Groups (b) (4), (5) and (6) of § 984.35), regardless of the number and location of his or her walnut orchard(s), shall be entitled to cast only one ballot in the nomination and each vote shall be given equal weight. If the grower has orchard(s) in both grower districts he or she shall advise the Board of the district in which he or she desires to vote. The person receiving the highest number of votes for grower position shall be the nominee.

(4) Nominations for handler members representing handlers that do not handle 35% or more of the crop shall be submitted on ballots mailed by the Board to those handlers. The votes of these handlers shall be weighted by the kernelweight of walnuts certified as merchantable by each handler during the preceding marketing year. Each handler in the production area may vote for handler member nominees and their alternates of this subsection. However, no handler shall have more than one person on the Board either as member or alternate member. The person receiving the highest number of votes for a handler member position of this subsection shall be the nominee for that position.

(d) Each grower is entitled to participate in only one nomination process, regardless of the number of handler entities to whom he or she delivers walnuts. If a grower delivers walnuts to more than one handler entity, the grower must choose which nomination process he or she participates in.

(e) The nine members shall nominate one person as member and one person as alternate for the tenth member position. The tenth member and alternate shall be nominated by not less than 6 votes cast by the nine members of the Board.

(f) Nominations in the foregoing manner received by the Board shall be reported to the Secretary on or before

June 15 of each odd-numbered year, together with a certified summary of the results of the nominations. If the Board fails to report nominations to the Secretary in the manner herein specified by June 15 of each odd-numbered year, the Secretary may select the members without nomination. If nominations for the tenth member are not submitted by September 1 of any such year, the Secretary may select such member without nomination.

(g) The Board, with the approval of the Secretary, may change these nomination procedures should the Board determine that a revision is necessary.

11. Revise § 984.40 to read as follows:

§ 984.40 Alternate.

(a) An alternate for a member of the Board shall act in the place and stead of such member in his or her absence or in the event of his or her death, removal, resignation, or disqualification, until a successor for his or her unexpired term has been selected and has qualified.

(b) In the event any member of the Board and his or her alternate are both unable to attend a meeting of the Board, any alternate for any other member representing the same group as the absent member may serve in the place of the absent member, or in the event such other alternate cannot attend, or there is no such other alternate, such member, or in the event of his or her disability or a vacancy, his or her alternate may designate, subject to the disapproval of the Secretary, a temporary substitute to attend such meeting. At such meeting such temporary substitute may act in the place of such member.

Proposal Number 4

12. Revise § 984.39 to read as follows:

§ 984.39 Qualify by acceptance.

Any person nominated to serve as a member or alternate member of the Board shall, prior to selection by USDA, qualify by filing a written qualification and acceptance statement indicating such person's willingness to serve in the position for which nominated.

Proposal Number 5

13. Revise § 984.6 to read as follows:

§ 984.6 Board.

Board means the California Walnut Board established pursuant to § 934.35.

14. In addition to the Board's recommended changes as set forth in Proposal No. 3(a), revise § 984.35(a) introductory text to read as follows:

§ 984.35 California Walnut Board.

(a) A California Walnut Board is hereby established consisting of 10 members selected by the Secretary, each of whom shall have an alternate nominated and selected in the same way and with the same qualifications as the member. The members and their alternates shall be selected by the Secretary from nominees submitted by each of the following groups or from other eligible persons belonging to such groups:

* * * * *

Proposal Number 6

15. In addition to the Board's recommended changes as set forth in Proposal No.3(a) and Proposal No. 5, add a new paragraph (d) to § 984.35 to read as follows:

§ 984.35 California Walnut Board.

* * * * *

(d) The Secretary, upon recommendation of the Board, may reestablish districts, may reapportion members among districts, and may revise the groups eligible for representation on the Board specified in paragraphs (a) and (b) of this section: Provided, That any such recommendation shall require at least six concurring votes of the voting members of the Board. In recommending any such changes, the following shall be considered:

- (1) Shifts in acreage within districts and within the production area during recent years;
- (2) The importance of new production in its relation to existing districts;
- (3) The equitable relationship between Board apportionment and districts;
- (4) Changes in industry structure and/or the percentage of crop represented by various industry entities resulting in the existence of two or more major handlers;
- (5) Other relevant factors.

Proposal Number 7

16. Revise § 984.45 to read as follows:

§ 984.45 Procedure.

(a) The members of the Board shall select a chairman from their membership, and shall select such other officers and adopt such rules for the conduct of Board business as they deem advisable. The Board shall give the Secretary the same notice of its meetings as is given to members of the Board.

(b) All decisions of the Board, except where otherwise specifically provided, shall be by a sixty-percent (60%) supermajority vote of the members present. A quorum of six members, or the

equivalent of sixty percent (60%) of the Board, shall be required for the conduct of Board business.

(c) The Board may vote by mail or telegram, or by any other means of communication, upon due notice to all members. When any proposition is to be voted on by any of these methods, one dissenting vote shall prevent its adoption. The Board, with the approval of the Secretary, shall prescribe the minimum number of votes that must be cast when voting is by any of these methods, and any other procedures necessary to carry out the objectives of this paragraph.

(d) The Board may provide for meetings by telephone, or other means of communication and any vote cast at such a meeting shall be confirmed promptly in writing: Provided, That if any assembled meeting is held, all votes shall be cast in person.

17. In addition to the Board's recommended changes as set forth in Proposal No. 1, revise § 984.48(a) introductory text to read as follows:

§ 984.48 Marketing estimates and recommendations.

(a) Each marketing year the Board shall hold a meeting, prior to October 20, for the purpose of recommending to the Secretary a marketing policy for such year. Each year such recommendation shall be adopted by the affirmative vote of at least 60% of the Board and shall include the following, and where applicable, on a kernelweight basis:

* * * * *

Proposal Number 8

18. Revise § 984.69 to read as follows:

§ 984.69 Assessments.

(a) *Requirement for payment.* Each handler shall pay the Board, on demand, his or her pro rata share of the expenses authorized by the Secretary for each marketing year. Each handler's pro rata share shall be the rate of assessment per kernelweight pound of walnuts fixed by the Secretary times the kernelweight of merchantable walnuts he or she has certified. At any time during or after the marketing year the Secretary may increase the assessment rate as necessary to cover authorized expenses and each handler's pro rata share shall be adjusted accordingly.

(b) *Reserve walnut pool expenses.* The Board is authorized temporary use of funds derived from assessments collected pursuant to paragraph (a) of this section to defray expenses incurred in disposing of reserve walnuts pooled. All such expenses shall be deducted from the proceeds obtained by the Board

from the sale or other disposal of pooled reserve walnuts.

(c) *Accounting.* If at the end of a marketing year the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (c)(2) or (c)(3) of this section, it shall be refunded to handlers from whom collected and each handler's share of such excess funds shall be the amount of assessments he or she has paid in excess of his or her pro rata share of the actual expenses of the Board.

(2) Excess funds may be used temporarily by the Board to defray expenses of the subsequent marketing year: Provided, That each handler's share of such excess shall be made available to him or her by the Board within five months after the end of the year.

(3) The Board may carry over such excess into subsequent marketing years as a reserve: Provided, That funds already in reserve do not exceed approximately two years' budgeted expenses. In the event that funds exceed two marketing years' budgeted expenses, future assessments will be reduced to bring the reserves to an amount that is less than or equal to two marketing years' budgeted expenses. Such reserve funds may be used:

- (i) To defray expenses, during any marketing year, prior to the time assessment income is sufficient to cover such expenses;
- (ii) To cover deficits incurred during any year when assessment income is less than expenses;
- (iii) To defray expenses incurred during any period when any or all provisions of this part are suspended;
- (iv) To meet any other such costs recommended by the Board and approved by the Secretary.

(d) *Termination.* Any money collected from assessments hereunder and remaining unexpended in the possession of the Board upon termination of this part shall be distributed in such manner as the Secretary may direct.

Proposal Number 9

19. Add a new § 984.70 to read as follows:

§ 984.70 Contributions.

The Board may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 984.46, Research and development. Furthermore, such contributions shall be free from any encumbrances by the

donor and the Board shall retain complete control of their use.

Proposal Number 10

20. Revise § 984.42 to read as follows:

§ 984.42 Expenses.

The members and their alternates of the Board shall serve without compensation, but shall be allowed their necessary expenses incurred by them in the performance of their duties under this part.

Proposal Number 11

21. Revise § 984.51 to read as follows:

§ 984.51 Inspection and certification of inshell and shelled walnuts.

(a) Before or upon handling of any walnuts for use as free or reserve walnuts, each handler at his or her own expense shall cause such walnuts to be inspected to determine whether they meet the then applicable grade and size regulations. Such inspection shall be performed by the inspection service or services designated by the Board with the approval of the Secretary; Provided, That if more than one inspection service is designated, the functions performed by each service shall be separate, and shall not conflict with each other. Handlers shall obtain a certificate for each inspection and cause a copy of each certificate issued by the inspection service to be furnished to the Board. Each certificate shall show the identity of the handler, quantity of walnuts, the date of inspection, and for inshell walnuts the grade and size of such walnuts as set forth in the United States Standards for Walnuts (*Juglans regia*) in the Shell. Certificates covering reserve shelled walnuts for export shall also show the grade, size, and color of such walnuts as set forth in the United States Standards for Shelled Walnuts (*Juglans regia*). The Board, with the approval of the Secretary, may prescribe such additional information to be shown on the inspection certificates as it deems necessary for the proper administration of this part.

(b) Inshell merchantable walnuts certified shall be converted to the kernelweight equivalent at 45 percent of their inshell weight. This conversion percentage may be changed by the Board with the approval of the Secretary.

(c) Upon inspection, all walnuts for use as free or reserve walnuts shall be identified by tags, stamps, or other means of identification prescribed by the Board and affixed to the container by the handler under the supervision of the Board or of a designated inspector and such identification shall not be

altered or removed except as directed by the Board. The assessment requirements in § 984.69 shall be incurred at the time of certification.

(d) Whenever the Board determines that the length of time in storage or conditions of storage of any lot of merchantable walnuts which has been previously inspected have been or are such as normally to cause deterioration, such lot of walnuts shall be reinspected at the handler's expense and recertified as merchantable prior to shipment.

Proposal Number 12(a)

22. Revise § 984.50 to read as follows:

§ 984.50 Grade, quality and size regulations.

(a) *Minimum standard for inshell walnuts.* Except as provided in § 984.64, no handler shall handle inshell walnuts unless such walnuts are equal to or better than the requirements of U.S. No. 2 grade and baby size as defined in the then effective United States Standards for Walnuts (*Juglans regia*) in the Shell. This minimum standard may be modified by the Secretary on the basis of a Board recommendation or other information.

(b) *Minimum standard for shelled walnuts.* Except as provided in § 984.64, no handler shall handle shelled walnuts unless such walnuts are equal to or better than the requirements of the U.S. Commercial grade as defined in the then effective United States Standards for Shelled Walnuts (*Juglans regia*) and the minimum size shall be pieces not more than 5 percent of which will pass through a round opening $\frac{5}{64}$ inch in diameter. This minimum standard may be modified by the Secretary on the basis of a Board recommendation or other information.

(c) *Effective period.* The minimum standards established pursuant to paragraphs (a) and (b) of this section and the provisions of this part relating to the administration thereof, shall continue in effect irrespective of whether the season average price for walnuts is above the parity level specified in section 2(1) of the Act.

(d) *Additional grade, size or other quality regulation.* The Board may recommend to the Secretary additional grade, size or other quality regulations, and may also recommend different regulations for different market destinations. If the Secretary finds on the basis of such recommendation or other information that such additional regulations would tend to effectuate the declared policy of the Act, he or she shall establish such regulations.

(e) *Minimum requirements for reserve.* The Board, with the approval of the

Secretary, may specify the minimum kernel content and related requirements for any lot of walnuts acceptable for disposition for credit against a reserve obligation: Provided, That reserve walnuts exported must meet the requirements of paragraph (a) of this section if inshell, or paragraph (b) of this section if shelled.

Proposal Number 12(b)

23. Revise § 984.52 to read as follows:

§ 984.52 Processing of shelled walnuts.

(a) No handler shall slice, chop, grind, or in any manner change the form of shelled walnuts unless such walnuts have been certified as merchantable or unless such walnuts meet quality regulations established under § 984.50(d) if such regulations are in effect.

(b) Any lot of shelled walnuts which, upon inspection, fails to meet the minimum standard effective pursuant to § 984.50 solely due to excess shriveling may be certified for processing provided that the total amount of shrivel does not exceed 20 percent, by weight, of the lot. All such walnuts must be reinspected after processing and shall be certified as merchantable if the processed material meets the effective minimum standard. The provisions of this paragraph may be modified by the Secretary, upon recommendation of the Board or other information.

(c) The Board shall establish such procedures as are necessary to insure that all such walnuts are inspected prior to being placed into the current of commerce.

Proposal Number 13

24. Revise § 984.46 to read as follows:

§ 984.46 Research and development.

The Board, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of walnuts. The expenses of such projects shall be paid from funds collected pursuant to § 984.69 and § 984.70.

Proposal Number 14

25. Revise § 984.21 to read as follows:

§ 984.21 Handler inventory.

Handler inventory as of any date means all walnuts, inshell or shelled (except those held in satisfaction of a reserve obligation), wherever located, then held by a handler or for his or her account.

26. Revise § 984.67 to read as follows:

§ 984.67 Exemptions.

(a) *Exemption from volume regulation.* Reserve percentages shall not apply to lots of merchantable inshell walnuts which are of jumbo size or larger as defined in the then effective United States Standards for Walnuts in the Shell, or to such quantities as the Board may, with the approval of the Secretary, prescribe.

(b) *Exemptions from assessments, quality, and volume regulations:*

(1) *Sales by growers direct to consumers.* Any walnut grower may handle walnuts of his or her own production free of the regulatory and assessment provisions of this part if he or she sells such walnuts in the area of production directly to consumers under the following types of exemptions.

(i) At roadside stands and farmers' markets;

(ii) In quantities not exceeding an aggregate of 500 pounds of inshell walnuts or 200 pounds of shelled walnuts during any marketing year (at locations other than those specified in (b)(i) of this section); and

(iii) If shipped by parcel post or express in quantities not exceeding 10 pounds of inshell walnuts or 4 pounds of shelled walnuts to any one consumer in any one calendar day.

(2) *Green walnuts.* Walnuts which are green and which are so immature that they cannot be used for drying and sale as dried walnuts may be handled without regard to the provisions of this part.

(3) *Noncompetitive outlets.* Any person may handle walnuts, free of the provisions of this part, for use by charitable institutions, relief agencies, governmental agencies for school lunch programs, and diversion to animal feed or oil manufacture pursuant to an authorized governmental diversion program.

(c) *Rules and modifications.* The Board may establish, with the approval of the Secretary, such rules, regulations and safeguards and such modifications as will promote the objectives of this subpart.

27. In addition to the Board's recommended changes set forth in Proposal Nos. 1 and 7, revise § 984.48 (a)(2), (a)(4), and (a)(5) to read as follows:

§ 984.48 Marketing estimates and recommendations.

(a) * * *

(1) * * *

(2) Its estimate of the handler inventory on September 1 of inshell and shelled walnuts;

(3) * * *

(4) Its estimate of the trade demand for such marketing year for shelled and inshell walnuts, taking into consideration trade inventory, imports, prices, competing nut supplies, and other factors;

(5) Its recommendation for desirable handler inventory of inshell and shelled walnuts on August 31 of each marketing year;

* * * * *

28. Revise § 984.71 to read as follows:

§ 984.71 Reports of handler inventory.

Each handler shall submit to the Board in such form and on such dates as the Board may prescribe, reports showing his or her inventory of inshell and shelled walnuts.

Proposal Number 15(a)

29. Revise § 984.59 to read as follows:

§ 984.59 Interhandler transfers.

For the purposes of this part, transfer means the sale of inshell and shelled walnuts within the area of production by one handler to another. The receiving handler shall comply with the regulations made effective pursuant to this part. The Board, with the approval of the Secretary, may establish methods and procedures, including necessary reports, for such transfers.

Proposal Number 15(b)

30. Revise § 984.73 to read as follows:

§ 984.73 Reports of walnut receipts.

Each handler shall file such reports of his or her walnut receipts from growers, handlers, or others in such form and at such times as may be requested by the Board with the approval of the Secretary.

Proposal Number 16

31. Revise § 984.22 to read as follows:

§ 984.22 Trade demand.

(a) *Inshell.* The quantity of merchantable inshell walnuts that the trade will acquire from all handlers during a marketing year for distribution in the United States and its territories.

(b) *Shelled.* The quantity of merchantable shelled walnuts that the trade will acquire from all handlers during a marketing year for distribution in the United States and its territories.

Proposal Number 17

32. Add a new § 984.91 to read as follows:

§ 984.91 Relationship with the California Walnut Commission.

In conducting Board activities and other objectives under this part, the

Board may deliberate, consult, cooperate and exchange information with the California Walnut Commission, whose activities complement those of the Board. Any sharing of information gathered under this subpart shall be kept confidential in accordance with provisions under section 10(i) of the Act.

Proposals submitted by USDA are as follows:

Proposal Number 18

33. Revise § 984.36 to read as follows:

§ 984.36 Term of office.

The term of office of Board members, and their alternates shall be for a period of two years ending on June 30 of odd-numbered years, but they shall serve until their respective successors are selected and have qualified. Board members may serve up to four consecutive, two-year terms of office. In no event shall any member serve more than eight consecutive years on the Board. For purposes of determining when a Board member has served four consecutive terms, the accrual of terms shall begin following any period of at least twelve consecutive months out of office. The limitation on tenure shall not apply to alternates.

Proposal Number 19

34. Amend § 984.89 by redesignating the current paragraph (b)(4) as (b)(5), and adding a new paragraph (b)(4) to read as follows:

§ 984.89 Effective time and termination.

(a) * * *

(b) * * *

(1) * * *

(2) * * *

(3) * * *

(4) Within six years of the effective date of this part the Secretary shall conduct a referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by a two thirds (2/3) majority of voting producers, or a two thirds (2/3) majority of volume represented thereby, who, during a representative period determined by the Secretary, have been engaged in the production for market of walnuts in the production area. Such termination shall be announced on or before the end of the production year.

* * * * *

Proposal Number 20

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: April 18, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6-6071 Filed 4-21-06; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF ENERGY**10 CFR Part 626****RIN 1901-AB16****Procedures for the Acquisition of Petroleum for the Strategic Petroleum Reserve**

AGENCY: Office of Petroleum Reserves, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Energy Policy Act of 2005 directs the Secretary of Energy to develop procedures for the acquisition of petroleum for the Strategic Petroleum Reserve (SPR) in appropriate circumstances. The Department of Energy (DOE) is today proposing procedures for the acquisition of petroleum for the SPR, including acquisition by direct purchase and transfer of royalty oil from the Department of the Interior. The proposed rule also has provisions concerning the deferral of scheduled deliveries of petroleum for the SPR.

DATES: Comments are due on May 24, 2006.

ADDRESSES: You may submit comments, identified by RIN Number 1901-AB16 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-Mail: nancy.marland@hq.doe.gov. Include RIN Number 1901-AB16 in the subject line of the message.

- Mail: Office of Petroleum Reserves, FE-40, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

You may obtain electronic copies of this notice of proposed rulemaking and review comments received by DOE at the following Web sites: <http://www.fe.doe.gov/programs/reserves> and <http://www.spr.doe.gov>. Those without Internet access may access this information by visiting the DOE Freedom of Information Reading Room, Rm. 1E-190, 1000 Independence Avenue SW., Washington, DC, (202)

586-3142, between the hours of 9 a.m. and 4 p.m., Monday to Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lynnette le Mat, Director, Operations and Readiness, Office of Petroleum Reserves, FE-43, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-4398.

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I. Introduction*A. Background*

The Strategic Petroleum Reserve was established pursuant to the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6201 *et seq.*) to store petroleum to diminish the impact on the United States of disruptions in petroleum supplies and to carry out the obligations of the United States under the International Energy Program. EPCA authorizes the storage of up to one billion barrels of petroleum and permits the Secretary of Energy to acquire petroleum for storage in the SPR by a variety of methods.

Since its authorization, the Federal Government has created six crude oil storage sites and subsequently decommissioned two of the six. The SPR currently consists of underground storage caverns located in the four Government-owned sites. The locations are Bryan Mound and Big Hill in Texas and West Hackberry and Bayou Choctaw in Louisiana. These four storage locations have salt dome caverns with 727 million barrels of useable storage capacity.

Over the last thirty years, the Government has acquired approximately 800 million barrels of petroleum for the SPR. Over 100 million barrels of oil have been withdrawn from the SPR for sale or exchange. The inventory reached its highest level of 700.7 million barrels in August 2005 before the drawdown, exchange and sale

of 20.8 million barrels in the aftermath of Hurricane Katrina.

Crude oil was initially acquired for the SPR by direct purchases on the open market. Through an Interagency Agreement, the Department of Defense served as DOE's agent to acquire crude oil using appropriated funds to attempt to meet a series of target fill rates specified by Congress. Petroleum was acquired through a combination of spot market purchases and term contracts, including a matching purchase and sale involving the Government's share of production from the Naval Petroleum Reserve in California. Except for various pauses occasioned by geopolitical events, e.g., Desert Storm, the Defense Fuel Supply Center (currently the Defense Energy Support Center) continued to function as DOE's acquisition agent for direct purchases through 1994, at which time funds from direct appropriations and receipts from sales in 1990 and 1991 were exhausted.

In December 1981, DOE entered into the first of a series of four country-to-country contracts with Petroleos Mexicanos (PEMEX), the state-owned oil company of Mexico. These term contracts—under which deliveries of approximately 220 million barrels of petroleum were completed in 1990—employed commercial market terms and were priced according to a formula indexed to prices of globally-traded petroleum.

In 1996, in a series of congressionally-mandated sales, an aggregate 28 million barrels of SPR inventory were sold to fund SPR programmatic requirements and for general deficit reduction purposes. Subsequently, pursuant to a 1999 Memorandum of Understanding (MOU) between the Department of the Interior (DOI) and DOE, DOE initiated a program to replace the 28 million barrels by the transfer to DOE of crude oil royalties collected in-kind on production from Federal leases in the Gulf of Mexico Outer Continental Shelf. Under this MOU, DOE contracted with commercial entities to receive the royalty oil at offshore production facilities and transfer it to the SPR, either directly or by exchange for other crude oil meeting SPR quality specifications.

In 1998, in order to improve the efficiency of drawdown operations at the Bryan Mound site, DOE conducted a competition under the exchange authority in EPCA to trade crude oil of one type for another type of superior quality. Although this resulted in a net decrease in the number of barrels in inventory, the upgrade in oil quality maintained the value of the

Government's assets and enhanced emergency response capabilities.

In the fall of 2000, again under the EPCA exchange authority, DOE conducted a time exchange of oil from the SPR. Through open competition, DOE entered into agreements with nine companies to exchange 30 million barrels of oil. Under these agreements, oil delivered to companies from SPR sites was to be repaid the following year with oil of comparable quality and quantity plus additional premium barrels paid as interest.

In November 2001, the Administration announced it would extend the royalty-in-kind program to fill the SPR to a level of 700 million barrels. To accomplish this, a new MOU was signed with the Department of Interior and DOE issued a series of competitive solicitations for six-month terms, similar to those used to acquire the previous 28 million barrels.

At various times since 1999, when the market moved into steep backwardation (prices for future barrels remained consistently low relative to near term prices), suppliers under both the time exchange and royalty-in-kind transfer programs requested that contractually scheduled deliveries to the SPR be delayed. DOE granted these deferral requests through individual negotiations for the future return of the originally scheduled barrels plus additional premium barrels.

In addition, there have been periods when catastrophic events, most recently severe weather, have prompted requests for loans of oil from the SPR. These loans have been conducted as time exchanges in a manner similar to deferred deliveries, in that the loaned oil is returned plus additional barrels as interest.

B. Energy Policy Act of 2005

The acquisition authority in section 160 of EPCA requires that the Secretary of Energy, to the greatest extent practicable, acquire petroleum products for the SPR in a manner consonant with the following objectives:

- Minimization of the cost of the SPR;
 - Minimization of the Nation's vulnerability to a severe energy supply interruption;
 - Minimization of the impact of such acquisition upon supply levels and market forces; and
 - Encouragement of competition in the petroleum industry.
- (42 U.S.C. 6240).

The recently enacted Energy Policy Act of 2005 (Pub. L. 109-58) generally directs the Secretary of Energy to acquire petroleum to fill the SPR to the

one billion barrel capacity authorized by section 154(a) of EPCA (42 U.S.C. 6234(a)) as expeditiously as practicable, without incurring excessive cost or appreciably affecting the price of petroleum products to consumers. DOE estimates that the acquisition of the approximately 300 million barrel difference between the current and authorized SPR inventory would likely take approximately 15 years. The rate of acquisition depends on the availability of capacity to receive and hold the oil and by the availability of oil either through transfer from the Department of the Interior to DOE or through purchases, which will be affected by the availability of funds.

In addition, section 301(e)(2) of the Energy Policy Act of 2005 amends EPCA by adding a new subsection (c) to section 160. Subsection (c) directs the Secretary of Energy to develop, with public notice and opportunity for comment, procedures consistent with the objectives of section 160 to acquire petroleum for the SPR. Such procedures must take into account the need to—

- (1) Maximize overall domestic supply of crude oil (including quantities stored in private sector inventories);
- (2) Avoid incurring excessive cost or appreciably affecting the price of petroleum products to consumers;
- (3) Minimize the costs to the Department of the Interior and DOE in acquiring such petroleum products (including foregone revenues to the Treasury when petroleum products for the SPR are obtained through the royalty-in-kind program);
- (4) Protect national security;
- (5) Avoid adversely affecting current and futures prices, supplies, and inventories of oil; and
- (6) Address other factors that the Secretary determines to be appropriate.

The Energy Policy Act of 2005 further provides that the procedures developed under section 160(c) shall include procedures and criteria for the review of requests for the deferrals of scheduled deliveries.

Along with the direction to expand the SPR to one billion barrels, section 303 of the Energy Policy Act of 2005 requires the Secretary of Energy to complete a proceeding to select sites "necessary to enable acquisition by the Secretary of the full authorized volume of the Strategic Petroleum Reserve." (42 U.S.C. 6201 note.) This activity is currently underway.

Consistent with the principles set forth in EPCA and the objectives of the Energy Policy Act of 2005, DOE now proposes procedures for oil acquisition by direct purchase and by royalty oil transfers from the Department of the

Interior. Additionally, the procedures address deferrals of deliveries.

II. Proposed Acquisition Procedures

A. Discussion of Acquisition Principles

DOE will consider a wide range of factors consonant with the objectives set forth in section 160 (b) of EPCA and the new section 160 (c) added by the Energy Policy Act of 2005. Careful and deliberative consideration of these factors will occur prior to acquisition of petroleum for the SPR or deferral of scheduled deliveries.

While the mission of the SPR is to provide energy security by storing substantial quantities of petroleum, the acquisition of petroleum to meet this long term objective must be conducted using the criteria set forth in EPCA, as amended by the Energy Policy Act of 2005. When acquiring petroleum, whether by purchase or royalty transfer, DOE will seek to balance the objectives of assuring adequate security and minimizing market stress. To this end, DOE will consider various factors that may be affecting market fundamentals, current and projected SPR and commercial receipt capabilities, and the geopolitical climate. Consistent with the SPR mission, however, energy security will be the overriding objective as long as it does not result in undue impact on markets.

Whether acquiring by purchase or royalty transfer, DOE will seek to maximize the overall domestic supply of crude oil. Assuming the necessary authorizations and appropriations have been made, DOE decisions on crude oil acquisition will take into consideration the current level of the SPR and private inventories, national and regional import dependency, the outlook for international and domestic production levels, oil acquisition by other stockpiling entities, the added security value of the marginal barrel in storage, incipient disruptions of supply or refining capability, the level of market volatility, the demand and supply elasticity to price changes, logistics and economics of petroleum movement, and any other considerations that may be pertinent to the balance of petroleum supply and demand. More indirect considerations, such as monetary policy, the current and projected rate of economic growth, and impacts on specific domestic market segments, as well as foreign policy considerations may also be pertinent to near-term acquisition strategy. All of these factors are recognized as having an impact, at some level, on U.S. energy security.

The timing of DOE entry into the market, its sustained presence, and the

quantities sought will all be sensitive to these factors. DOE will remain aware of the extent to which the SPR fill rate and prices paid for its own acquisitions will impact supply availability and prices for other market participants. DOE will strive to avoid incurring excessive cost or appreciably affecting the price of petroleum products to consumers by analyzing market activity for crude oil and related commodities and prices of oil for delivery in future months as well as the perceived availability of near term and forward supplies.

For purchases or exchanges, DOE will ensure the use of commercially reasonable terms and conditions.

B. Vehicles for Petroleum Acquisition

DOE may acquire oil for the SPR through direct purchase, the transfer of royalty-in-kind oil, through deferrals and exchanges, or other means authorized in EPCA (42 U.S.C. 6239, 6240). In order to acquire oil, DOE may enter into agreements with other Federal agencies with relevant expertise and resources to acquire oil for the SPR consistent with the provisions of part 626.

1. Direct Purchases

Use of the direct purchase method for oil acquisition is contingent on the availability of funds. If funds are made available, DOE proposes to provide public notice of its intent to issue a solicitation for the acquisition of crude oil. The quantity and quality of oil to be purchased would be identified in the solicitation. When acquiring by direct purchase, DOE would use competitive solicitations to assure that prices paid are fair and reasonable in a global market, and in line with contemporaneous commercial transactions for comparable quality crude oils. The use of open, continuous solicitations that allow entry into price and delivery negotiations would enable DOE to increase the rate of purchases if price volatility reduces prices below trend and offers the opportunity to reduce the average cost of oil acquisition. Under the proposed procedures, DOE also may decrease the rate of purchase if volatility or future price projections indicate a delay would result in better economy and less stress on seasonal markets. DOE's decision to enter the market, delay purchases or defer deliveries would follow the careful analysis of the effect of such a decision on current and futures prices, supplies and inventories of oil.

2. Royalty-in-Kind Transfers

Oil acquisition by royalty-in-kind transfer is conducted in coordination

with the Minerals Management Service of the Department of the Interior. The Department of the Interior is responsible for collecting royalties on production from leases on Federally-owned properties. The Federal Government receives royalties of a defined percentage of the amount or value of the oil produced from the leases. Under the royalty-in-kind acquisition method, the royalties are paid "in kind", in the oil itself, and transferred to the SPR. In most cases, the royalty oil is provided to private companies under exchange agreements. In turn, these companies are bound by contract to provide oil of suitable quality to the SPR. If the royalty oil is of suitable quality and transportation logistics are amenable, it may be directly transferred to the SPR. DOE expects this would be a small proportion of the total oil transferred.

When using royalty production to fill the SPR, DOE would minimize the cost to the Department of the Interior and DOE through its analysis of royalty values, as well as a comparative analysis of the relative market values of crude oil offered in exchange. Both agencies will encourage the direct transfer of royalty oil to the SPR when in the Government's interest.

3. Deferrals

Secretary of Energy may defer scheduled deliveries to the SPR for the purpose of obtaining additional crude oil. Under the proposed rule, DOE could defer scheduled crude oil deliveries to the SPR to a later date in exchange for a premium, which would be paid to DOE in oil.

The precise amount of that premium would be negotiated with the contractor by a DOE contracting officer. The determination of an appropriate premium would take into consideration the length of deferral as well as prevailing market conditions.

C. Description of the Proposed Rule

This portion of the supplementary information discusses certain provisions of the proposed rule.

Section 626.03 (Applicability)

This section limits the applicability of these procedures to the acquisition of petroleum for the SPR through direct purchase or transfer of royalty-in-kind oil, as well as to deferrals of contractually scheduled deliveries. The procedures do not apply to the following transactions during which oil may be acquired: (1) Country-to-country oil purchases; (2) facility leases with payments in oil; and (3) contracts for oil not owned by the United States as provided for by section 171 of the

Energy Policy and Conservation Act. These transactions generally are not conducted primarily for the acquisition of oil by DOE.

Section 626.04 (General Acquisition Strategy)

This proposed section addresses the indicators which will be reviewed by DOE for likely market impacts prior to acquisition of petroleum for the SPR.

Section 626.05 (Notice of Acquisition)

This section describes the contents of the acquisition solicitation and issuance activities. The proposed section also discusses the duration of the solicitation, definition of quality specifications, quantity determination, offer procedures and delivery.

Section 626.06 (Acquiring Oil by Direct Purchase)

This proposed section addresses in more detail the development of an acquisition strategy taking into account specific SPR quantitative and qualitative requirements. This proposed section also addresses the method by which solicitations are issued and offers evaluated.

Section 626.07 (Royalty Transfer and Exchange)

This proposed section describes how DOE, in coordination with the Department of the Interior, would proceed to fill the SPR with the Government's share of U.S. Gulf of Mexico offshore royalty production, either by direct transport to SPR facilities or through a competitive exchange with industry. Successful exchange offers generally would be those which provide the greatest value of exchange oil to the Government relative to the value of the royalty oil delivered to the contractor.

Section 626.08 (Deferrals of Contractually Scheduled Deliveries)

This proposed section addresses the conditions in which DOE would consider and the process by which it would delay deliveries scheduled under existing contracts to the mutual benefit of the Government and other market participants.

III. Regulatory Review

A. Executive Order 12866

Today's proposed rule has been determined to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory

Affairs of the Office of Management and Budget.

B. National Environmental Policy Act

DOE has determined that this proposed rule is covered under the Categorical Exclusion found in the Department's National Environmental Policy Act regulations at paragraph A.6 of Appendix A to Subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>.

DOE has reviewed today's proposed procedures under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. These proposed procedures would not directly affect small businesses or other small entities. The proposed procedures would apply only to individuals who are engaged in the acquisition of petroleum products for the Strategic Petroleum Reserve. On the basis of the foregoing, DOE certifies that the proposed procedures, if implemented would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Paperwork Reduction Act

This proposed rule would not impose any new collection of information subject to review and approval by the Office of Management and Budget

(OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of \$100 million or more. Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments.

These proposed procedures would not impose a Federal mandate on State, local or tribal governments. The proposed rule would not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. These proposed procedures apply only to Federal employees involved in the acquisition of petroleum products for the SPR. While some of these individuals may be members of a family, the proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it

is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, Civil Justice Reform, 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed

procedures meet the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

List of Subjects in 10 CFR Part 626

Government contracts, Oil and gas reserves, Strategic and critical materials.

Issued in Washington, DC, on April 6, 2006.

Thomas D. Shope,

Acting Assistant Secretary for Fossil Energy.

For the reasons stated in the preamble, DOE hereby proposes to amend chapter II of title 10 of the Code of Federal Regulations by adding a new part 626 as set forth below:

PART 626—PROCEDURES FOR ACQUISITION OF PETROLEUM FOR THE STRATEGIC PETROLEUM RESERVE

Sec.

- 626.01 Purpose.
- 626.02 Definitions.
- 626.03 Applicability.
- 626.04 General Acquisition Strategy.
- 626.05 Acquisition Process—General.
- 626.06 Acquiring Oil by Direct Purchase.
- 626.07 Royalty Transfer and Exchange.
- 626.08 Deferrals of Contractually Scheduled Deliveries.

Authority: 42 U.S.C. 6240(c); 42 U.S.C. 7101, *et seq.*

§ 626.01 Purpose.

This part establishes the procedures for acquiring petroleum for, and deferring contractually scheduled deliveries to, the Strategic Petroleum Reserve.

§ 626.02 Definitions.

Backwardation means a market situation in which prices are progressively lower in succeeding delivery months than in earlier months.

Contango means a market situation in which prices are progressively higher in the succeeding delivery months than in earlier months.

Contract means the agreement under which DOE acquires SPR petroleum, consisting of the solicitation, the contract form signed by both parties, the successful offer, and any subsequent modifications, including those granting requests for deferrals.

Contracting Officer means the person executing acquisition contracts on behalf of the Government, including the authorized representative of a Contracting Officer acting within the limits of his or her authority.

DEAR means the Department of Energy Acquisition Regulation.

Deferral means a process whereby petroleum scheduled for delivery to the SPR in a specific contract period is rescheduled for later delivery, outside of that period and encompasses the future delivery of the originally scheduled quantity plus an in-kind premium.

DOE means the Department of Energy.

Exchange means a process whereby petroleum owned by or due to the SPR is provided to a person or contractor in return for petroleum of comparable quality plus a premium quantity of petroleum delivered to the SPR in the future, or when SPR petroleum is traded for petroleum of a different quality for operational reasons based on the relative values of the quantities traded.

FAR means the Federal Acquisition Regulation.

Government means the United States Government.

International Energy Program means the program established by the Agreement on an International Energy Program, signed by the United States on November 18, 1974, including any subsequent amendments and additions to that Agreement.

OPR means the Office of Petroleum Reserves within the DOE Office of Fossil Energy whose responsibilities include the operation of the Strategic Petroleum Reserve.

Petroleum means crude oil, residual fuel oil, or any refined product (including any natural gas liquid, and any natural gas liquid product) owned, or contracted for, by DOE and in storage in any permanent SPR facility, or temporarily stored in other storage facilities.

Secretary means the Secretary of Energy.

Strategic Petroleum Reserve or *SPR* means the DOE program established by Title I, Part B, of the Energy Policy and Conservation Act, 42 U.S.C. 6201 *et seq.*

§ 626.03 Applicability.

The procedures in this part apply to the acquisition of petroleum by DOE for the Strategic Petroleum Reserve through direct purchase or transfer of royalty-in-

kind oil, as well as to deferrals of contractually scheduled deliveries.

§ 626.04 General acquisition strategy.

(a) *Criteria for commencing acquisition.* To reduce the potential for negative impacts from market participation, DOE shall review the following factors prior to commencing acquisition of petroleum for the SPR:

- (1) The current inventory of the SPR;
 - (2) The current level of private inventories;
 - (3) Days of net import protection;
 - (4) Current price levels for crude oil and related commodities;
 - (5) The outlook for international and domestic production levels;
 - (6) Existing or potential disruptions in supply or refining capability;
 - (7) The level of market volatility;
 - (8) Futures market price differentials for crude oil and related commodities; and
- (9) Any other factor the consideration of which the Secretary deems to be necessary or appropriate.

(b) *Review of rate of acquisition.* DOE shall review the appropriate rate of oil acquisition each time an open market acquisition has been suspended for more than three months, and every six months in the case of ongoing or suspended royalty-in-kind transfers.

(c) *Acquisition through other Federal agencies.* DOE may enter into arrangements with another Federal agency for that agency to acquire oil for the SPR on behalf of DOE.

§ 626.05 Acquisition procedures—general.

(a) *Notice of acquisition.*

(1) Except when DOE has determined there is good cause to do otherwise, DOE shall provide advance public notice of its intent to acquire petroleum for the SPR. The notice of acquisition is usually in the form of a solicitation. DOE shall state in the notice of acquisition the general terms and details of DOE's crude oil acquisition and, to the extent feasible, shall inform the public of its overall fill goals, so that they may be factored into market participants' plans and activities.

(2) The notice of acquisition generally states:

- (i) The method of acquisition to be employed;
- (ii) The time that the solicitations will be open;
- (iii) The quantity of oil that is sought;
- (iv) The minimum crude oil quality requirements;
- (v) The acceptable delivery locations; and
- (vi) The necessary instructions for the offer process.

(b) *Method of acquisition.*

(1) DOE shall define the method of crude oil acquisition, direct purchase or royalty-in-kind transfer and exchange, in the notice of acquisition.

(2) DOE shall determine the method of crude oil acquisition after taking into account the availability of appropriated funds, current market conditions, the availability of oil from the Department of the Interior, and other considerations DOE deems to be relevant.

(c) *Solicitation.*

(1) To secure the economic benefit and security of a diversified base of potential suppliers of petroleum to the SPR, DOE shall maintain a listing, developed through on-line registration and personal contact, of interested suppliers. Upon the issuance of a solicitation, DOE shall notify potential suppliers via their registered e-mail addresses.

(2) DOE shall make the solicitation publicly available on the Web sites of the DOE Office of Fossil Energy <http://www.fe.doe.gov/programs/reserves> and the OPR <http://www.spr.doe.gov>.

(d) *Timing and duration of solicitation.*

(1) DOE shall determine crude oil requirements on nominal six-month cycles, and shall review and update these requirements prior to each solicitation cycle.

(2) DOE may terminate all solicitations and contracts pertaining to the acquisition of crude oil at the convenience of the Government, and in such event shall not be responsible for any costs incurred by suppliers, other than for oil delivered to the SPR.

(e) *Quality.*

(1) DOE shall define minimum crude oil quality specifications for the SPR. DOE shall include such specifications in acquisition solicitations, and shall make them available on the Web sites of the DOE Office of Fossil Energy <http://www.fe.doe.gov/programs/reserves> and the OPR <http://www.spr.doe.gov>.

(2) DOE shall periodically review the quality specifications to ensure, to the greatest extent practicable, the crude oil mix in storage matches the demand of the United States refining system.

(f) *Quantity.* In determining the quantities of oil to be delivered to the SPR, DOE shall:

(1) Take into consideration market conditions and the availability of transportation systems; and

(2) Seek to avoid adversely affecting other market participants or crude oil market fundamentals.

(g) *Offer and evaluation procedures.*

(1) Each solicitation shall provide necessary instructions on offer format and submission procedures. The details of the offer, evaluation and award

procedures may vary depending on the method of acquisition.

(2) DOE shall use relative crude values and time differentials to the maximum extent practicable to manage acquisition and delivery schedules to reduce acquisition costs.

(3) DOE shall evaluate offers based on prevailing market prices of specific crude oils, and shall award contracts on a competitive basis.

(4) Whether acquisition is by direct purchase or royalty transfer and exchange on a term contract basis, DOE shall use a price index to account for fluctuations in absolute and relative market prices at the time of delivery to reduce market risk to all parties throughout the contract term.

(h) *Scheduling and delivery.*

(1) Except as provided in paragraph (4) of this section, DOE shall accept offers for crude oil delivered to specified SPR storage sites via pipeline or as waterborne cargos delivered to the terminals serving those sites.

(2) Except as provided in paragraph (4) of this section, DOE shall generally establish schedules that allow for evenly spaced deliveries of economically-sized marine and pipeline shipments within the constraints of SPR site and commercial facilities receipt capabilities.

(3) DOE shall strive to maximize U.S. flag carrier utilization through the terms of its supply contracts.

(4) DOE reserves the right to accept offers for other methods of delivery if, in DOE's sole judgment, market conditions and logistical constraints require such other methods.

§ 626.06 Acquiring oil by direct purchase.

(a) *General.* For the direct purchase of crude oil, DOE shall, through certified contracting officers, conduct crude oil acquisitions in accordance with the FAR and the DEAR.

(b) *Acquisition strategy.*

(1) DOE solicitations:

(i) May be either continuously open or fixed for a period of time (usually no longer than 6 months); and

(ii) May provide either for prompt delivery or for delivery at future dates.

(2) DOE may alter the acquisition plan to take advantage of differentials in prices for different qualities of oil, based on a consideration of the availability of storage capacity in the SPR sites, the logistics of changing delivery streams, and the availability of ships, pipelines and terminals to move and receive the oil.

(3) Based on the market analysis described in paragraph (d) of this section, DOE may suspend competition or reject offers on the basis of

Government estimates that project substantially lower oil prices in the future than those contained in offers. If DOE determines there is a high probability that the cost to the Government can be reduced without significantly affecting national energy security goals, DOE may either contract for delivery at a future date or delay purchases to take advantage of projected future lower prices. Conversely, DOE may increase the rate of purchases if prices fall below recent price trends or futures markets present a significant contango and prices offer the opportunity to reduce the average cost of oil acquisitions in anticipation of higher prices.

(4) Based on the market analysis described in paragraph (d) of this section, DOE may suspend the solicitation or refuse offers or decrease the rate of purchase if DOE determines acquisition will add significant upward pressure to prices either regionally or on a world-wide basis. DOE may consider recent price changes, private inventory levels, oil acquisition by other stockpiling entities, the outlook for world oil production, incipient disruptions of supply or refining capability, logistical problems for moving petroleum products, macroeconomic factors, and any other considerations that may be pertinent to the balance of petroleum supply and demand.

(c) *Fill requirements determination.*

DOE shall develop SPR fill requirements for each solicitation based on an assessment of national energy security goals, the availability of storage capacity, and the need for specific grades and quantities of crude oil.

(d) *Market analysis.*

(1) DOE shall establish a market value for each crude type to be acquired based on a market analysis at the time of contract award.

(2) In conducting the market analysis, DOE may use prices on futures markets, spot markets, recent price movements, current and projected shipping rates, forecasts by the DOE Energy Information Administration, and any other analytic tools available to DOE to determine the most desirable purchase profile.

(3) A market analysis supporting a suspension decision may consider recent price changes, private inventory levels, oil acquisition by other stockpiling entities, the outlook for world oil production, incipient disruptions of supply or refining capability, logistical problems for moving petroleum products, macroeconomic factors, and any other considerations that may be pertinent to

the balance of petroleum supply and demand.

(e) *Evaluation of offers.*

(1) DOE shall evaluate offers using:

(i) The criteria and requirements stated in the solicitation; and
(ii) The market analysis under paragraph (d) of this section.

(2) DOE shall require financial guarantees from contractors.

§ 626.07 Royalty transfer and exchange.

(a) *General.*

DOE shall conduct royalty transfers pursuant to an agreement between DOE and the Department of the Interior for the transfer of royalty oil.

(b) *Acquisition strategy.*

(1) DOE and the Department of the Interior shall select a royalty volume from specified leases for transfer usually over six-month periods, beginning April 1 and October 1.

(2) If logistics and crude oil quality are compatible with SPR receipt capabilities and requirements respectively, DOE may take the royalty oil directly from the Department of the Interior and place it in SPR storage sites. Otherwise, DOE may competitively solicit suppliers to deliver oil of comparable value to the SPR in exchange for the receipt of royalty-in-kind oil.

(3) If, based on the market analysis described in paragraph (d) of this section, DOE determines there is a high probability that the cost to the Government can be reduced without significantly affecting national energy security goals, DOE may contract for delivery at a future date in expectation of lower prices and a higher quantity of oil in exchange. Conversely, it may schedule deliveries at an earlier date under the contract in anticipation of higher prices at later dates.

(4) Based on the market analysis in paragraph (d) of this section, DOE may, after consultation with the Department of the Interior, suspend the transfer of royalty oil to DOE if it appears the added demand for oil will add significant upward pressure to prices either regionally or on a world-wide basis.

(c) *Fill requirements determination.*

DOE shall develop SPR fill requirements for each solicitation based on an assessment of national energy security goals, the availability of royalty oil and storage capacity, and need for specific grades and quantities of crude oil.

(d) *Market analysis.*

(1) DOE may use prices on futures markets, spot markets, recent price movements, current and projected shipping rates, forecasts by the DOE

Energy Information Administration, and any other analytic tools to determine the most desirable acquisition profile.

(2) A market analysis supporting a suspension decision may consider recent price changes, private inventory levels, oil acquisition by other stockpiling entities, the outlook for world oil production, incipient disruptions of supply or refining capability, logistical problems for moving petroleum products, macroeconomic factors, and any other considerations that may be pertinent to the balance of petroleum supply and demand.

(e) *Evaluation of royalty exchange offers.*

(1) DOE shall evaluate offers using:

(i) The criteria and requirements stated in the solicitation; and
(ii) The market analysis under paragraph (d) of this section.

(2) DOE shall require financial guarantees from contractors prior to evaluation.

§ 626.08 Deferrals of contractually scheduled deliveries.

(a) *General.*

(1) DOE prefers to take deliveries of petroleum for the SPR at times scheduled under applicable contracts. However, in the event the market is distorted by disruption to supply or other factors, DOE may defer scheduled deliveries or request or entertain deferral requests from contractors.

(2) A contractor seeking to defer scheduled deliveries of oil to the SPR may submit a deferral request to DOE.

(b) *Deferral criteria.* DOE shall only grant a deferral request for negotiation if the Government can increase the volume of oil in the SPR and, if DOE determines, based on DOE's deferral analysis, that at least one of the following conditions exists:

(1) The Government can reduce the cost of its oil acquisition per barrel and increase the volume of oil being delivered to the SPR by means of the premium barrels required by the deferral process.

(2) The Government anticipates private inventories are approaching a point where unscheduled outages may occur.

(3) There is evidence that refineries are reducing their run rates for lack of feedstock.

(4) There is an unanticipated disruption to crude oil supply.

(c) *Negotiating terms.*

(1) If DOE decides to negotiate a deferral of deliveries, DOE shall estimate the market value of the deferral and establish a strategy for negotiating with suppliers the minimum percentage

of the market value to be taken by the Government.

(2) DOE shall only agree to amend the contract if the negotiation results in an agreement to give the Government a fair and reasonable share of the market value.

[FR Doc. E6-6102 Filed 4-21-06; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-23578; Directorate Identifier 2006-CE-01-AD]

RIN 2120-AA64

Airworthiness Directives; Mitsubishi Heavy Industries MU-2B Series Airplanes

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

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: The FAA proposes to revise an earlier proposed airworthiness directive (AD) that applies to all Mitsubishi Heavy Industries MU-2B series airplanes. The earlier NPRM would have required you to do the following: Remove and visually inspect the wing attach barrel nuts, bolts, and retainers for cracks, corrosion, and fractures; replace any cracked, corroded, or fractured parts; inspect reusable wing attach barrel nuts and bolts for deformation and irregularities in the threads; replace any deformed or irregular parts; and install new or reusable parts and torque to the correct value. The earlier NPRM resulted from a recent safety evaluation that used a data-driven approach to evaluate the design, operation, and maintenance of the MU-2B series airplanes in order to determine their safety and define what steps, if any, are necessary for their safe operation. This proposed AD would retain the actions from the earlier NPRM, add airplanes to the applicability, revise the serial numbers of the affected airplanes, and update the manufacturer's contact information. This proposed AD results from the manufacturer revising the service information to include two additional airplane models. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow

the public the chance to comment on these additional actions.

DATES: We must receive comments on this proposed AD by May 25, 2006.

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

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- Fax: (202) 493-2251.
- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Mitsubishi Heavy Industries America, Inc., 4951 Airport Parkway, Suite 800, Addison, Texas 75001; telephone: (972) 934-5480; fax: (972) 934-5488, or Turbine Aircraft Services, Inc., 4550 Jimmy Doolittle Drive, Addison, Texas 75001; telephone: (972) 248-3108; facsimile: (972) 248-3321.

FOR FURTHER INFORMATION CONTACT: Andrew McAnaul, Aerospace Engineer, ASW-150 (c/o MIDO-43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308-3365; facsimile: (210) 308-3370.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed airworthiness directive (AD). Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, "FAA-2006-23578; Directorate Identifier 2006-CE-01-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Discussion

Recent accidents and the service history of the Mitsubishi Heavy Industries (MHI) MU-2B series airplanes prompted the Federal Aviation Administration (FAA) to conduct an MU-2B Safety Evaluation. This evaluation used a data-driven approach to evaluate the design, operation, and maintenance of MU-2B series airplanes in order to determine their safety and define what steps, if any, are necessary for their safe operation.

The safety evaluation provided an in-depth review and analysis of MU-2B incidents, accidents, safety data, pilot training requirements, engine reliability, and commercial operations. In conducting this evaluation, the team employed new analysis tools that provided a much more detailed root cause analysis of the MU-2B problems than was previously possible.

Part of that evaluation was to identify unsafe conditions that exist or could develop on the affected type design airplanes. One of these conditions is the discovery of the right wing upper forward and lower forward barrel nuts found cracked during routine maintenance on one of the affected airplanes. The manufacturer conducted additional investigations of the wing attach barrel nuts on other affected airplanes. The result of this investigation revealed no other cracked barrel nuts. However, it was discovered that several airplanes had over-torqued barrel nuts, which could result in cracking.

This condition, if not detected and corrected, could result in failure of the wing barrel nuts and/or associated wing attachment hardware. This failure could lead to in-flight separation of the outer wing from the center wing section and result in loss of controlled flight.

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all MHI MU-2B series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 25, 2006 (71 FR 4072). The NPRM proposed to require you to do the following:

- Remove and visually inspect the wing attach barrel nuts, bolts, and retainers for cracks, corrosion, and fractures;
- Replace any cracked, corroded, or fractured wing attach barrel nuts, bolts, and retainers with new parts;
- Inspect reusable barrel nuts and bolts for deformation and irregularities in the threads;

- Replace any deformed or irregular wing attach barrel nuts or bolts with new parts; and
- Install new or reusable parts and torque to the correct value.

Comments

The FAA encouraged interested persons to participate in developing this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Incorporate Revised Service Bulletin

The manufacturer revised the MU-2 Service Bulletin referenced as FAA T.C.: No. 103/57-004, dated August 2, 2004, to add two airplane models to the effectivity. The change in the model effectivity accurately reflects the airplanes for that service bulletin.

The manufacturer requests the revised service bulletin, MU-2 Service Bulletin referenced as FAA T.C.: No. 103/57-004A, dated March 10, 2006, be incorporated into the NPRM.

We agree with the commenter and will incorporate the revised service bulletin into the supplemental NPRM.

Comment Issue No. 2: Revise the Manufacturer Contact Information

The manufacturer requests that we revise the manufacturer contact information from Mitsubishi Heavy Industries in Nagoya, Japan, to Mitsubishi Heavy Industries America, Inc. in Addison Texas.

We agree with the commenter and will incorporate the change into the supplemental NPRM.

Comment Issue No. 3: Revise the Serial Numbers of the Affected Airplanes

The manufacturer requests that we revise the serial numbers of the affected airplanes based on additional information submitted for clarification.

We agree with the commenter and will incorporate the change into the supplemental NPRM.

Comment Issue No. 4

The manufacturer requests that we revise the proposed requirement in the NPRM for "replacing any bolts or barrel nuts with deformation or irregularities in the threads" to include a "or that do not meet the minimum breakaway torque check."

We agree with the commenter and will incorporate the change into the supplemental NPRM.

Events That Caused FAA To Issue a Supplemental NPRM

The manufacturer revised the service information to include two additional airplane models.

Relevant Service Information

We have reviewed Mitsubishi Heavy Industries, Ltd. MU-2 Service Bulletin referenced as JCAB T.C.: No. 241, dated July 14, 2004, and MU-2 Service Bulletin referenced as FAA T.C.: No. 103/57-004A, dated March 10, 2006.

These service bulletins describe procedures for:

- Removing and inspecting the wing attach barrel nuts and retainer for cracks, corrosion, and fractures;
- Replacing any wing attach barrel nuts and retainer with cracks, corrosion, or fractures;

- Inspecting reusable wing attach barrel nuts and bolts for deformation or irregularities in the threads;

- Checking the minimum breakaway torque of the wing attach barrel nuts;

- Replacing any bolts or wing attach barrel nuts with deformation or irregularities in the threads or that do not meet the minimum breakaway torque check; and

- Reinstalling the wing attach barrel nuts and hardware to the correct torque value.

Foreign Airworthiness Authority Information

The MU-2B series airplane was initially certificated in 1965 and again in 1976 under two separate type certificates (TC) that consist of basically the same type design. Japan is the State of Design for TC No. A2PC, and the United States is the State of Design for TC No. A10SW. The affected models are as follows (where models are duplicated, specific serial numbers are specified in the individual TCs):

Type certificate	Affected models
A10SW	MU-2B-25, MU-2B-26, MU-2B-26A, MU-2B-35, MU-2B-36, MU-2B-36A, MU-2B-40, and MU-2B-60.
A2PC	MU-2B, MU-2B-10, MU-2B-15, MU-2B-20, MU-2B-25, MU-2B-26, MU-2B-30, MU-2B-35, and MU-2B-36.

The Japan Civil Airworthiness Board (JCAB), which is the airworthiness authority for Japan, approved Mitsubishi Heavy Industries, Ltd. MU-2 Service Bulletin referenced as JCAB T.C.: No. 241, dated July 14, 2004, and MU-2 Service Bulletin referenced FAA T.C.: No. 103/57-004A, dated March 10, 2006, to ensure the continued airworthiness of these airplanes in Japan.

FAA's Determination and Requirements of the Proposed AD

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

- The unsafe condition referenced in this document exists or could develop on other Mitsubishi MU-2B series airplanes of the same type design that are on the U.S. registry;
- We should change the NPRM to incorporate the concerns addressed by

the commenters and incorporate the revised service information; and

- We should take AD action to correct this unsafe condition.

The Supplemental NPRM

Adding airplanes to the applicability section of the NPRM goes beyond the scope of what was originally proposed in the NPRM. Therefore, we are reopening the comment period and allowing the public the chance to comment on these additional actions.

This proposed AD would require you to do the following:

- Remove and visually inspect the wing attach barrel nuts, bolts, and retainers for cracks, corrosion, and fractures;
- Replace any cracked, corroded, or fractured wing attach barrel nuts, bolts, and retainers with new parts;
- Inspect reusable wing attach barrel nuts and bolts for deformation and irregularities in the threads;

- Check the minimum breakaway torque of the wing attach barrel nuts;
- Replace any deformed or irregular wing attach barrel nuts or bolts with new parts; and
- Install new or reusable parts and torque to the correct value.

The FAA is committed to updating the aviation community of expected costs associated with the MU-2B series airplane safety evaluation conducted in 2005. As a result of that commitment, the accumulating expected costs of all ADs related to the MU-2B series airplane safety evaluation may be found in the Final Report section at the following Web site: http://www.faa.gov/aircraft/air_cert/design_approvals/small_airplanes/cos/mu2_foia_reading_library/.

Costs of Compliance

We estimate that this proposed AD affects 399 airplanes in the U.S. registry. We estimate the following costs to do the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
12 workhours × \$80 per hour = \$960	N/A	\$960	\$960 × 399 = \$383,040

We estimate the following costs to do any necessary replacements that would

be required based on the results of the proposed inspection. We have no way of

determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane to replace all 8 wing attach barrel nuts
No additional labor cost. Any necessary replacements will be done at the time of inspection.	\$60 for each barrel nut. There are 8 barrel nuts on each airplane. Possible total cost of: \$60 × 8 = \$480.	\$480

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Mitsubishi Heavy Industries, Ltd.: Docket No. FAA-2006-23578; Directorate Identifier 2006-CE-01-AD.

Comments Due Date

- (a) The FAA must receive comments on this AD action by May 25, 2006.

Affected ADs

- (b) None.

Applicability

- (c) This AD affects the following Mitsubishi Heavy Industries, Ltd. airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
MU-2B-10	101 through 120 (Except 102, 114, 115, and 118).
MU-2B-15	114, 115, and 118.
MU-2B-20	102, and 121 through 238.
MU-2B-25	239 through 318 (Except 313), and 313SA.
MU-2B-26	319 through 347 (Except 321), and 349SA.
MU-2B-26A	321SA, 348SA, and 350SA through 394SA (Except 365SA).
MU-2B-30	502 through 547.
MU-2B-35	548 through 654 (Except 652), and 652SA.
MU-2B-36	501, and 655 through 696 (Except 661).
MU-2B-36A	661SA, and 697SA through 730SA (Except 700SA).
MU-2B-40	365SA.
MU-2B-60	700SA.

Unsafe Condition

(d) This AD results from a recent safety evaluation that used a data-driven approach to evaluate the design, operation, and maintenance of the MU-2B series airplanes in order to determine their safety and define what steps, if any, are necessary for their safe operation. Part of that evaluation was to

identify unsafe conditions that exist or could develop on the affected type design airplanes. The actions specified in this AD are intended to detect and correct cracks, corrosion, fractures, and incorrect torque values in the wing attach barrel nuts, which could result in failure of the wing attach barrel nuts and/or associated wing

attachment hardware. This failure could lead to in-flight separation of the outer wing from the center wing section and result in loss of controlled flight.

Compliance

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

Actions	Compliance	Procedures
(1) Remove each wing attach barrel nut, bolt, and retainer and do a detailed visual inspection for cracks, corrosion, and fractures.	Within the next 200 hours time-in-service (TIS) or 12 months after the effective date of this AD, whichever occurs first, unless already done.	Follow Mitsubishi Heavy Industries, Ltd. MU-2 Service Bulletins referenced as JCAB T.C.: No. 241, dated July 14, 2004, and FAA T.C.: No. 103/57-004A, dated March 10, 2006, as applicable.

Actions	Compliance	Procedures
(2) If any signs of cracks, corrosion, or fractures are found on any wing attach barrel nut during the inspection required in paragraph (e)(1) of this AD, replace that wing attach barrel nut, bolt, and retainer with new parts and install to the correct torque value.	Before further flight after the inspection required in paragraph (e)(1) of this AD, unless already done.	Follow Mitsubishi Heavy Industries, Ltd. MU-2 Service Bulletins referenced as JCAB T.C.: No. 241, dated July 14, 2004, and FAA T.C.: No. 103/57-004A, dated March 10, 2006, as applicable, and the appropriate maintenance manual.
(3) If no signs of cracks, corrosion, or fractures are found during the inspection required in paragraph (e)(1) of this AD, you may reuse the wing attach barrel nuts and bolts if they have been inspected and are free of deformation and irregularities in the threads and meet the minimum breakaway torque requirement. Reinstall inspected parts to the correct torque value. If the wing attach barrel nuts and bolts are not free of deformation and irregularities in the threads or do not meet the minimum breakaway torque requirement, install new parts to the correct torque value.	Before further flight after the inspection required in paragraph (e)(1) of this AD, unless already done.	Follow Mitsubishi Heavy Industries, Ltd. MU-2 Service Bulletins referenced as JCAB T.C.: No. 241, dated July 14, 2004, and FAA T.C.: No. 103/57-004A, dated March 10, 2006, as applicable, and the appropriate maintenance manual.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Fort Worth Airplane Certification Office, FAA, ATTN: Andrew McAnaul, Aerospace Engineer, ASW-150 (c/o MIDO-43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308-3365; facsimile: (210) 308-3370, 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

(g) Mitsubishi Heavy Industries, Ltd. MU-2 Service Bulletins JCAB T.C.: No. 241, dated July 14, 2004, and FAA T.C.: No. 103/57-004A, dated March 10, 2006, pertain to the subject of this AD. To get copies of the documents referenced in this AD, contact Mitsubishi Heavy Industries America, Inc., 4951 Airport Parkway, Suite 800, Addison, Texas 95001; telephone: (972) 934-5480; fax: (972) 934-5488, or Turbine Aircraft Services, Inc., 4550 Jimmy Doolittle Drive, Addison, Texas 75001; telephone: (972) 248-3108; facsimile: (972) 248-3321. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC, or on the Internet at <http://dms.dot.gov>. The docket number is Docket No. FAA-2006-23578; Directorate Identifier 2006-CE-01-AD.

Issued in Kansas City, Missouri, on April 18, 2006.

William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-6054 Filed 4-21-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-24094; Directorate Identifier 2006-CE-20-AD]

RIN 2120-AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC-6, PC-6-H1, PC-6-H2, PC-6/350, PC-6/350-H1, PC-6/350-H2, PC-6/A, PC-6/A-H1, PC-6/A-H2, PC-6/B-H2, PC-6/B1-H2, PC-6/B2-H2, PC-6/B2-H4, PC-6/C-H2, and PC-6/C1-H2 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to revise Airworthiness Directive (AD) 68-17-03, which applies to all Pilatus Aircraft Ltd. PC-6 series airplanes. AD 68-17-03 currently requires you to repetitively inspect the rudder end rib for cracks and replace the rudder end rib with a modified rudder end rib when you find cracks. Installing the modified rudder end rib terminates the repetitive inspection requirements of AD 68-17-03. Under a licensing agreement with Pilatus, Fairchild Republic Company (also identified as Fairchild Industries, Fairchild Heli Porter, or Fairchild-Hiller Corporation) produced Model PC-6 series airplanes (manufacturer serial numbers 2001 through 2092) in the United States. AD 68-17-03 was intended to apply to all affected serial numbers of Model PC-6 series airplanes listed on Type Certificate Data Sheet (TCDS) No. 7A15, including the Fairchild-produced airplanes. Consequently, this proposed AD would

clarify that all models of the PC-6 airplane on TCDS No. 7A15 (including those models produced under the licensing agreement with Fairchild Republic Company) are included in the applicability. We are proposing this AD to detect and correct cracks in the rudder end rib, which could result in failure of the rudder end rib. This failure could result in loss of directional control.

DATES: We must receive comments on this proposed AD by May 24, 2006.

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

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- Fax: (202) 493-2251.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Pilatus Aircraft Ltd., Customer Liaison Manager, CH-6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224.

FOR FURTHER INFORMATION CONTACT:

Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; facsimile: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, "FAA-2006-24094; Directorate Identifier 2006-CE-20-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Discussion

Fatigue cracks found in the bottom nose rib on the rudders of certain Model PC-6 series airplanes prompted us to issue AD 68-17-03, Amendment 39-634. AD 68-17-03 currently requires the following on all Pilatus Aircraft Ltd. (Pilatus) Model PC-6 series airplanes:

- Repetitively inspecting the rudder end rib for cracks;
- Replacing the rudder end rib with a modified rudder end rib when you find cracks; and
- Terminating the repetitive inspections when the modified rudder end rib is installed.

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, notified the FAA of the need to revise AD 68-17-03 to address an unsafe condition that may exist or could develop on all Pilatus Model PC-6 series airplanes. The FOCA reports that clarification is needed to assure the applicability of AD 68-17-03 to all Model PC-6 series airplanes listed on Type Certificate Data Sheet (TCDS) No. 7A15, including those produced in the United States through a licensing agreement between Pilatus and Fairchild Republic Company (also identified as Fairchild Industries, Fairchild Heli Porter, or Fairchild-Hiller Corporation).

This condition, if not detected and corrected, could result in failure of the rudder end rib. This failure could result in loss of directional control.

Foreign Airworthiness Authority Information

The FOCA recently issued Swiss AD Number HB 2005-289, effective date August 23, 2005, to ensure the continued airworthiness of all Model PC-6 series airplanes listed on TC No. 7A15, including those produced in the United States under a licensing agreement with Pilatus and Fairchild Republic Company (also identified as Fairchild Industries, Fairchild Heli Porter, or Fairchild-Hiller Corporation).

The State of Design for Pilatus Model PC-6 series airplanes is Switzerland and the airplanes are type-certificated for operation in the United States under the

provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the FOCA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we have examined the FOCA's findings, evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design that are certificated for operation in the United States.

This proposed AD would revise AD 68-17-03 with a new AD that would retain all actions currently required by AD 68-17-03 and would clarify the applicability of the affected airplanes by:

- Identifying those airplanes produced in the United States through a licensing agreement with the Fairchild Republic Company; and
- Listing all Pilatus Model PC-6 series airplanes on TCDS No. 7A15 in the applicability section.

Costs of Compliance

We estimate that this proposed AD would affect 49 airplanes in the U.S. registry.

We estimate the following costs to do the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work hour × \$80 per hour = \$80	Not applicable	\$80	\$80 × 49 = \$3,920

We estimate the following costs to do any necessary replacements that would

be required based on the results of the proposed inspection. We have no way of

determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
9 work hours × \$80 per hour = \$720	\$821	\$1,541

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701,

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

Regulatory Findings

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

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

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

Where Can I Go To View the Docket Information?

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 68-17-03, Amendment 39-634, and adding the following new AD:

Pilatus Aircraft LTD: Docket No. FAA-2006-24094; Directorate Identifier 2006-CE-20-AD.

Comments Due Date

(a) We must receive comments on this proposed airworthiness directive (AD) action by May 24, 2006.

Affected ADs

(b) This AD revises AD 68-17-03, Amendment 39-634.

Applicability

(c) This AD affects the following airplane models, all manufacturer serial numbers (MSN), that are certificated in any category.

Note: MSNs 2001 through 2092 were manufactured by Fairchild Republic Company (also identified as Fairchild Industries, Fairchild Heli Porter, and Fairchild-Hiller Corporation) in the United States under a license agreement and are covered by Type Certificate Data Sheet No. 7A15.

- (1) PC-6
- (2) PC-6-H1
- (3) PC-6-H2
- (4) PC-6/350
- (5) PC-6/350-H1
- (6) PC-6/350-H2
- (7) PC-6/A
- (8) PC-6/A-H1
- (9) PC-6/A-H2
- (10) PC-6/B-H2
- (11) PC-6/B1-H2
- (12) PC-6/B2-H2
- (13) PC-6/B2-H4
- (14) PC-6/C-H2
- (15) PC-6/C1-H2

Unsafe Condition

(d) This AD results from fatigue cracks found in the bottom nose rib on the rudders of certain PC-6 airplanes. We are issuing this AD to detect and correct cracks in the rudder end rib, which could result in failure of the rudder. This failure could lead to loss of rudder control.

Compliance

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

Actions	Compliance	Procedures
(1) With the aid of a mirror, inspect the rudder end rib, part number (P/N) 6302.27 (or FAA-approved equivalent P/N) for crack(s).	Within the next 50 hours time-in-service (TIS) after August 19, 1968 (the effective date of AD 68-17-03). Repetitively inspect thereafter at intervals not to exceed 50 hours TIS.	Follow Pilatus Service Bulletin No. 80, dated April 1968.
(2) If you detect crack(s) during any inspection required in paragraph (e)(1) of this AD, replace the rudder end rib with a modified rudder end rib assembly, P/N 6302.26 Pos. 2, channel reinforcement, P/N 113.40.06.002, and torque tube, P/N 113/40.06.003 (or FAA-approved equivalent P/Ns).	Before further flight after any inspection required in paragraph (e)(1) of this AD in which you find cracks. Installing the modified rudder end rib terminates the repetitive inspection requirement in paragraph (e)(1) of this AD.	Follow Pilatus Service Bulletin No. 80, dated April 1968.
(3) 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 identity to the design of the part under the type certificate and replacement parts to correct the unsafe condition under PMA (other than identity). If parts are installed that are identical to the unsafe parts, then the corrective actions of the AD affect these parts also. In addition, equivalent replacement parts to correct the unsafe condition under PMA (other than identity) may also be installed provided they meet current airworthiness standards, which include those actions cited in this AD.	Not applicable	Not applicable.
(4) Installing the modified rudder end rib assembly terminates the repetitive inspection requirement in paragraph (e)(1) of this AD.	Not applicable	Not applicable.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Standards Office, Attn: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; facsimile: (816) 329-4090, has the authority to approve alternative methods of compliance (AMOCs) for this AD, if requested using the procedures found in 14 CFR 39.19.

(g) AMOCs approved for AD 68-17-03 are approved for this AD.

Related Information

(h) Swiss AD Number HB 2005-289, effective date August 23, 2005, also addresses the subject of this AD. To get copies of the documents referenced in this AD, contact Pilatus Aircraft Ltd., Customer Liaison Manager, CH-6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC, or on the Internet at <http://dms.dot.gov>. The docket number is Docket No. FAA-2006-24094; Directorate Identifier 2006-CE-20-AD.

Issued in Kansas City, Missouri, on April 17, 2006.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-6055 Filed 4-21-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HOMELAND SECURITY

DEPARTMENT OF THE TREASURY

Bureau of Customs and Border Protection

19 CFR Parts 24 and 111

RIN 1505-AB62

[USCBP-2006-0035]

Fees for Certain Services

AGENCY: Customs and Border Protection, Homeland Security; Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the rules dealing with customs financial and accounting procedures by revising the fees charged for certain customs inspectional services under section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended. These revisions propose to exercise authority provided under recent changes in the pertinent statutory provisions.

DATES: Written comments must be received by May 24, 2006.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2006-0035.

- *Mail:* Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during the regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: For information concerning user fee policy and rates, contact Mr. Jerry Petty, Director, Cost Management Division, 1300 Pennsylvania Avenue, NW., Room 4.5A, Washington, DC 20229. Telephone: (202) 344-1317.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rule-making by submitting written data, views, or arguments on all aspects of the proposed rule. The Bureau of Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

CBP collects fees to pay for the costs incurred in providing customs services in connection with certain activities under the authority of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), as amended, codified at section 19 U.S.C. 58c.

On October 22, 2004, the President signed the American Jobs Creation Act of 2004 (Pub. L. 108-357). Section 892 of the American Jobs Creation Act amended 19 U.S.C. 58c to renew the fees provided under COBRA, which would have otherwise expired March 1, 2005, and to allow the Secretary of the Treasury to increase such fees by an amount not to exceed 10 percent in the period beginning fiscal year 2006 through the period for which fees are authorized by law. It is noted that the law specifically mentions the Secretary of the Treasury, even though CBP is now a component of the Department of Homeland Security. Regulations concerning user fees, among other customs revenue functions, were retained by the Secretary of the Treasury pursuant to Treasury Department Order No. 100-16.

In accordance with the current statutory provisions, CBP is proposing to amend the regulations by increasing the fees for customs services provided in connection with (1) the arrival of certain commercial vessels, commercial trucks, railroad cars, private aircraft and private vessels, passengers aboard commercial aircraft and commercial vessels, and barges or other bulk carrier arrivals, (2) each item of dutiable mail for which a customs officer prepares documentation, and (3) annual customs brokers permits.

CBP is proposing to increase the fees by the amounts authorized so that they more accurately reflect the actual costs of providing the services for which they are charged. None of the user fees being raised in this package have been adjusted since their implementation in 1986. However, the costs incurred by CBP in performing certain customs inspection services have continued to grow because of higher volumes, greater varieties of cargo and increased security concerns which require inspections of individuals and conveyances entering the United States. As a result, CBP currently collects COBRA fees covering only thirty-two percent of the costs incurred by the agency. With this proposed increase, we estimate COBRA fees will generate an additional \$26 million annually. Approximately 84 percent of these fees come from individual travelers, which are

categorized as individual user fees. As such, the impact on business will be minimal.

It must be noted that the proposed fee changes would only apply to customs inspection fees charged by CBP under COBRA and do not impact the administration of any other user fees charged by CBP. Certain user fees, by statute, have annual caps that were not included in the legislation authorizing these increases and, as such, the amount of the annual caps remain unchanged.

Discussion of Changes

Following is a summary of the user fees affected and a description of customs services each fee covers.

Commercial Vessel User Fee (Vessel of 100 Net Tons or More)

CBP inspects commercial vessels of 100 net tons or more arriving at ports of entry in the customs territory of the United States. Vessel owners or operators pay a user fee for each arrival, up to a calendar year maximum amount.

The current CBP user fee for each commercial vessel arrival is \$397 and a calendar year maximum of \$5,955. The current fee became effective in 1985 and has not been adjusted prior to this rule. The user fee is proposed to be raised to \$437 per arrival while retaining the maximum of \$5,955 each calendar year.

User Fees for Commercial Trucks

CBP inspects commercial trucks arriving at all land ports in the customs territory of the United States. The United States Department of Agriculture (USDA) also assesses a commercial truck user fee for arrivals at certain land ports.

Commercial truck owners or operators can elect to pay a per arrival fee or pay a fee to cover the entire calendar year. The annual payment covers an unlimited number of entries during the calendar year. Upon payment of the annual fee, which includes both CBP and USDA user fees, the truck owner or operator receives a transponder to place on the truck windshield. This indicates that both the CBP and USDA user fees for the truck have been paid for that calendar year.

The current CBP commercial truck user fee is \$5.00 for each arrival and \$100 for the annual fee. The current fee became effective in 1985. This document proposes to raise the CBP user fee to \$5.50 for each arrival and \$100 for the calendar year fee.

An electronic transponder recently replaced the paper decal formerly used. Questions about the transponder should be directed to "Decal" Inquiries,

National Finance Center, (317) 298-1245.

Railroad Car Passenger/Freight User Fee and Decal

CBP inspects railroad cars, carrying passengers or commercial freight, arriving at land ports in the customs territory of the United States. However, CBP does not assess a fee on empty railroad cars. There is a calendar year maximum that applies to railroad cars and a decal may be purchased for the entire calendar year.

The current user fee is \$7.50 for the arrival of each railroad car carrying passengers or commercial freight and \$100 for a decal that covers the calendar year. The current fee became effective in 1986. The fee is proposed to be raised to \$8.25 for the arrival of each railroad car carrying passengers or commercial freight and to \$100 for a decal for the calendar year.

Private Aircraft and Private Vessel Decal Fees

CBP inspects private aircraft and private vessels arriving in the customs territory of the United States. Owners and operators of both private aircraft and private vessels are required to purchase a decal each calendar year.

Those parties currently pay \$25 for all arrivals made during a calendar year by a private vessel or aircraft. The current fee became effective in 1985. This document proposes to raise the decal fee to \$27.50 for all arrivals made during a calendar year by a private vessel or aircraft.

User Fee Passenger Aboard a Commercial Aircraft

CBP inspects commercial airline passengers arriving at airports in the customs territory of the United States. Millions of travelers pass through U.S. airports daily. Our overall goal, keeping in mind airport security, is a timely, seamless inspection process that is integrated with the clearance processes of other Federal agencies with inspection responsibilities. Our joint goal is to enhance security and improve enforcement and regulatory processes in order that international air passengers are cleared through the entire Federal inspection process as quickly as possible without jeopardizing our security requirements.

Currently, the user fee for international airline passenger clearance is \$5.00 per passenger. The fee is proposed to be raised to \$5.50 per passenger.

User Fee Passenger Aboard a Commercial Vessel (Non-Exempt)

CBP inspects commercial vessel passengers arriving at ports in the customs territory of the United States. Our overall goal, keeping in mind port security, is a timely, seamless inspection process that is integrated with the clearance processes of other Federal agencies with inspection responsibilities. Our joint goal is to enhance security and improve enforcement and regulatory processes in order that commercial vessel passengers are cleared through the entire Federal inspection process as quickly as possible without jeopardizing our security requirements.

Currently, the user fee for commercial vessel passenger clearance is \$5.00 per passenger. The fee is proposed to be increased to \$5.50 per passenger.

Passenger Commercial Vessel User Fee (Canada, Mexico, Territory or Possession of the U.S., or Adjacent Island as Defined in 8 U.S.C. 1101(b)(5))

CBP inspects commercial vessel passengers arriving at ports in the customs territory of the United States from Canada, Mexico, territory or possession of the U.S., or adjacent island as defined in the aforementioned statute.

Currently, the user fee for commercial vessel passenger processing relating to the above locations is \$1.75 per passenger. The current fee became effective in 1999. The fee is proposed to be increased to \$1.93 per passenger.

Dutiable Mail Entries User Fee

All international mail is subject to inspection by CBP; however, we assess a user fee only on packages and/or mail containing dutiable merchandise.

Currently, the user fee for dutiable mail is \$5.00 per item. The current fee became effective in 1985. The fee is proposed to be raised to \$5.50 per item.

Customs Broker Permits

Brokers are required to pay an annual fee to maintain their license for customs purposes. The fees are applicable for each district permit and each national permit held by an individual, partnership, association, or corporation. Currently, the user fee for a broker permit is \$125.00 per permit. The current fee became effective in 1985.

The fee is proposed to be raised to \$138.00 per permit.

Barges and Other Bulk Carriers (From Canada or Mexico)

CBP inspects barges and other bulk carriers from Canada and Mexico. Currently, the user fee for barge and

bulk carrier inspection is \$100 per arrival and a calendar year maximum of \$1,500. The current fee became effective in 1986. The fee is proposed to be raised

to \$110 per arrival and a calendar year maximum of \$1,500.

New Fee Structure

Table 1 indicates the customs inspection user fees currently in effect and the proposed user fee rates.

TABLE 1.—SUMMARY OF NEW FEE RATES

Customs services	Current fees/ annual cap	Proposed fees
Commercial Vessels	\$397.00/\$5,955	\$437.00/\$5,955
Commercial Trucks	\$5.00/\$100.00	\$5.50/\$100.00
Railroad Cars	\$7.50/\$100.00	\$8.25/\$100.00
Private Aircraft (Decal)	\$25.00	\$27.50
Private Vessel (Decal)	\$25.00	\$27.50
Commercial Aircraft Passenger	\$5.00	\$5.50
Commercial Vessel Passenger (Non-Exempt)	\$5.00	\$5.50
Commercial Vessel Passenger	\$1.75	\$1.93
Dutiable Mail	\$5.00	\$5.50
Broker Permit	\$125.00	\$138.00
Barges and other bulk carriers	\$100.00/\$1,500	\$110.00/\$1,500

Standard for Setting Fees

As noted above, Section 892 of the American Jobs Creation Act specifically gives the Secretary of the Treasury the authority to increase the COBRA fees by an amount not to exceed 10 percent in the period beginning fiscal year 2006 through the period for which fees are authorized by law. In addition, this provision requires that the amounts of fees charged (a) be reasonably related to the costs of providing customs services in connection with the activity or item

for which the fee is charged, (b) may not exceed, in the aggregate, the amounts paid in that fiscal year for the costs incurred in providing customs services in connection with the activity or item for which the fee is charged, and (c) may not be collected except to the extent such fee will be expended to pay the costs incurred in providing customs services in connection with the activity or item for which the fee is charged.

Accordingly, CBP has compared the amounts of user fees charged and the corresponding costs incurred in

providing customs services in connection with the activity or item for which the fee is charged to ensure that the fees accurately reflect the actual costs incurred in providing each service.

The fees are proposed to be increased by the amounts necessary to align them with the costs incurred by CBP in performing such services, subject to the 10 percent increase limit set by law.

Table 2 shows the collections received and obligations incurred by CBP, in Fiscal Year 2004, in performing customs inspectional services.

TABLE 2.—SUMMARY OF FEE COLLECTIONS AND OBLIGATIONS

Customs services	Fiscal year 2004 collection by type	Fiscal year 2004 obligation by type
Commercial Vessels	\$18,915,411	\$87,816,021
Commercial Trucks	18,576,419	224,047,446
Railroad Cars	7,737,910	27,052,069
Private Aircraft	755,390	32,908,142
Private Vessel	729,678	5,934,279
Commercial Aircraft Passenger	236,939,037	494,340,066
Commercial Vessel Passenger (Non-Exempt)	1,475,810	8,409,194
Commercial Vessel Passenger	12,431,417	13,276,642
Dutiable Mail	344,510	49,038,824
Broker Permit	494,170	10,858,344
Barges and Other Bulk Carriers*	451,475	1,271,805

* Barge/Bulk Carrier obligations for Fiscal Year 2002.

The Regulatory Flexibility Act

Based on the supplementary information set forth in the preceding section and as illustrated in Table 2 above, this proposed rule generally affects individuals and large commercial carriers. The proposed increase, if adopted, would only increase fees by 10 percent over the amounts currently paid by users of the customs services for which each fee is charged. The American Jobs Creation Act specifically provides that the Secretary of the

Treasury shall charge fees that are reasonably related to these activities. Accordingly, CBP certifies that this proposed rule will not have a significant impact on a substantial number of small entities because the majority of fees will come from individual travelers into the United States. Therefore, it is not subject to the analysis provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*).

Executive Order 12866

For the same reasons stated above, the proposed amendments do not meet the criteria for a “significant regulatory action” as specified in E.O. 12866. Accordingly, a regulatory impact analysis is not required thereunder.

Signing Authority

This document is being issued in accordance with § 0.1(a) of Chapter I of Title 19, Code of Federal Regulations (19 CFR 0.1) pertaining to the exercise

of authority to approve regulations in 19 CFR chapter I.

List of Subjects

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Fees, Financial and accounting procedures, Imports, Taxes, User fees.

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing.

Proposed Amendments to the Regulations

For the reasons stated in the preamble, parts 24 and 111 of the Customs and Border Protection Regulations (19 CFR parts 24 and 111) are proposed to be amended as follows:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

§ 24.22 [Amended]

2. Amend § 24.22 as follows:

a. In paragraph (b)(1)(i), the figure “\$397” is removed and, in its place, the figure “\$437” is added.

b. In paragraph (b)(2)(i), the figure “\$100” is removed and, in its place, the figure “\$110” is added.

c. In paragraph (c)(1), the figure “\$5” is removed and, in its place, the figure “\$5.50” is added.

d. In paragraph (d)(1), the figure “\$7.50” is removed and, in its place, the figure “\$8.25” is added.

e. In paragraph (e)(1), the figure “\$25” is removed and, in its place, the figure “\$27.50” is added.

f. In paragraph (e)(2), the figure “\$25” is removed and, in its place, the figure “\$27.50” is added.

g. In paragraph (f), the figure “\$5” is removed and, in its place, the figure “\$5.50” is added.

h. In paragraph (g)(1)(i), the figure “\$5” is removed and, in its place, the figure “\$5.50” is added.

i. In paragraph (g)(1)(ii), the figure “\$1.75” is removed and, in its place, the figure “\$1.93” is added.

j. In the table under paragraph (g)(2), in both columns headed “Fee status for arrival from SL”, all the figures reading “\$1.75” are removed and, in their place,

the figure “\$1.93” is added; and, in the column headed “Fee status for arrival from other than SL”, all the figures reading “\$5” are removed and, in their place, the figure “\$5.50” is added.

k. In paragraph (g)(5)(v), the figure “\$5” is removed and, in its place, the figure “\$5.50” is added; and, the figure “\$1.75” is removed and, in its place, the figure “\$1.93” is added.

l. In paragraph (i)(7), the figure “\$5” is removed and, in its place, the figure “\$5.50” is added.

m. In paragraph (i)(8), the figure “\$1.75” is removed and, in its place, the figure “\$1.93” is added.

PART 111—CUSTOMS BROKERS

3. The authority citation for part 111 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202, (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

Section 111.96 also issued under 19 U.S.C. 58c; 31 U.S.C. 9701.

§ 111.19 [Amended]

4. Section 111.19 is amended in paragraph (c) by removing all the figures reading “\$125” and adding in their place the figure “\$138”.

§ 111.96 [Amended]

5. Section 111.96 is amended in paragraph (c) by removing all the figures reading “\$125” and adding in their place the figure “\$138”.

Approved: April 19, 2006.

Deborah J. Spero,

Acting Commissioner, Customs and Border Protection.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 06–3867 Filed 4–21–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 634

[FHWA Docket No. FHWA–2005–23200]

RIN 2125–AF11

Worker Visibility

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The FHWA proposes to require the use of high-visibility safety apparel for workers who are working within the Federal-aid highway rights-

of-way. This action would decrease the likelihood of fatalities or injuries to workers on foot who are exposed either to traffic (vehicles using the highway for purposes of travel) or to construction vehicles or equipment while working within the rights-of-ways of Federal-aid highways. This proposal is in response to section 1402 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, 119 Stat. 1227.

DATES: Comments must be received on or before June 23, 2006.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at <http://dmses.dot.gov/submit> or fax comments to (202) 493–2251. Alternatively, comments may be submitted via the Federal eRulemaking Portal at <http://www.regulations.gov>. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or print the acknowledgement page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Persons making comments may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or may visit <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Hari Kalla, Office of Transportation Operations, (202) 366–5915; or Mr. Raymond W. Cuprill, Office of the Chief Counsel, (202) 366–0791, U.S. Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: <http://dmses.dot.gov/submit>. The DMS is available 24 hours each day, 365 days

each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: <http://www.archives.gov> and the Government Printing Office's Web page at: <http://www.access.gpo.gov/nara>.

Background

There has been an increase in the amount of maintenance and reconstruction of the Nation's highways that is being accomplished in stages while traffic continues to use a portion of the street or highway for the purposes of travel. This has resulted in an increase in the exposure of workers on foot to high-speed traffic and a corresponding increase in the risk of injury or death for highway workers. Consequently, the number of workers injured and killed in highway work zones by vehicles has increased in recent years.¹ In fact, each year, more than 100 workers are killed and over 20,000 are injured in the highway and street construction industry.²

Workers on foot within a work zone are also exposed to moving construction vehicles and equipment. According to the National Institute for Occupational Health, approximately half of the incidents where workers are struck by construction vehicles or equipment involve a vehicle or construction machine that is backing up.

High visibility is one of the most prominent needs for workers who must perform tasks near moving vehicles or equipment. The need to be seen by those who drive or operate vehicles or equipment is recognized as a critical issue for worker safety. Workers must devote their attention to completing their assigned tasks and may not completely focus on the hazardous surroundings where they are working. It is imperative that the approaching motorist or equipment operator be able to see and recognize the worker. The sooner a worker in or near the path of travel is seen, the more time the operator has to avoid an incident.

The FHWA recognized this fact and included language in the 2000 Edition of the Manual on Uniform Traffic Control Devices (MUTCD)³ to address

this issue. Item B in the third paragraph of section 6D.02 of the MUTCD states: "Worker Clothing—Workers close to the motor vehicle traveled way should wear bright, highly visible clothing." The word "close" was not defined. At that time, there was not a generally accepted definition or standard for high-visibility garment, so the acceptability of the clothing as well as the determination of when the garments were required was left up to the practitioner.

This text in the 2000 MUTCD led some agencies to adopt policies and specifications requiring workers to wear high-visibility vests or shirts on their highway projects. The American National Standards Institute (ANSI) also released ANSI 107–1999,⁴ a standard for high visibility garments.

Therefore, the FHWA recognized the need for a more specific recommendation and included language to that effect in the 2003 Edition of the MUTCD. Item B in the third paragraph of section 6D.03 included the following recommendation: "Worker Safety Apparel—All workers exposed to the risks of moving roadway traffic or construction equipment should wear high-visibility safety apparel meeting the requirements of International Safety Equipment Association (ISEA) American National Standard for High-Visibility Safety Apparel, or equivalent revisions, and labeled as ANSI 107–1999 standard performance for Class 1, 2, or 3 risk exposure."

As a result of the text in the 2003 MUTCD, many agencies have revised their policies to require their employees to wear ANSI Class 2 safety apparel at all times and they are revising their specifications to require contractors' employees to wear compliant safety apparel also. For example, the State of Maryland now requires all employees working on the right-of-way on their highways to wear ANSI Class 2 high visibility garments.⁵ The Illinois Department of Transportation also has implemented this requirement for all workers on highway projects through their contract specifications.⁶

highway, or bicycle trail open to public travel. It is available at <http://www.mutcd.fhwa.dot.gov>.

⁴ ANSI 107–1999 is the nationally recognized standard for high-visibility garments developed in conjunction with the International Safety Equipment Association. Copies may be obtained at <http://www.safetysystem.com/hivisstd.htm>.

⁵ Maryland's policy on the use of High visibility garments can be viewed at: <http://www.sha.state.md.us/businesswithsha/bizStdsSpecs/desManualStdPub/publicationsonline/ohd/spi2001/hddjfb/020-hvsap.doc>.

⁶ Illinois specifications can be viewed at: <http://dot.state.il.us/desenv/pdf/80130.pdf>.

Although the FHWA made the text more specific in the 2003 MUTCD, it was still a recommendation rather than a requirement and some agencies have, therefore, not incorporated the use of high-visibility safety apparel into their policies and contract documents.

Legislation

Section 1402 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59; August 10, 2005) directed the Secretary of Transportation to, within 1 year, issue regulations to decrease the likelihood of worker injury and maintain the free flow of vehicular traffic by requiring workers whose duties place them on or in close proximity to a Federal-aid highway to wear high-visibility safety apparel.

Therefore, the FHWA is proposing to add a new part to the Code of Federal Regulations (CFR) to implement this statutory requirement. The FHWA is proposing to add a new part to title 23 CFR that would require workers whose duties place them on or in close proximity to a Federal-aid highway to wear high-visibility safety apparel rather than propose to include such a requirement in the MUTCD. The FHWA is also considering whether to propose to include these requirements in the next edition of the MUTCD. Although the MUTCD is incorporated by reference at 23 CFR 655.601(a), it applies to all streets and highways open to the public which is much broader than the requirement in SAFETEA–LU which would apply only to workers whose duties place them on or in close proximity to Federal-aid highways.

Section-by-Section Discussion of Proposed Rule

The FHWA proposes to add a new part 634 in 23 CFR that would require workers whose duties place them on or in close proximity to Federal-aid highways to use high-visibility safety apparel and would provide guidance on its application. Currently, 23 CFR 635.108—Health and Safety contains requirements for provisions to be included in contracts for projects on Federal-aid highways that mandate the contractor comply with all Federal, State and local laws governing the safety and health of workers. It also requires contractors to provide safety devices and protective equipment for workers. The FHWA considered amending part 635 to include the high-visibility garments requirements; however, this Part is limited to contract procedures for Federal-aid projects, and would be of applicability only during the project phase. As a result, the FHWA decided

¹ DHHS (NIOSH) Publication No. 2001–128; Building Safer Highway Work Zones: Measures to Prevent Worker Injuries from Vehicles and Equipment. It is available at the following URL: <http://www.cdc.gov/niosh/2001128.html>.

² Id.

³ Manual on Uniform Traffic Control Devices (MUTCD) is recognized as the national standard for all traffic control devices installed on any street,

to propose adding the requirements in a new part in 23 CFR, which would be applicable during the entire life of all Federal-aid highways. The FHWA's intent in proposing this rule is to improve the visibility of all workers on or in close proximity to Federal-aid highways in all circumstances including, but not limited to, Federal-aid construction projects, maintenance and utility work, and traffic incident management.

This proposed regulation would not preempt or limit the occupational safety and health jurisdiction of the Occupational Safety and Health Administration (OSHA) over the workers that would be covered by the proposed high-visibility garments requirements. The FHWA lacks direct enforcement or civil penalty authority to enforce the proposed requirements. Rather, pursuant to 23 CFR 1.36, compliance with this proposed regulation would be achieved by the withholding of payment to the State of Federal funds on account of Federal-aid highway projects, the withholding of approval of further Federal-aid projects in the State, and such other actions as the Federal Highway Administrator deems appropriate under the circumstances.

Section 634.1

This section explains that the FHWA is taking this action to decrease the likelihood of fatalities or injuries to workers on foot who are exposed either to traffic (vehicles using the highway for purposes of travel) or to construction vehicles or equipment while working within the rights-of-ways of Federal-aid highways. Section 634.1 also notes that this rulemaking would apply only to workers who are working within the rights-of-ways of Federal-aid highways.

Section 634.2

This section provides three definitions that are critical to the proper understanding of the rule.

The definition of "conspicuity" is provided because this word is used in the definition of high-visibility safety apparel. The goal of this rule would be to make the worker more conspicuous in the work area so that drivers and equipment operators will notice the worker during both daytime and nighttime conditions despite all of the other distractions that exist in a typical temporary traffic control zone.

The definition of "high-visibility safety apparel" is provided to relate this new rule to a specific and measurable standard. The American National Standards Institute (ANSI), in conjunction with the International

Safety Equipment Association (ISEA), developed ANSI 107–1999 standard for personal protective equipment conspicuity. ANSI 107–2004⁷ has superseded the ANSI 107–1999 standard. The revisions in the ANSI 107–2004 standard include the incorporation of improvements to the fabric of the safety apparel, the inclusion of additional examples of garment designs, and further guidance on the selection of the proper class of garment for the field conditions. The ANSI 107–2004 standard has become recognized by the industry and the FHWA as the national standard and therefore the FHWA proposes to include this standard in 23 CFR part 634.

The definition of "workers" is provided to explain that part 634 would apply to all workers who are working within the rights-of-ways of Federal-aid highways who are exposed to traffic, both highway traffic and moving construction equipment, when they are not in the cab of a motorized vehicle. For the purposes of this part, the FHWA proposes that workers include, but are not limited to, the following: highway construction and maintenance forces, survey crews, utility crews, responders to incidents within the highway right-of-way, law enforcement personnel and any other personnel whose duties put them on or in the right-of-way of a Federal-aid highway.

The FHWA recognizes the multiple roles and responsibilities of law enforcement officers on the public right-of-way of Federal-aid highways. Law enforcement officers have responsibilities of incident response, work zone safety as well as law enforcement. The FHWA is seeking comments during this public comment period to fully assess the impact on safety and security of law enforcement officers should high visibility garments be required for use in all situations.

The text in section 1402 of SAFETEA–LU specifically states that the requirement to wear high-visibility safety apparel applies to all workers who are on or in close proximity to Federal-aid highways. Definition 32 in section 1A.13 of the 2003 MUTCD defines "highway" as a general term for denoting a public way for purposes of travel by vehicular travel, including the entire area within the right-of-way. Therefore, for the purposes of part 634, the FHWA proposes that this requirement be interpreted to apply to

all workers who are within the public right-of-way of a Federal-aid highway.

Section 634.3

This section would implement the provisions of section 1402 of SAFETEA–LU. It would require all workers within the right-of-way of a Federal-aid highway who are exposed either to traffic (vehicles using the highway for purposes of travel) or to construction equipment within the work area to wear high-visibility safety apparel. The applicability of the requirements for high-visibility garments, under the proposed rule, would include non-traditional highway workers including responders to incidents and law enforcement personnel. Responders to incidents and law enforcement personnel on highways are exposed to the same hazards from traffic as those construction and maintenance workers, traditionally considered as highway workers. Improving the ability of the approaching motorist to identify persons on or in close proximity to the highway should improve the safety of all workers.

In order to minimize the financial impacts of this new part, the FHWA proposes to establish a compliance date for part 634 that will be 2 years from the effective date of the final rule. The FHWA research into the service life of the high-visibility garments that are currently in use indicates that the useful service life of the vests depends greatly on the type of activities in which the workers are engaged while wearing the garments. The useful service life of garments that are worn on a daily basis is approximately 6 months. Garments that are not worn on a daily basis are expected to have a useful service life of up to 3 years. Therefore, the proposed 2-year compliance period should provide agencies and contractors sufficient time in most cases to react to the adoption of these new requirements by purchasing garments that comply with the new standard as they replace garments that have already reached the end of their useful service life.

Rulemaking Analysis and Notices

All comments received on or before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket

⁷ ANSI 107–2004 is now the nationally recognized standard for high-visibility garments developed in conjunction with the International Safety Equipment Association. Copies may be obtained at: <http://www.safetyequipment.org>.

relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

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

The FHWA has determined preliminarily that this action would not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal.

As a result of the text in the 2003 MUTCD, many agencies have revised their policies to require their employees to wear ANSI Class 2 safety apparel at all times when they are working within the Federal-aid highway right-of-way and are revising their specifications to also require contractors' employees to wear compliant safety apparel when working within the right-of-way. In addition, in recognition of its risk management value, many contractors have begun to provide their workers with high-visibility safety apparel and to require its use on their projects, regardless of whether it is required by the contract language.

The FHWA has researched the current practice regarding the use of high-visibility safety apparel in construction and maintenance work zones in 30 States. This research revealed that more than 90 percent (28 out of 30) of these State DOTs have already adopted policies that require highway construction and maintenance workers (including their own employees and contractors' employees) in highway work zones to wear high-visibility safety apparel. Most of these agencies specify the ANSI Class 2 standard and are furnishing them for their own employees. Therefore, a large majority of the State DOTs are already in compliance with the proposed requirements of this regulation.

According to the U.S. Department of Labor, Bureau of Labor Statistics, there are approximately 350,000 workers involved in highway construction activities nationwide at any given time.⁸ The FHWA's research indicates that approximately 90 percent of States have already adopted high visibility garment policies in accordance with 2003 MUTCD. Therefore, the estimated

economic impact for contractors will be the purchase of approximately 35,000 garments at \$25.00⁹ each for a total of \$875,000. This cost will be borne across many agencies, and the impact to each agency individually would be minimal. In order to further minimize the financial impacts of this new part, the FHWA proposes to establish a compliance date for part 634 that will be 2 years from the effective date of the final rule.

Each year more than 100 workers are killed and over 20,000 are injured in the highway and street construction industry. We believe this proposed rule would help reduce these numbers. Improved visibility of workers within the Federal-aid highway right-of-way would reduce these numbers.

The FHWA research into the service life of the high-visibility garments that are currently in use has shown that the useful service life of the vests depends greatly on the type of activities in which the workers are engaged while wearing the garments. The useful service life of garments that are worn on a daily basis is approximately 6 months. Garments that are not worn on a daily basis are expected to have a useful service life of up to 3 years. Therefore, the proposed 2-year compliance period should provide agencies and contractors sufficient time in most cases to react to the adoption of these new requirements by purchasing garments that comply with the new standard as they replace garments that have already reached the end of their useful service life.

The FHWA believes there would also be a minimal economic impact to the incident responder community, such as law enforcement agencies and fire departments. The proposed 23 CFR part 634 would require these agencies to supply their personnel with high-visibility safety apparel for use on Federal-aid highway rights-of-ways. However, we do not believe we have enough information to determine what percentage of incident responders and law enforcement agencies have actually begun to wear high-visibility garments. Therefore, the FHWA is seeking comments during this public comment period that will allow the magnitude of the economic impact that this proposed new part would have on the incident response and law enforcement communities to be more fully assessed.

Also, States and local agencies may use funding available under section 402 of chapter 4 of Title 23, the State and

Community Highway Safety Grant Program, to purchase high visibility garments for worker safety when this purchase is part of an eligible section 402 highway safety project included in the State's approved highway safety plan.

These proposed changes would not adversely affect, in any material way, any sector of the economy. In addition, these proposed changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of these proposed changes on small entities. This action proposes to require all workers to wear high-visibility safety apparel when on the right-of-way of the Federal-aid highways. The results of FHWA research indicated that 90 percent of the States have adopted policies that require the use of high-visibility safety apparel in construction and maintenance (including their own employees and contractors' employees) in highway work zones. Most of these agencies specify the ANSI Class 2 standard and are furnishing them for their own employees. The FHWA believes many local agencies have also adopted this policy because the FHWA's research indicates that usually local agencies follow States' policies with respect to MUTCD standards and guidance. Also, the proposed rule would only apply to Federal-aid highway rights-of-way and the FHWA's research shows that the number of miles of Federal-aid highways that are owned by small entities makes up only approximately 25 percent of the total number of miles on the Federal-aid highway system.¹⁰

Therefore, the FHWA has determined that the proposed revisions would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This notice of proposed rulemaking would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995). This proposed action would not result in the

⁸ U.S. Department of Labor Bureau of Labor Statistics maintains records on the numbers of workers involved in the highway construction industry. The statistics may be viewed at <http://www/bls.gov>.

⁹ The FHWA researched the price of high-visibility garments with manufacturers. This figure represents an average cost that an agency or contractor can expect to pay for a ANSI Class 2 garment.

¹⁰ U.S. Department of Transportation, Federal Highway Administration Highway Statistics. This information is available at <http://www.fhwa.dot.gov/policy/ohim/hs03>.

expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$120.7 million or more in any 1 year period to comply with these changes as these proposed changes are minor and non-substantive in nature, requiring no additional or new expenditures.

Additionally, the definition of "Federal mandate" in the Unfunded Mandate Reform Act excludes financial assistance of the type in which State, local or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility to the States.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FHWA has determined that this proposed action would not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States and local governments. The FHWA has also determined that this proposed rulemaking would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions and does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The proposed amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of highways.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that it would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. The purpose of this proposed rule is to improve visibility of workers within the Federal-aid highway right-of-way to increase safety of these workers, and would not impose any direct compliance requirements on Indian tribal governments and will not have any economic or other impacts on the viability of Indian tribes. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

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

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

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

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

This proposed action would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with

Constitutionally Protected Property Rights.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it would not have any effect on the quality of the environment.

Regulation Identification Number

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

List of Subjects in 23 CFR Part 634

Design standards, Highways and roads, Incorporation by reference, Workers, Traffic regulations.

Issued on: April 17, 2006.

J. Richard Capka,

Acting Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to add part 634 to title 23, Code of Federal Regulations, as follows:

PART 634—WORKER VISIBILITY

Sec.

634.1 Purpose.

634.2 Definitions.

634.3 Rule.

Authority: 23 U.S.C. 101(a), 109(d), 114(a), 315, and 402(a); Sec. 1402 of Public Law 109-59; 23 CFR 1.32; and 49 CFR 1.48(b).

§ 634.1 Purpose.

The purpose of the regulations in this part is to decrease the likelihood of worker fatalities or injuries caused by motor vehicles and construction vehicles and equipment while working within the right-of-way on Federal-aid highways.

§ 634.2 Definitions.

Close proximity—means within the highway right-of-way on Federal-aid highways.

Conspicuity means the characteristics of an object that influence the probability that it will come to the attention of an observer, especially in a complex environment with other competing objects.

High-visibility safety apparel means personal protective safety clothing that is intended to provide conspicuity during both daytime and nighttime usage, and that meets the Performance

Class 2 or 3 requirements of the ANSI/ISEA 107–2004 publication entitled “American National Standard for High-Visibility Safety Apparel and Headwear,” which is published by the International Safety Equipment Association, 1901 N. Moore Street, Arlington, VA 22209 (<http://www.safetyequipment.org>).

Workers means people on foot whose duties place them within the right-of-way of a Federal-aid highway, including highway construction and maintenance forces, survey crews, utility crews, responders to incidents within the highway right-of-way, law enforcement personnel and any other personnel whose duties put them on the Federal-aid highway right-of-way.

§ 634.3 Rule.

All workers within the right-of-way of a Federal-aid highway who are exposed either to traffic (vehicles using the highway for purposes of travel) or to construction equipment within the work area shall wear high-visibility safety apparel.

[FR Doc. E6–6025 Filed 4–21–06; 8:45 am]

BILLING CODE 4910–22–P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. MC2006–4; Order No. 1462]

Classification Changes for Express Mail Second Day Service

AGENCY: Postal Rate Commission.

ACTION: Notice of new docket and proposed rulemaking.

SUMMARY: This order announces a mail classification docket to consider and clarify domestic mail classification schedule language pertaining to Express Mail Second Day service. The proposed change, if adopted, will help clarify delivery guarantees.

DATES: Deadline for filing notices of intervention and comments on Notice of Inquiry and need for a hearing: May 3, 2006; Deadline for filing replies to comments on Notice of Inquiry: May 10, 2006.

ADDRESSES: File all documents referred to in this order electronically via the Commission’s Filing Online system at <http://www.prc.gov>.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, 202–789–6820.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to 39 U.S.C. 3623(b), the Commission is instituting a mail classification case to consider and clarify the language of the Domestic

Mail Classification Schedule (DMCS) pertaining to Express Mail Second Day service. This classification case is in response to the issues brought to light in count 3 of the Complaint on Express Mail filed under 39 U.S.C. 3662 and docketed by the Commission as Docket No. C2005–1,¹ and upon the statements, proffers and admissions offered by Postal Service counsel in the Postal Service’s Answer in that proceeding.²

Background

The Commission’s views on the necessity and desirability for DMCS clarification on Express Mail Second Day service are explained in more detail in Order No. 1461. The primary focus of this proceeding is on how best to clearly state in the DMCS the scope of Second Day Express Mail service that the Postal Service intends to provide its customers. As it stands, several DMCS provisions call for second day delivery, when, in certain limited circumstances, the Postal Service has admitted that it does not expect to provide delivery until the third or fourth day. Delivery on the third or fourth day is nonetheless second delivery day delivery—mail that would have been delivered on the second calendar day except that Sunday or holiday delivery is not available at that particular destination. This proceeding is an attempt to promptly remedy that inconsistency and harmonize the “refund” section of the Express Mail DMCS language regarding Second Day service with the “availability” section.³

Intervention

Those wishing to be heard in this matter are directed to file a notice of intervention on or before May 3, 2006. The notice of intervention shall be filed using the Internet (Filing Online) at the Commission’s Web site (<http://www.prc.gov>), unless a waiver is obtained for hardcopy filing. Rules 9(a) and 10(a) [39 CFR 3001.9(a) and 39 CFR 3001.10(a)]. Notices should indicate whether participation will be on a full or limited basis and may include procedural suggestions. See rules 20 and 20a [39 CFR 3001.20 and CFR 3001.20a]. No decision has been made at this point on whether a hearing will be held in this case.

¹ Douglas F. Carlson Complaint on Express Mail, February 18, 2005 (Complaint).

² Answer of United States Postal Service, May 5, 2005 (Answer).

³ Compare DMCS section 182.4 with section 123.1.

Notice of Inquiry

The current “availability” subsection of the Expedited Mail section of the DMCS is as follows:

123 Next Day Service and Second Day Service

123.1 Availability of Services. Next Day and Second Day Services are available at designated retail postal facilities to designated destination facilities or locations for items tendered by the time or times specified by the Postal Service. Next Day Service is available for overnight delivery. Second Day Service is available for second day delivery.

The Commission recognizes that, “[o]ver time, because of ambiguities or imprecise language, it becomes necessary to amend the DMCS to clarify or correct language that has led to misinterpretations in the application of the DMCS to specific types of mail matter.” PRC Op. C85–1, para. 066. In that light, the Commission proposes to clarify the current DMCS language regarding the availability of Second Day service. The Commission proposes changes based upon statements made by the Postal Service in its Answer to the Complaint filed in C2005–1 as to the service it intends to provide its customers.⁴ Clarification is especially important since, as the Postal Service noted, the “refund” provision only provides for refunds for Second Day service if an Express Mail package is not delivered on the second delivery day.⁵ This anomalous result occurs even if second calendar day delivery is promised to a customer and yet the mailpiece is not delivered until the second delivery day, see DMCS section 182.4.

Proposed Change

Accordingly, the Commission proposes the following clarifying changes to the current DMCS:

123 Next Day Service and Second Day Service

123.1 Availability of Services. Next Day and Second Day Services are available at designated retail postal facilities to designated destination facilities or locations for items tendered by the time or times specified by the Postal Service. Next Day Service is available for overnight delivery. Second Day Service is available for delivery on the second delivery day as specified by the Postal Service.

Participants are invited to submit comments on the proposed DMCS changes presented above on or before May 3, 2006. Reply comments may be submitted on or before May 10, 2006.

⁴ Specifically, the “Postal Service admits that, when customers send Express Mail on Fridays to destinations for which Next Day Service is not available, or when customers’ Express Mail is accepted on Fridays after the cut-off time for Next Day Service, their Express Mail is guaranteed for delivery on Monday (or Tuesday, if Monday is a holiday) unless the destination ZIP Code is one in which Sunday and holiday delivery is available.” Answer at 13.

⁵ *Id.* at 11–12.

Necessity of a prehearing conference. Given the limited scope of this proceeding, the Commission will determine an appropriate procedural schedule after evaluating comments on its Notice of Inquiry. Participants shall file pleadings identifying and discussing the matters that would indicate the need to schedule a prehearing conference or a hearing, along with other matters referred to in this order by May 3, 2006.

Representation of the general public. In conformance with section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MC2006-4, Classification Changes for Express Mail Second Day Service to consider clarifying the DMCS language related to Second Day Express Mail service and other germane issues.

2. The Commission will sit en banc in this proceeding.

3. The deadline for filing notices of intervention is May 3, 2006.

4. Notices of intervention shall indicate the nature of the intervening party's participation in the case.

5. Participants are invited to submit comments on the Notice of Inquiry and the proposed DMCS change on or before May 3, 2006. Reply comments may be submitted on or before May 10, 2006.

6. Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.

7. The Secretary shall arrange for publication of this document in the **Federal Register**.

Dated: April 19, 2006.

Steven W. Williams,

Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons discussed above, the Commission proposes to amend 39 CFR part 3001 as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603; 3622-24; 3661, 3662, 3663.

2. Amend Appendix A to Subpart C—Postal Services Rates and Charges by revising 123.1 to read as follows:

123.1 Availability of Services. Next Day and Second Day Services are available at designated retail postal facilities to designated destination facilities or locations for items tendered by the time or times specified by the Postal Service. Next Day Service is available for overnight delivery. Second Day Service is available for delivery on the second delivery day as specified by the Postal Service.

[FR Doc. E6-6104 Filed 4-21-06; 8:45 am]

BILLING CODE 7710-FW-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-R01-OAR-2006-0119; A-1-FRL-8049-8]

Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants; Perchloroethylene Dry Cleaner Regulation, State of Maine Department of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the Maine Department of Environmental Protection's (ME DEP) request for approval to implement and enforce "Chapter 125: Perchloroethylene Dry Cleaner Regulation" in place of the National Emissions Standard for Hazardous Air Pollutants for Perchloroethylene Dry Cleaning Facilities ("Dry Cleaning NESHAP") as it applies to area sources. Approval of this request for partial rule substitution would make Chapter 125 federally enforceable and consolidate the compliance requirements for area source dry cleaners in Maine into one set of regulations. Major source dry cleaning facilities would remain subject to the Dry Cleaning NESHAP.

DATES: Written comments must be received on or before May 24, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2006-0119 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. E-mail: brown.dan@epa.gov.

3. Fax: (617) 918-0048.

4. Mail: "EPA-R01-OAR-2006-0119", Dan Brown, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAP), Boston, MA 02114-2023.

5. Hand Delivery or Courier. Deliver your comments to: Dan Brown, Manager, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAP), Boston, MA 02114-2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT:

Susan Lancey, Air Permits, Toxics, and Indoor Programs Unit, U.S.

Environmental Protection Agency, EPA New England Regional Office, One Congress St, Suite 1100, Boston, MA 02114, telephone number (617) 918-1656, fax (617) 918-0656, e-mail lancey.susan@epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving ME DEP's request as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments. Chapter 125 has been in effect in Maine since 1991 and is, taken as a whole, more stringent than the Dry Cleaning NESHAP. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, EPA will take no further action on this proposed rule. If the EPA receives relevant adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will then address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period in this action.

For additional information see the direct final action which is published in the Rules Section of this **Federal Register**.

Dated: March 16, 2006.

Robert W. Varney,

Regional Administrator, EPA—New England.
[FR Doc. 06–3854 Filed 4–21–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2006–24497]

RIN 2127–AI93

Federal Motor Vehicle Safety Standards; Occupant Protection in Interior Impact

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Response to petitions for rulemaking; notice of proposed rulemaking.

SUMMARY: Our safety standard on occupant protection in interior impact requires, in part, that light vehicles provide head protection when an occupant's head strikes upper interior components, such as pillars, side rails, headers, and the roof during a crash. For altered vehicles and vehicles built in two or more stages, these requirements become effective September 1, 2006. The Recreation Vehicle Industry Association and the National Truck Equipment Association petitioned the agency to permanently exclude certain types of altered vehicles and vehicles manufactured in two or more stages from these requirements. This document responds to these petitions for rulemaking and proposes certain amendments to the standard.

Based on a careful consideration of both the safety benefits of the upper interior protection requirements, and practicability concerns relating to vehicles built in two or more stages and certain altered vehicles, we are proposing to limit these requirements to only the front seating positions of those vehicles. Further, we tentatively conclude that it is appropriate to exclude a narrow group of multi-stage vehicles delivered to the final stage manufacturer without an occupant compartment, because of impracticability concerns.

We are also proposing to delay the effective date of the head impact protection requirements as they apply to final stage manufacturers and alterers until September 1, 2008.

DATES: You should submit your comments early enough to ensure that Docket Management System receives them not later than June 23, 2006.

ADDRESSES: You may submit comments [identified by DOT Docket Number at the beginning of this document] by any of the following methods:

- Web site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1–202–493–2251.
- Mail: Docket Management System; U.S. Department of Transportation, 400 7th Street, SW., Room PL–401, Washington, DC 20590.

• Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 7th Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL–01 on the plaza level of the Nassif Building, 400 7th Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590:

For technical and policy issues: Lori Summers, Office of Crashworthiness Standards, telephone: (202) 366–4917, facsimile: (202) 366–4329, E-mail: Lori.Summers@dot.gov.

For legal issues: George Feygin, Office of the Chief Counsel, telephone: (202) 366–2992, facsimile: (202) 366–3820, E-mail George.Feygin@dot.gov.

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I. Background

A. 1995 Final Rule Upgrading FMVSS No. 201

On August 18, 1995, the National Highway Traffic Safety Administration (NHTSA) issued a final rule (August 1995 final rule) amending Federal Motor Vehicle Safety Standard (FMVSS) No. 201, "Occupant Protection in Interior Impact," to provide enhanced head impact protection.¹ The August 1995 final rule required passenger cars, and trucks, buses and multipurpose passenger vehicles (MPVs) with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or less, to provide protection when an occupant's head strikes upper interior components, including pillars, side rails, headers, and the roof, during a crash. The new head protection requirements were necessary because even in vehicles equipped with air bags, head impacts with upper interior components resulted in a significant number of occupant injuries and fatalities.

The August 1995 final rule significantly expanded the scope of FMVSS No. 201. Previously, the

¹ See 60 FR 43031, Aug. 18, 1995; Docket No. NHTSA–1996–1762–1.

standard applied to the instrument panel, seat backs, interior compartment doors, arm rests and sun visors, but not to interior components such as pillars and headers. The final rule set minimum performance requirements for these upper interior components by establishing target areas that must be padded or otherwise have energy absorbing properties to minimize head injury in the event of a crash. The final rule added procedures for a new in-vehicle component test in which a free-motion head form (FMH) is fired at certain target locations on the upper interior of a vehicle at an impact speed of 24 km/h (15 mph). Targets that are located on or within 50 mm (2 inches) of dynamically deployable upper interior head protection systems (air bags systems) can, at the option of the manufacturer, be impacted at the reduced speed of 19 km/h (12 mph). Data collected from an FMH impact are translated into a Head Injury Criterion (HIC(d)) score. The resultant HIC(d) must not exceed 1000.

The FMH impact requirements excluded targets located on convertible roof frames or roof linkage mechanisms, targets located at least 24 inches rearward of the rearmost designated seating position, and targets located at least 24 inches rearward of the driver's seating position in an ambulance or a motor home. Walk-in van-type vehicles were also excluded from the new requirements because upper interior components on those vehicles are located much higher compared to other vehicles, and head impacts against these components are unlikely for belted occupants.²

The 1995 final rule provided manufacturers with three alternate phase-in schedules for complying with the FMH impact requirements. At this time, all vehicles except altered vehicles and vehicles manufactured in two-or-more stages are required to comply with the FMH impact requirements.³ As discussed below, the effective date for altered vehicles and vehicles manufactured in two or more stages to comply with these requirements is presently September 1, 2006.⁴

B. Subsequent Amendments to FMVSS No. 201

On April 8, 1997, the agency responded to petitions for reconsideration of the 1995 final rule.⁵

Among other things, the agency delayed the effective date of the FMH impact requirements for vehicles manufactured in two or more stages until September 1, 2002. The agency also excluded buses with a GVWR of more than 3,856 kg (8,500 pounds) from the FMH impact requirements because we were concerned that these requirements were prohibitively costly for that class of vehicles.⁶ Finally, the agency denied a petition to exclude police vehicles from the FMH impact requirements because the petitioner did not present evidence to indicate that police equipment required different treatment from interior attachments present in other vehicles subjected to testing.

In 2002, in response to petitions (described in detail in the next section) to permanently exclude altered vehicles and vehicles manufactured in two or more stages from the FMH impact requirements, the agency issued an interim final rule, delaying the effective date of these requirements as they apply to altered vehicles and vehicles manufactured in two or more stages until September 1, 2003.⁷ On August 28, 2003, the agency further delayed the effective date of the FMH impact requirements for altered vehicles and vehicles manufactured in two or more stages until September 1, 2006.⁸ The issue of permanent exclusion of these types of vehicles is being addressed in the subsequent sections of this notice.⁹

II. Petitions for Rulemaking

This document addresses petitions for rulemaking submitted by the Recreation Vehicle Industry Association (RVIA) and the National Truck Equipment Association (NTEA). The member companies of RVIA and NTEA are generally considered final-stage manufacturers and alterers. That is, they purchase incomplete vehicles from major manufacturers to serve as the basis for specialty vehicles (manufactured in two or more stages) for certain uses and markets, or alter completed vehicles prior to first retail sale. As such, the petitioners' members face a variety of challenges in certifying that their vehicles meet applicable safety standards. We note that with respect to vehicles manufactured in two or more stages, some multi-stage vehicles are built from chassis-cabs with a completed occupant compartment. Others are built from less complete

vehicles, often necessitating the addition by the final-stage manufacturer of its own occupant compartment. The final stage manufacturer is responsible for certification of the completed vehicle, although, as discussed below, it can often "pass-through" by incomplete vehicle manufacturer.

A. Recreation Vehicle Industry Association Petition for Rulemaking

On October 4, 2001, the RVIA submitted a petition for rulemaking requesting that "van conversions, altered vehicles, and motor homes" with a GVWR of 10,000 pounds or less be excluded from the requirements of the August 1995 final rule.¹⁰

The RVIA is a national trade association representing final stage manufacturers and alterers. These entities alter vans, pickup trucks, and sport utility vehicles prior to first retail sale (RVIA refers to these vehicles collectively as conversion vehicles or "CVs"), and also manufacture motor homes. The RVIA petition requested that CVs and motor homes be excluded from the FMH impact requirements for the following reasons:

1. RVIA argues that in the statutory enactment directing NHTSA to improve head impact protection, Congress specifically limited its mandate to passenger cars. RVIA stated that a proposed Senate amendment to include multipurpose passenger vehicles (MPVs) and light duty trucks (LDTs) was expressly rejected.¹¹ Because the agency chose to proceed beyond the congressional mandate, RVIA argues that NHTSA has the discretion to exclude vehicles, other than passenger cars, from the FMH impact requirements.

2. With the exception of a single entity, all RVIA members fall under the "small business" definition for the purposes of Small Business Administration regulations.¹² RVIA states that its members have been operating in a declining market where production of CVs and motor homes has been declining sharply. For example, in 1999, RVIA members produced 104,100 CVs and 4,634 motor homes. By contrast, 2001 shipments were projected at 38,000 CVs and 3,629 motor homes. In light of their member's "small business" status and declining sales, RVIA argues that the member companies do not have the financial

² The current exclusions are specified in S6.3 of 49 CFR 571.201.

³ We note that under S6.3(d), walk-in van-type vehicles are permanently excluded from the FMH impact requirements.

⁴ See S6.1.4 of 49 CFR 571.201.

⁵ See 62 FR 16718, April 8, 1997.

⁶ See *id* at 16720.

⁷ See 67 FR 41348, June 18, 2002.

⁸ See 68 FR 51706, August 28, 2003.

⁹ We note that there have been other, more recent amendments to the requirements of FMVSS No. 201. However, their content had no relevance to this NPRM.

¹⁰ To examine the petition, please go to <http://dms.dot.gov/> and enter Docket No. NHTSA-2000-7145-6.

¹¹ See H.R. Conf. Rep. No. 102-404, at 395-396 (1991).

¹² See 13 CFR 121.201.

resources and technical expertise to comply with FMH impact requirements.

3. RVIA estimates the cost of compliance (including development and tooling) to average \$2,401 to \$4,850 per each CV and \$4,748 to \$5,747 per each motor home, respectively.¹³ RVIA estimates that the costs associated with certification testing to be as high as \$46,000 for each vehicle configuration.

RVIA argues that most CVs and motor homes feature unique interior designs. Specifically, these vehicles include overhead cabinets, side valances, raised roof structures, and other unusual interior components. RVIA members offer an average of 18 different CV configurations each, all of which would require separate certification testing. Some offer as many as 38 different CV variations. Motor home manufacturers offer as many as 14 motor home variations. However, at least one motor home manufacturer offers at least 73 different "floor plans." RVIA states that this product variation necessitates conducting FMH impact testing on each vehicle configuration and may even require multiple identical vehicles to test each configuration.

Because of the differences in the customized interiors, RVIA argues that the manufacturers have been unable to arrive at practicable and cost-effective "countermeasures;" i.e., additional padding designed to bring these vehicles into compliance with FMH impact requirements.

4. RVIA states that cooperative testing, suggested by NHTSA as a way to lessen compliance costs associated with FMH requirements, is not practicable because each RVIA member manufactures unique vehicles, each substantially different from its competitors. Because these vehicles are different, cooperative testing is impossible unless interiors for all vehicles manufactured by RVIA members are made uniform. Accordingly, RVIA argues that cooperative testing would eliminate interior customization, which would in turn result in a loss of market for CVs and motor homes.

5. RVIA argues that the safety benefits of FMH impact requirements as applied to CVs and motor homes are marginal. RVIA conducted a survey of CV and motor home manufacturers which showed no crashes in which an occupant injury or death had occurred due to head impacts with upper interior components covered by FMH impact requirements.

¹³ RVIA's detailed certification testing and tooling cost estimates are on page 7 and in Exhibit D of the petition (Docket No. NHTSA-2002-7145-6).

RVIA cites Fatal Analysis Reporting System (FARS) data in arguing that van-based motor homes are safe.

Specifically, between 1996 and 1999, there was an average of 14 fatalities per year in all van-based motor homes regardless of the GVWR, which translates to 0.0039 fatalities per 1,000,000 annual vehicle miles (compared to 0.0143 fatalities per 1,000,000 miles for passenger cars). Based on these data, RVIA estimates that the safety benefit reduction from excluding small, van-based motor homes from the FMH impact requirements would be extremely low. Since FARS does not track crash data for all CVs, RVIA was not able to make a similar estimate for CVs. However, RVIA argues that CVs are safer than an average passenger car, and that the safety benefit reduction in the case of CVs would also be quite low.¹⁴

6. RVIA members produce vehicles to the consumer's specifications and many special components and designs are installed in response to consumer requests. RVIA argues that in granting a previous (unrelated) temporary exemption from the requirements of FMVSS No. 201, the agency acknowledged public benefit in affording consumers a wide choice of motor vehicles.¹⁵ Petitioners asked that the agency adhere to this policy by allowing RVIA members to continue manufacturing CVs and motor homes built to customer specifications.

B. National Truck Equipment Association Petition for Rulemaking

On November 27, 2001, NTEA submitted a petition for rulemaking requesting that certain vehicles manufactured in two or more stages be excluded from FMH impact requirements arguing that the requirements are impracticable as they apply to these vehicles.¹⁶ These vehicles included ambulances, fire fighting, rescue, emergency, and law enforcement vehicles. Additionally, the NTEA requested exemption from FMH impact requirements for any target in a truck or multipurpose passenger vehicle located rearward of a vertical transverse plane through the foremost design H-point of the rear most forward facing designated

¹⁴ Petitioners support this assertion by a letter from RV Alliance America. The letter is found in Exhibit E (Docket No. NHTSA-2002-7145-6).

¹⁵ See 64 FR 61379, November 10, 1999.

¹⁶ See NHTSA-2001-8876-10 at <http://dms.dot.gov/>. NTEA also filed subsequent petitions to delay the effective date of the August 1995 final rule as it applied to vehicles manufactured in two or more stages. These later petitions relied on the same arguments presented to the agency in the November 27, 2001 document (see NHTSA-2002-12480-2, NHTSA-2002-12480-3).

seating position where the vehicle is equipped with a full or partial bulkhead or other similar device for the purpose of protecting or isolating the driver and passenger compartment from the cargo carrying, load bearing, or work performing area of the vehicle.

NTEA represents 1,500 distributors, final stage and intermediate manufacturers, and alterers of work-related trucks, truck bodies and equipment. More specifically, NTEA member companies produce ambulances, fire fighting, rescue, emergency or law enforcement vehicles, utility company vehicles, aerial bucket trucks, delivery trucks and a variety of other specialized vehicles for commercial or vocational use. These entities generally use incomplete vehicles provided by major manufacturers and assemble a completed vehicle for a specified purpose using the chassis provided by another company. As discussed above, altered vehicles and vehicles manufactured in two or more stages must comply with FMH impact requirements beginning September 1, 2006. In 2001, NTEA estimated that 377,000 vehicles produced by its members annually would have to meet the FMH impact requirements.

NTEA asked for an exclusion of such vehicles because it believes that NTEA member manufacturers will not be able to demonstrate that these vehicles comply with FMH impact requirements without conducting individual full-scale dynamic testing on each vehicle model, which NTEA argues is not economically or technologically possible. Other options for demonstrating compliance, such as pass through certifications, engineering analysis, and computer modeling, are, according to NTEA, not available or economically feasible.

First, NTEA believes that FMH testing for the subject vehicles is not economically feasible because of the number of vehicle configurations produced by the multi-stage truck and specialty vehicle industry. NTEA estimates that in aggregate, compliance testing would cost its members \$160,000,000. Specifically, NTEA states that there are over 1,200 identifiable vehicle configurations produced by its members. For each configuration, the cost of actual testing is approximately \$14,000 to \$17,000 (NTEA states that this cost estimate does not account for development costs, costs for re-testing after failures, transportation of the vehicle to the test facility, or countermeasures in production vehicles that would be necessary to produce a

compliant vehicle).¹⁷ Besides costs, NTEA argues that it is not feasible to test each vehicle configuration produced by its member manufacturers because they are aware of only two testing facilities that provide dynamic testing, and each is only capable of testing 12 vehicles per month.

Second, NTEA stated that alternative options to demonstrate compliance such as pass-through certifications,¹⁸ test data from component vendors, engineering analysis, computer modeling, and consortium dynamic testing, are not available.

Specifically, NTEA argued that pass-through is not an available option because the member manufacturers often complete the vehicle “outside the parameters” provided by the chassis manufacturer. For example, the installation of bulkheads or partitions usually invalidates the chassis manufacturer’s compliance statement. In many work vans, emergency vehicles, or police vehicles, bulkheads or dividers are needed to ensure that objects or people that must remain in the rear of the vehicle actually do so. Installation of these bulkheads, according to NTEA, is likely to require relocation of target areas originally certified by the incomplete vehicle manufacturer, adding to the compliance burden of the NTEA member and frustrating the ability to take advantage of “pass through” certification. Furthermore, NTEA asserts that the chassis manufacturer’s completion guidelines are too restrictive to allow for compliance.

Additionally, NTEA argued that other compliance options are also unavailable to multi-stage manufacturers. NTEA stated that the chassis manufacturers do not provide sufficient compliance information to the multi-stage manufacturers and that the test data is not enough to certify compliance under FMVSS No. 201 because validation requires in-system testing. NTEA also argued that engineering analysis and computer modeling are not possible because they require previous dynamic test data that do not exist. Finally, NTEA stated that consortium testing is not an option since the compliance tests developed by NHTSA are so specific that minor differences produce significantly different test results.

III. The Agency’s New Approach to Vehicles Built in Two or More Stages and Altered Vehicles

On February 14, 2005, the agency issued a final rule (February 2005 final rule) which enables more final stage manufacturers to take advantage of “pass-through” certification by requiring incomplete vehicle manufacturers to assume certification responsibility for the vehicle as further manufactured or completed by a final-stage manufacturer, to the extent that the vehicle is completed in accordance with the Incomplete Vehicle Document (IVD) described below.¹⁹ Previously, this requirement only applied to chassis-cab manufacturers. The February 2005 final rule also created a new process under which manufacturers of vehicles built in two or more stages and alterers could obtain temporary exemptions from certain dynamic performance requirements. Finally, as a part of that rulemaking, we refined our analysis of the agency’s authority to establish different requirements for vehicles built in two or more stages. The February 2005 final rule becomes effective September 1, 2006.

The agency is in the process of considering a petition for reconsideration of the February 2005 final rule submitted by NTEA.²⁰ We expect to issue our response shortly.

A. “Pass-Through” Certification

Manufacturers of chassis-cabs are currently required to place on the incomplete vehicle a certification label stating under what conditions the chassis-cab has been certified. This allows what is commonly referred to as “pass-through” certification. As long as a subsequent manufacturer meets the conditions of the chassis-cab certification, that manufacturer may rely on this certification and pass it through when certifying the completed vehicle. However, the current certification regulations do not impose corresponding certification responsibilities on manufacturers of incomplete vehicles other than chassis-cabs (e.g., incomplete vans, cut-away chassis, stripped chassis and chassis-cowls).

The February 2005 final rule extended these certification responsibilities to all types of incomplete vehicles. More specifically, beginning September 1, 2006, all incomplete vehicle

manufacturers and intermediate manufacturers will have certification responsibilities for the vehicles as further manufactured or completed by final-stage manufacturers, to the extent that the vehicle is completed in accordance with the conditions specified in the IVD.²¹

B. The Agency’s Authority to Exclude Multi-Stage Vehicles From FMVSSs

In the February 2005 final rule, the agency reconsidered a previous position and concluded that it has authority to exclude multi-stage vehicles as a group from FMVSSs that are impracticable as they applied to these vehicles, or to subject these vehicles to different requirements. NHTSA concluded that it is appropriate to consider multi-stage vehicles as a vehicle type subject to consideration in the establishment of a regulation. For a detailed discussion of this issue, see 70 FR 7014 at 7421.

C. New Temporary Exemption Procedures Available to Final Stage Manufacturers and Alterers

The February 2005 final rule established new procedures available to manufacturers of vehicles built in two or more stages and alterers for obtaining temporary exemptions from FMVSSs for which the agency specifies certain dynamic test procedures to determine compliance. The new procedures streamline the temporary exemption process by allowing an association or another party representing the interests of multiple manufacturers to bundle exemption petitions for a specific

²¹ The IVD details, with varying degrees of specificity, the types of future manufacturing contemplated by the incomplete vehicle manufacturer and must provide, for each applicable safety standard, one of three statements that a subsequent manufacturer can rely on when certifying compliance of the vehicle, as finally manufactured, to some or all of all applicable FMVSSs. First, the IVD may state, with respect to a particular safety standard, that the vehicle, when completed, will conform to the standard if no alterations are made in identified components of the incomplete vehicle (this representation is most often made with respect to chassis-cabs, since a significant portion of the occupant compartment is already complete). Second, the IVD may provide a statement for a particular standard or set of standards of specific conditions of final manufacture under which the completed vehicle will conform to the standard (this statement is applicable in those instances in which the incomplete vehicle manufacturer has provided all or a portion of the equipment needed to comply with the standard, but subsequent manufacturing might be expected to change the vehicle such that it may not comply with the standard once finally manufactured). Third, the IVD may identify those standards for which no representation of conformity is made (for example, a manufacturer of a stripped chassis may be unable to make any representations about conformity to any crashworthiness standards if the incomplete vehicle does not contain an occupant compartment).

¹⁷ See Appendix A of the NTEA petition.

¹⁸ In a “pass through” of chassis manufacturer compliance, multi-stage manufacturers certify compliance by “passing through” the chassis manufacturer’s certification.

¹⁹ See 70 FR 7414, Docket No. 1999–5673–54.

²⁰ See Docket No. NHTSA–1999–5673–55. See also comment concerning the NTEA petition for reconsideration submitted by General Motors (Docket No. NHTSA–1999–5673–56).

vehicle design, thus permitting a single explanation of the potential safety impact and good faith attempts to comply with the standards. The new exemption procedures specify that each manufacturer seeking an exemption is required to demonstrate financial hardship and good faith efforts to comply with applicable requirements. Exemptions based on financial hardship are available to companies manufacturing less than 10,000 vehicles per year, and any one exemption cannot apply to more than 2,500 vehicles per year.

We note that, given the regulatory text specifying the new temporary exemption procedure, there is an issue whether that procedure is available for the head impact protection requirements at issue in the NTEA and RVIA petitions. That regulatory text reads as follows:

* * * An alterer, intermediate or final-stage manufacturer, or industry trade association representing a group of alterers, intermediate and/or final-stage manufacturers may seek * * * a temporary exemption or a renewal of a temporary exemption from any performance requirement for which a Federal motor vehicle safety standard specifies the use of a **dynamic crash test procedure** to determine compliance. [Emphasis added]

The procedure for the head impact protection requirements does not incorporate a full scale crash test except as an option for vehicles equipped with a dynamically deployable upper interior head protection system, which we do not believe is relevant to vehicles that are subject of the RVIA and NTEA FMVSS No. 201 petitions. Nevertheless, the upper interior requirements have a number of similarities to crash tests. For purposes of this rulemaking, we are proposing to extend the scope of the new temporary exemption procedures such that multistage manufacturers would be able to petition NHTSA for an exemption from FMH impact requirements.

First, we observe that small volume multistage manufacturers are currently able to petition the agency for temporary exemptions from all FMVSSs, including FMH impact requirements, under the existing temporary exemption procedures currently in effect. Therefore, our proposal to expand the scope of the new temporary exemption procedures to include consideration of petitions related to FMH impact testing relates to the availability of the more streamlined procedures rather than to the possibility of a manufacturer obtaining an exemption, in appropriate circumstances, at all.

Second, we believe that, in limited circumstances, the difficulty or

impracticability of testing a multitude of unique vehicle configurations, or otherwise obtaining an appropriate basis for certification, with the associated financial hardships, may extend to FMH impact requirements. Specifically, there is a considerable cost associated with FMH impact tests and vehicles are usually damaged during testing.

Finally, we expect the number of instances in which an exemption will be needed to be very small because in order to petition for an exemption, the petitioner would have to show why FMH impact tests would cause substantial economic hardship. This showing must include detailed financial information and a complete description of the petitioner's good faith efforts to comply with the standards. Specifically, the petitioner would have to explain the inadequacy of IVD documents furnished by one or more incomplete vehicle manufacturers or by prior intermediate manufacturers pursuant to 49 CFR part 568. The petitioner would also have to show why generic or cooperative testing is impracticable. In addition, each petitioner is required to explain under § 555.13(c) why the requested temporary exemption would not unreasonably degrade safety.

We are not proposing specific regulatory text in this document. We note that this issue is also before the agency in the context of petitions for reconsideration of the February 2005 final rule establishing the new exemption procedures. We also note that depending on the agency's decision in that proceeding, this issue could become moot as to this rulemaking.

IV. Response to the RVIA and NTEA Petitions for Rulemaking

As discussed above, RVIA and NTEA petitioned the agency to permanently exclude certain altered vehicles and vehicles manufactured in two or more stages from all or a portion of the FMH impact requirements. We are granting the petition in part, by proposing to further limit the area that is subject to FMH impact requirements in ambulances, motor homes, and extending this limitation to other vehicles manufactured in two or more stages, as well as altered vehicles. We are also proposing to exclude vehicles delivered to a final stage manufacturer without an occupant compartment from the FMH impact requirements. We are denying all other parts of the petitions.

A. Proposal To Limit the Occupant Compartment Area Subject to the FMH Impact Requirements in Ambulances, Motor Homes, and Other Vehicles Manufactured in Two or More Stages, and Altered Vehicles

In ambulances and motor homes, the current standard excludes the occupant compartment area located more than 600 mm (24 inches) behind the seating reference point of the driver's seating position from the FMH impact requirements. For all other vehicles, the occupant compartment area located more than 600 mm (24 inches) behind the seating reference point of the rearmost designated seating position is similarly excluded from the FMH impact requirements.

For altered vehicles and vehicles manufactured in two or more stages, including motor homes and ambulances, we are proposing to limit the area subject to the FMH impact requirements to not more than 300 mm (12 inches) behind the seating reference point of the driver's seating position. This would have the effect of limiting the FMH impact requirements to the front seating positions for these vehicles. We believe that the distance reduction to 300 mm (12 inches) is more representative of the distance between the seating reference point and the upper seat back/head restraint location where the occupant's head is located. Because of the front head restraint height requirements, we believe it is unlikely that the head of a seated occupant would come in contact with bulkheads, partitions, or overhead cabinets and storage shelves located further than 300 mm (12 inches) behind the seating reference point of the driver's seating position. However, we are not granting the NTEA proposal to limit the seat position for this exclusion to the foremost design H-point (rather than the seating reference point) since we believe that a large portion of the seated driver's head would not be provided head protection in the areas of B-pillars and side rails between the A-pillar and the B-pillar.

In developing this proposal, we have carefully considered both the safety benefits of the FMH requirements and practicability concerns relating to multistage vehicles. Based on previous estimates of the benefits of the FMVSS No. 201 final rule, and estimates from the National Automotive Sampling System, Crashworthiness Data System of the percent of injuries occurring to light truck occupants in multi-stage vehicles, the agency derived the following estimate of safety benefits. Requiring all multi-stage manufactured vehicles to

meet FMVSS No. 201 would have annual benefits in the front seat of 16–22 fewer fatalities and 19–22 fewer AIS 2–5 injuries. However, in the rear seats, the benefits are estimated to be less than 1 fatality (which would round down to 0) and 1 AIS 2–5 injury. Thus, based on this analysis, excluding multi-stage vehicles from target points that could not be struck by the front row occupants would have a very small impact on safety.

Given the small safety benefits associated with the FMH impact requirements for rear seating positions and practicability concerns, we have tentatively concluded that the FMH impact requirements should be limited to the front seating positions for these vehicles.

As indicated in its petition, many commercial vehicles manufactured by NTEA members feature bulkheads or partitions located less than 600 mm (24 inches) behind the rearmost designated seating position. Bulkheads or partitions are used in a variety of work vehicles that haul odd-shaped objects that cannot be readily secured in the cargo area. These structures protect the driver and passenger from loose or shifting or shifting cargo or work equipment. NTEA argued that the installation of bulkheads or partitions would likely require relocation of target areas originally certified by the incomplete vehicle manufacturer, thus significantly adding to the compliance burden.

As discussed above, RVIA argued that most CVs and motor homes feature unique interior designs. Specifically, these vehicles include overhead cabinets, side valances, raised roof structures, and other unusual interior components. Among other things, RVIA stated that cooperative testing, suggested by NHTSA as a way to lessen compliance costs associated with FMH requirements, is not practicable because each RVIA member manufactures unique vehicles, each substantially different from its competitors. RVIA argued that cooperative testing would eliminate interior customization, which would in turn result in a loss of market for CVs and motor homes.

We believe our proposal to effectively limit the FMH impact requirements to the front seating positions for these vehicles would provide appropriate relief to the industries represented by NTEA and RVIA, while continuing to meet the need for safety. As discussed above, the benefits related to rear seating positions are very small.

We note that NTEA and RVIA members can ordinarily purchase incomplete vehicles that are already designed to meet the FMH impact

requirements for the front seating positions. Under our proposal, final stage manufacturers would ordinarily be able to take advantage of pass-through certification by not changing the upper interior portions of the front of the vehicle.

We believe the requirements are justified by safety. As indicated above, we estimate that requiring all multi-stage manufactured vehicles to meet FMVSS No. 201 would have annual benefits in the front seat of 16–22 fewer fatalities and 19–22 fewer AIS 2–5 injuries. Given the safety significance of these requirements, we believe, in situations where final stage manufacturers use incomplete vehicles that have occupant compartments that either are designed to meet the FMH impact requirements for the front seating positions or can be purchased in a configuration that is designed to meet those requirements, it would be inconsistent with the need for safety to generally exclude the vehicles from these head impact protection requirements. We also note that while final stage manufacturers will be able to submit petitions under subpart B of part 555, it is unlikely in this type of situation that the agency would find it in the public interest to exclude final stage manufacturers from the front seat head impact protection requirements of FMVSS No. 201 to facilitate customization of the upper interior portions of the front of the vehicle.

Our proposal would, however, facilitate customization of the rear of vehicles, including conversion vans, where there would be no significant impact on safety. Moreover, we continue to believe that final stage manufacturers can use cooperative testing to determine the types of changes that can be made while enabling vehicles to continue to comply with the FMH requirements, including ones related to use of overhead cabinets, raised roof structures, and so forth. Thus, while customization of the front portion of occupant compartments will be more difficult and may be more limited, it will by no means be eliminated.

B. Proposal To Exclude Vehicles Manufactured in Two or More Stages, Other Than Motor Homes, Chassis Cabs, Cutaway Vans, and Other Incomplete Vehicles With a Furnished Front Compartment, From FMH Impact Requirements

We tentatively conclude that a narrow group of multi-stage vehicles contains physical attributes that make compliance with the FMH impact requirements impracticable. These are

vehicles built on a “stripped” chassis; i.e., an incomplete vehicle without an occupant compartment. The manufacturers of these vehicles would not be able to rely on pass-through certification. This is because these vehicles are highly customized and produced in quantities that would make compliance prohibitively expensive. Further, these vehicles are often equipped with partitions and bulkheads that present a further impediment to the compliance efforts. We note that for vehicles manufactured from stripped chassis, the cost of meeting the FMH impact requirements could be substantial because the alternative means of compliance such as pass-through certification are not available.

In the context of serving niche markets demanding specialized work vehicles that are not delivered to the final stage manufacturers with an intact occupant compartment (unlike for example, chassis cabs and cut-away vans), we believe that the physical limitations of these vehicles can adversely affect the ability of multi-stage manufacturers to design safety performance into their completed vehicles. Accordingly, we believe it appropriate to exclude this narrow group of vehicles from FMH impact testing.

C. Question Regarding Multistage Vehicles With Raised Roofs

Certain multistage vehicles are manufactured with raised roofs. The final-stage manufacturer cuts out a portion of the original roof and attaches a raised roof, typically made of fiberglass that may also have metal inserts imbedded for strength. The manufacturers of these vehicles may not be able to take advantage of pass through certification because raising the roof affects the location of certain targets subject to FMH impact testing. The raised roof has a different shape than the van portion of an incomplete vehicle. Therefore, the reference points located on the exterior, i.e., APR and BPR, will probably not be the same and the FMH targets inside the vehicle may be in different locations from those that the incomplete vehicle manufacturer stated could be certified as pass through. In addition, the portion of the roof over the front seating area would be affected when the final-stage manufacturer installs a headliner and/or padding in a vehicle with a raised roof or a non-raised roof.

We believe that the original targets in raised roof vehicles, e.g., those along the pillars and side rails, may be as appropriate for safety as the targets that would be calculated for the new

configuration. We are therefore considering permitting manufacturers to meet requirements for either the target locations as calculated for the original configuration or changed configuration. This would also make compliance easier for final stage manufacturers. We are asking for comment on this approach to targets in vehicles with raised roofs.

D. Additional Relief Is Not Warranted

After carefully considering RVIA's and NTEA's petitions, we have decided not to propose a broader exclusion from the FMH requirements for front seat areas of conversion vans, motor homes, ambulances, fire fighting, rescue, emergency, law enforcement, and altered vehicles. As explained above, we believe that the head impact protection requirements provide important safety benefits in front seating positions of vehicles manufactured in two or more stages, and our proposal would provide appropriate relief to the industries represented by NTEA and RVIA, while continuing to meet the need for safety.

RVIA and NTEA did not provide any convincing reasons why occupants of its members' vehicles would not benefit from the same level of protection as required for other vehicles. Conversion vans, light duty motor homes, and other altered vehicles are typically driven by regular passenger vehicle drivers who require the same type of occupant protection as other passenger vehicle drivers. Furthermore, the petitioners did not explain why the occupants of ambulances, fire fighting, rescue, emergency, and law enforcement vehicles that may additionally travel at high rates of speed through unconventional traffic paths would not benefit from countermeasures designed to reduce head impacts in the event of a collision.

We note that the petitioners are also able to purchase incomplete vehicles that are already designed to meet the FMH impact requirements for the front seating positions. Under our proposal, the rear portions of multi-stage and altered vehicles, where the majority of vehicle customization is performed, would be excluded from the FMH requirements. Furthermore, final stage manufacturers would ordinarily be able to take advantage of pass-through certification by not changing the upper interior portions of the front of the vehicle. Accordingly, compliance costs and test burdens, (i.e., the petitioners' main concerns), would be substantially reduced when certifying these vehicles.

We further believe that the compliance costs provided by the RVIA and NTEA in their petition were overstated. For example, the compliance

test cost estimates provided by RVIA were not averaged over the years of vehicle production. Instead, the costs were reflective of only the first production year. RVIA did not provide the actual production cycles for its various vehicles, so its cost estimates were based on a one-year production cycle. Typically, when vehicle compliance costs are amortized over the vehicle production years, the costs are a lot smaller, as evidenced by the rulemaking involving small school buses where the estimated compliance cost per multi-stage vehicle was less than \$1,000 in 1993 economics.²²

NTEA estimated that compliance with the FMH requirements would cost its industry a minimum of \$160 million and 64 years to comply. However, this was based on the availability of two test laboratories that conducted FMH testing in 2001 and no pass-through certification was applied. We believe that laboratory experience has improved greatly since that time, and the exclusions that we are proposing in this notice will have a large impact on reducing the actual compliance costs.

RVIA and NTEA did not provide any convincing reasons why it is not generally practicable for these vehicles to comply. With respect to conversion vans and motor homes, the agency believes that there are alternative locations for the installation of hardwood cabinetry, and audio/video entertainment systems (other than mounted over the heads of front seat occupants). There are also other more compliant materials than hardwood that could be utilized by conversion van and motor home customization specialists.

As to fire fighting and rescue vehicles (with a gross vehicle weight rating of 4,536 kg or less), these vehicles are basically multi-stage work vehicles furnished with special equipment and tools designed exclusively for the purpose of rescuing people in emergency situations. We are proposing to exclude the rear compartment area of these vehicles from FMH target requirements, as we are for other multistage. We do not believe there is any reason to treat the front occupant compartment of these vehicles differently from other multistage vehicles (such as utility company trucks, contractor vehicles, snow removal vehicles, etc). Thus, we believe that no additional relief is necessary.

The agency has also previously considered and denied the exclusion of police cars from the FMH requirements.²³ Our position on that

issue has not changed substantially. Previously, the NTEA requested that police cars be excluded since these cars have special equipment, including gun racks and spotlight control mounted on the upper roof interior, and a bulkhead behind the front seats. However, the agency believes that interior components, such as gun racks and spotlight controls do not necessarily have to be mounted on the vehicle roof interior surface in the vicinity of the driver's head, and can alternatively be accommodated with padding. Furthermore, we are aware that there are available equipment packages (such as remote-controlled spotlights and A-pillar mounted spotlights below the AP3 target location) that would facilitate compliance with the FMH requirements.

VII. Effective Date

We are proposing to delay the effective date of the FMH impact requirements as they apply to final stage manufacturers and alterers from September 1, 2006 until September 1, 2008.

VIII. Submission of Comments

A. How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long.²⁴ NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**. You may also submit your comments to the docket electronically by logging onto the Docket Management System (DMS) Web site at <http://dms.dot.gov>. Click on "Help & Information" or "Help/Info" to obtain instructions for filing your comments electronically. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.²⁵

²⁴ 49 CFR 553.21.

²⁵ Optical character recognition (OCR) is the process of converting an image of text, such as a

²² See 62 FR 16718, April 8, 1997.

²³ See *id.*

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in NHTSA's confidential business information regulation (49 CFR part 512).

Will the Agency Consider Late Comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the agency will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for the agency to consider it in developing a final rule (assuming that one is issued), the agency will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation <http://dms.dot.gov>.

2. On that page, click on "search."

3. On the next page <http://dms.dot.gov/search>, type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA-1998-1234," you would type "1234." After typing the docket number, click on "search."

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the Docket for new material.

VIII. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This proposal was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. If adopted, it would not impose any new burdens on manufacturers of vehicles built in two or more stages or vehicles alterers.

Further, if adopted, this proposal would limit certain existing requirements as they apply to multistage vehicles, and exclude a narrow group of multi-stage vehicles manufactured from chassis without occupant compartments from the same requirements. The agency believes that this impact is so minimal as to not warrant the preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed rules on small businesses, small organizations and small governmental jurisdictions. I have considered the possible effects of this rulemaking action under the Regulatory Flexibility Act and certify that it would not have a significant economic impact on a substantial number of small entities.

Under 13 CFR 121.201, the Small Business Administration (SBA) defines small business (for the purposes of receiving SBA assistance) as a business with less than 750 employees. Most of the manufacturers of recreation vehicles, conversion vans, and specialized work trucks are small businesses that alter completed vehicles or manufacture vehicles in two or more stages. While the number of these small businesses potentially affected by this proposal is substantial, the economic impact upon these entities will not be significant because this document proposes to limit certain existing requirements as they apply to multistage vehicles, and exclude a narrow group of multi-stage vehicles manufactured from chassis without occupant compartments from the same requirements. For other multistage manufacturers, recent agency action described above will enable the manufacturers to more fully utilize pass-through certification.

C. National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment. Accordingly, no environmental assessment is required.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federal implications to warrant consultation with State and local officials or the preparation of a

federalism summary impact statement. The proposal would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (\$120.7 million as adjusted annually for inflation with base year of 1995). The assessment may be combined with other assessments, as it is here.

This proposal is not likely to result in expenditures by State, local or tribal governments or automobile manufacturers and/or their suppliers of more than \$120.7 million annually. If adopted, it would not impose any new burdens on manufacturers of vehicles built in two or more stages or vehicles alterers. Further, if adopted, this proposal would limit certain existing requirements as they apply to multistage vehicles, and exclude a narrow group of multi-stage vehicles manufactured from chassis without occupant compartments from the same requirements.

F. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, "Civil Justice Reform",²⁶ the agency has considered whether this proposed rule would have any retroactive effect. We conclude that it would not have such an effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file a suit in court.

²⁶ See 61 FR 4729, February 7, 1996.

G. Paperwork Reduction Act

There are no information collection requirements in this proposal.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

IX. Proposed Regulatory Text

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes to amend chapter V of title 49 of the Code of Federal Regulations by amending 49 CFR 571.201 to read as follows:

PART 571—[AMENDED]

1. The authority citation of part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 2011, 30115, 30166 and 30117; delegation of authority at 49 CFR 1.50.

2. Section 571.201 would be amended by revising S6.1.4, S6.3(b) and S6.3(c) to read as set forth below:

§ 571.201 Standard No. 201; Occupant protection in interior impact.

* * * * *

S6.1.4 *Phase-in Schedule #4* A final stage manufacturer or alterer may, at its option, comply with the requirements set forth in S6.1.4.1 and S6.1.4.2.

S6.1.4.1 Vehicles manufactured on or after September 1, 1998 and before September 1, 2008 are not required to comply with the requirements specified in S7.

S6.1.4.2 Vehicles manufactured on or after September 1, 2008 shall comply with the requirements specified in S7.

* * * * *

S6.3 * * *

(b) Any target located rearward of a vertical plane 600 mm behind the seating reference point of the rearmost designated seating position. For altered vehicles and vehicles built in two or more stages, including ambulances and motor homes, any target located rearward of a vertical plane 300 mm behind the seating reference point of the driver's designated seating position.

(c) Any target in a walk-in van-type vehicle or a vehicle manufactured in two or more stages that is delivered to a final stage manufacturer without an occupant compartment.

Note: Motor homes, ambulances, and other vehicles manufactured using a chassis cab, a cut-away van, or any other incomplete vehicle delivered to a final stage manufacturer with a furnished front compartment are not excluded under this paragraph.

* * * * *

Issued on April 18, 2006.

Ronald L. Medford,
Senior Associate Administrator for Vehicle Safety.
[FR Doc. E6-6024 Filed 4-21-06; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR PART 223**

[I.D. 041706C]

RIN 0648-AU10

Sea Turtle Conservation; Public Hearing Notification

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

ACTION: Notice of public hearing.

SUMMARY: The National Marine Fisheries Service (NMFS) is announcing its intent to hold a public hearing to inform interested parties of the proposed modifications to Federal regulations affecting pound net leaders in the Virginia Chesapeake Bay and to accept public comments on this action.

DATES: NMFS will hold a public hearing at the Double Tree Hotel Virginia Beach, on Wednesday, April 26, 2006, at 7 p.m., eastern daylight time.

ADDRESSES: The Double Tree Hotel Virginia Beach is located at 1900 Pavilion Drive, Virginia Beach, VA 23451 (ph..757-422-8900).

Written comments on this action may be submitted on this proposed rule, identified by RIN 0648-AU10, by any one of the following methods:

(1) E-mail: poundnetmodification@noaa.gov. Please include the RIN 0648-AU10 in the subject line of the message.

(2) Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instruction on the website for submitting comments.

(3) NMFS/Northeast Region Website: <http://www.nero.noaa.gov/nero/regs/com.html>. Follow the instructions on the website for submitting comments.

(4) Mail: Mary Colligan, Assistant Regional Administrator for Protected Resources, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930, ATTN: Sea Turtle Conservation Measures, Proposed Rule

(5) Facsimile (fax): 978-281-9394, ATTN: Sea Turtle Conservation Measures, Proposed Rule

FOR FURTHER INFORMATION CONTACT: Pasquale Scida (ph. 978-281-9208), NMFS, One Blackburn Drive, Gloucester, MA 01930.

SUPPLEMENTARY INFORMATION: A proposed rule was issued on April 17, 2006 (73 FR 19675), which proposes revisions to current regulations. The

proposed rule would require any offshore pound net set in Pound Net Regulated Area I in the Virginia waters of the Chesapeake Bay to use a modified pound net leader from May 6 to July 15 each year. This action, taken under the Endangered Species Act of 1973 (ESA), responds to new information generated by gear research and aims to conserve sea turtles listed as threatened or endangered. Additional information on the justification for this action can be found in that proposed rule.

NMFS recognizes the need and importance to obtain public comment on the proposed action. In addition to the April 26 meeting announced in this document, NMFS is accepting written comments on the proposed action. Written comments on the proposed rule or requests for copies of the literature cited, the draft Environmental Assessment, or Regulatory Impact Review and Initial Regulatory Flexibility Analysis should be addressed to the Assistant Regional Administrator for Protected Resources, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments and requests for supporting documents may be sent via fax to 978-281-9394. Comments will be accepted via email at poundnetmodification@noaa.gov and via the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instruction on the website for submitting comments. The public comment period closes at 5 p.m., eastern daylight time, on May 1, 2006.

In preparing the final rule for this action, NMFS will fully consider the public comments received during the 15-day comment period (either in writing or verbally during the public hearing).

Special Accommodations

This meeting is accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Pasquale Scida, telephone 978-281-3928 x9208, fax 978-281-9394, at least five days before the scheduled meeting date.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: April 19, 2006.

James H. Lecky,

Director, Office Protected Resources, National Marine Fisheries Service.

[FR Doc. E6-6106 Filed 4-21-06; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 229**

[Docket No. 060330090-6090-01, I.D. 021506B]

RIN 0648-AU19

List of Fisheries for 2006

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

ACTION: Proposed rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is publishing the proposed List of Fisheries (LOF) for 2006, as required by the Marine Mammal Protection Act (MMPA). The proposed LOF for 2006 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must categorize each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of serious injury and mortality of marine mammals that occurs incidental to each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

DATES: Comments must be received by May 24, 2006.

ADDRESSES: Send comments to Chief, Marine Mammal Conservation Division, Attn: List of Fisheries, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via email to 2006LOF.comments@noaa.gov or to the Federal eRulemaking portal: <http://www.regulations.gov> (follow instructions for submitting comments).

Comments regarding the burden-hour estimates, or any other aspect of the collection of information requirements contained in this proposed rule, should be submitted in writing to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and to David Rostker, OMB, by e-mail at David_Rostker@omb.eop.gov or by fax to 202-395-7285.

See **SUPPLEMENTARY INFORMATION** for a list of regional offices where registration information, materials, and marine mammal reporting forms may be obtained.

FOR FURTHER INFORMATION CONTACT:

Kristy Long, Office of Protected Resources, 301-713-1401; David Gouveia, Northeast Region, 978-281-9328; Juan Levesque, Southeast Region, 727-570-5312; Cathy Campbell, Southwest Region, 562-980-4060; Brent Norberg, Northwest Region, 206-526-6733; Bridget Mansfield, Alaska Region, 907-586-7642; Lisa Van Atta, Pacific Islands Region, 808-973-2937. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:**Regional Offices**

NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930-2298, Attn: Marcia Hobbs;
 NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Teletha Mincey;
 NMFS, Southwest Region, Sustainable Fisheries Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, Attn: Lyle Enriquez;
 NMFS, Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Permits Office;
 NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802; or
 NMFS, Pacific Islands Region, Protected Resources Division, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700.

What is the List of Fisheries?

Section 118 of the MMPA requires that NMFS place all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals that occurs in each fishery (16 U.S.C. 1387 (c)(1)). The categorization of a fishery in the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. NMFS must reexamine the LOF annually, consider new information in the Stock Assessment Reports, other relevant sources, and the LOF, and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387 (c)(3)).

How Does NMFS Determine in which Category a Fishery is Placed?

The definitions for the fishery classification criteria can be found in

the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock, and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the Potential Biological Removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. This definition can also be found in the implementing regulations for section 118 at 50 CFR 229.2

Tier 1: If the total annual mortality and serious injury across all fisheries that interact with a stock is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock would be placed in Category III. Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

Tier 2, Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level.

Tier 2, Category II: Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level.

Tier 2, Category III: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level.

While Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock, Tier 2 considers fishery-specific mortality and serious injury for a particular stock. Additional details regarding how the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995).

Since fisheries are categorized on a per-stock basis, a fishery may qualify as one Category for one marine mammal stock and another Category for a different marine mammal stock. A fishery is typically categorized on the LOF at its highest level of classification (e.g., a fishery that qualifies for Category III for one marine mammal stock and for

Category II for another marine mammal stock will be listed under Category II).

Other Criteria That May Be Considered

In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental serious injury or mortality qualifies for Category II by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries (50 CFR 229.2).

How Do I Find Out if a Specific Fishery is in Category I, II, or III?

This proposed rule includes two tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the fisheries in the Pacific Ocean (including Alaska). Table 2 lists all of the fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

Am I Required to Register Under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization from NMFS in order to lawfully incidentally take a marine mammal in a commercial fishery. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How Do I Register?

Fishers must register with the Marine Mammal Authorization Program (MMAP) by contacting the relevant NMFS Regional Office (see **ADDRESSES**) unless they participate in a fishery that has an integrated registration program (described below). Upon receipt of a completed registration, NMFS will issue vessel or gear owners physical evidence of a current and valid registration that must be displayed or in the possession of the master of each vessel while fishing in accordance with section 118 of the MMPA (16 U.S.C. 1387(c)(3)(A)).

What is the Process for Registering in an Integrated Fishery?

For some fisheries, NMFS has integrated the MMPA registration process with existing state and Federal fishery license, registration, or permit

systems and related programs. Participants in these fisheries are automatically registered under the MMPA and are not required to submit registration or renewal materials or pay the \$25 registration fee. The following is a list of integrated fisheries and a summary of the integration process for each Region. Fishers who operate in an integrated fishery and have not received registration materials should contact their NMFS Regional Office (see **ADDRESSES**).

Which Fisheries Have Integrated Registration Programs?

The following fisheries have integrated registration programs under the MMPA:

1. All Alaska Category II fisheries;
2. All Washington and Oregon Category II fisheries;
3. Northeast Regional fisheries for which a state or Federal permit is required. Individuals fishing in fisheries for which no state or Federal permit is required must register with NMFS by contacting the Northeast Regional Office (see **ADDRESSES**); and
4. Southeast Regional fisheries for which a state or Federal permit is required. Southeast Regional fisheries include all North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, and Puerto Rico fisheries. Individuals fishing in fisheries for which no state or Federal permit is required, must register with NMFS by contacting the Southeast Regional Office (see **ADDRESSES**).
5. The Hawaii Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, Oceanic Sharks Longline/Set line Fishery.

How Do I Renew My Registration Under the MMPA?

Regional Offices, except for the Northeast and Southeast Regions, annually send renewal packets to participants in Category I or II fisheries that have previously registered; however, it is the responsibility of the fisher to ensure that registration or renewal forms are completed and submitted to NMFS at least 30 days in advance of fishing. Individuals who have not received a renewal packet by January 1 or are registering for the first time should request a registration form from the appropriate Regional Office (see **ADDRESSES**).

Am I Required to Submit Reports When I Injure or Kill a Marine Mammal During the Course of Commercial Fishing Operations?

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or fisher (in

the case of non-vessel fisheries), participating in a Category I, II, or III fishery must report all incidental injuries or mortalities of marine mammals that occur during commercial fishing operations to NMFS. "Injury" is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the absence of any wound or other evidence of an injury, and must be reported. Instructions on how to submit reports can be found in 50 CFR 229.6.

Am I Required to Take an Observer Aboard My Vessel?

Fishers participating in a Category I or II fishery are required to accommodate an observer aboard vessel(s) upon request. Observer requirements can be found in 50 CFR 229.7.

Am I Required to Comply With Any Take Reduction Plan Regulations?

Fishers participating in a Category I or II fishery are required to comply with any applicable take reduction plans.

Sources of Information Reviewed for the Proposed 2006 LOF

NMFS reviewed the marine mammal incidental serious injury and mortality information presented in the Stock Assessment Reports (SARs) for all observed fisheries to determine whether changes in fishery classification were warranted. NMFS' SARs are based on the best scientific information available at the time of preparation for the information presented in the SARs, including the level of serious injury and mortality of marine mammals that occurs incidental to commercial fisheries and the PBR levels of marine mammal stocks. NMFS also reviewed other sources of new information, including marine mammal stranding data, observer program data, fisher self-reports, and other information that is not included in the SARs.

The information contained in the SARs is reviewed by regional scientific review groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were created by the MMPA to review the science that informs the SARs, and to advise NMFS on population status and trends, stock structure, uncertainties in the science, research needs, and other issues.

The proposed LOF for 2006 was based, among other things, on information provided in the final SARs for 1996 (63 FR 60, January 2, 1998), the

final SARs for 2001 (67 FR 10671, March 8, 2002), the final SARs for 2002 (68 FR 17920, April 14, 2003), the final SARs for 2003 (69 FR 54262, September 8, 2004), the final SARs for 2004 (70 FR 35397, June 20, 2005), and the draft SARs for 2005 (70 FR 37091, June 28, 2005).

Summary of Changes to the Proposed LOF for 2006

The following summarizes changes in fishery classification including fisheries listed on the LOF, the number of participants in a particular fishery, and the species and/or stocks that are incidentally killed or seriously injured in a particular fishery that are proposed for the 2006 LOF. The placement and definitions of U.S. commercial fisheries proposed for 2006 are identical to those provided in the LOF for 2005 with the exceptions provided below.

Commercial Fisheries in the Pacific Ocean: Fishery Classification

NMFS proposes to reclassify the AK Bering Sea and Aleutian Islands Greenland turbot longline fishery from Category II to Category III. The 2005 LOF reclassified this fishery based on a mortality of a killer whale (stock unknown) that occurred in 1999. This observed mortality extrapolated to an estimated mortality level of 3 animals in 1999, and a 5-year average of 0.6 killer whales per year for 1999–2003. In 2004, there were no serious injuries or mortalities of this species in the Greenland turbot longline fishery. When possible, fishery classifications are based on the most recent 5 years of data for a commercial fishery. Thus for the years 2000–2004, the 5-year average level of serious injury and mortality of killer whales incidental to this fishery is zero. This fishery is regularly observed by the Alaska Fisheries Science Center North Pacific Groundfish Observer Program and NMFS expects that future serious injuries and mortalities of killer whales would be detected by the program. Therefore, NMFS proposes to reclassify this fishery from Category II to Category III.

NMFS proposes to reclassify the CA sardine purse seine fishery from Category III to Category II. This fishery includes all vessels using purse seine gear to target sardine off of the coast of California. Most fishing occurs off of southern California, and occurs year-round. Fishing within 3 nautical miles of shore is prohibited by state law. NMFS began placing observers onboard CA sardine purse seine vessels in 2004 to collect information regarding the fishery's potential to interact with marine mammals. Observers have

documented entanglements of California sea lions in this fishery. In addition, this fishery uses similar gear and fishing techniques to other Category II purse seine fisheries (e.g., CA anchovy) known to seriously injure or kill marine mammals. Therefore, NMFS is proposing to reclassify this fishery to Category II based on analogy as provided in 50 CFR 229.2.

Addition of Fisheries to the LOF

NMFS proposes to add the "American Samoa longline fishery" to the LOF as a Category III fishery. The fishery has 138 participants. There are no documented marine mammal injuries or mortalities incidental to this fishery. NMFS is initiating a fishery observer program in this fishery in early 2006 and will reevaluate this fishery's classification when new information becomes available.

NMFS proposes to add the "Western Pacific squid jig fishery" to the LOF as a Category III fishery. There are no documented marine mammal serious injuries or mortalities incidental to this fishery. The fishery has 6 participants. This fishery is a Japanese-style jig fishery that operates at night by attracting squid with a light source. In the U.S. Pacific squid jigging fishery, bycatch of marine mammals is purported to be extremely small; if marine mammals are hooked, they would break the relatively weak squid lines before being brought to the boat. A similar fishery operates in the waters near Southern Australia. A draft Bycatch Action Plan was prepared for this fishery by the Australian Fisheries Management Authority in 2003. The report states that a "global assessment of bycatch and discards across world fisheries found that squid jigging is a highly selective fishing method". Because of the high selectivity of this fishery and a lack of reliable information regarding marine mammal bycatch in this fishery, NMFS proposes to add this fishery to the LOF in Category III.

NMFS proposes to add the "HI Kona crab loop net fishery" with 42 participants to the LOF as a Category III fishery. The fishery is conducted using baited loop nets above sandy substrate and is constantly tended by fishers. No marine mammal injuries or mortalities in this fishery have been documented. Therefore, NMFS proposes to add this fishery as a Category III fishery.

NMFS proposes to add the "HI offshore pen culture fishery" to the LOF as a Category III fishery. The fishery has 2 participants. There have been no documented marine mammal serious

injuries or mortalities incidental to this fishery.

NMFS proposes to add the "CA marine shellfish aquaculture fishery" to the LOF as a Category III fishery. This fishery includes a variety of target species and gear types including: clams (cultured either via ground or bag culture), oysters (cultured via bag, rack and bag, longline, stake, bottom culture, or suspended culture), scallops (cultured via offshore tray-based systems), and mussels (cultured via suspension from rafts or surface longlines in the subtidal zone). NMFS does not currently have any information regarding the number of participants in this fishery and there have been no documented marine mammal serious injuries or mortalities incidental to this fishery.

NMFS proposes to add the "CA white seabass enhancement net pen fishery" to the LOF as a Category III fishery. The fishery consists of a total of 13 enhancement net pens from Santa Barbara to San Diego, CA that are used as grow-out facilities for juvenile white seabass before release. The pens consist of large, supported nets or fiberglass raceways. The raceways are large rectangular fiberglass structures with open ends covered by steel mesh and steel predator barriers. The pens vary in depth from 4–5 ft (1.22–1.52 m) and accommodate 2,000 to 5,000 fish. There have been two observed mortalities of the U.S. stock of California sea lions in this fishery. There are 13 participants in this fishery as each pen represents a participant.

Removal of Fisheries from the LOF

NMFS proposes to remove the "HI net unclassified fishery" from the LOF. Since implementation of new and revised reporting forms, fishers report specific net gear used. Therefore, this fishery as currently listed on the LOF is no longer appropriate.

Fishery Name and Organizational Changes and Clarifications

NMFS proposes to modify the name of the "HI tuna fishery" to the "HI tuna handline fishery" to better reflect the gear type used in this fishery.

NMFS proposes to modify the name of the "HI deep sea bottomfish fishery" to the "HI Main Hawaiian Islands and Northwest Hawaiian Islands deep sea bottomfish fishery".

NMFS proposes to modify the name of the "HI coral diving fishery" to the "HI black coral diving fishery" to represent the target species in this fishery.

NMFS proposes to modify the name of the "HI other fishery" to the "HI charter vessel fishery".

Number of Vessels/Persons

NMFS proposes to update the estimated number of participants in the Hawaii gillnet fishery from 115 to 35.

NMFS proposes to update the estimated number of participants in the Hawaii opelu/akule net fishery from 16 to 12.

NMFS proposes to update the estimated number of participants in the Hawaii purse seine fishery from 18 to 23.

NMFS proposes to update the estimated number of participants in the Hawaii fish pond fishery to N/A as the fishery is currently not operating. NMFS is retaining this fishery on the LOF as there may be participants in the near future.

NMFS proposes to update the estimated number of participants in the Hawaii throw net, cast net fishery from 47 to 14.

NMFS proposes to update the estimated number of participants in the Hawaii trolling, rod and reel fishery from 1,795 to 1,321.

NMFS proposes to update the estimated number of participants in the Hawaii lobster trap fishery to 0 as the fishery is currently inactive. However, 14 permits are available if this fishery reopened.

NMFS proposes to update the number of participants in the Hawaii aku boat, pole and line fishery from 54 to 4.

NMFS proposes to update the number of participants in the Hawaii inshore handline fishery from 650 to 307.

NMFS proposes to update the number of participants in the Hawaii tuna handline fishery (proposed name change from the "Hawaii tuna" fishery, see Fishery Name and Organizational Changes and Clarifications section) from 144 to 298.

NMFS proposes to update the number of participants in the HI main Hawaiian Islands and Northwest Hawaiian Islands deep sea bottomfish fishery (proposed name change from the "HI deep sea bottomfish fishery", see Fishery Name and Organizational Changes and Clarifications section) from 434 to 387.

NMFS proposes to update the number of participants in the HI black coral diving fishery (proposed name change from the "HI coral diving fishery", see Fishery Name and Organizational Changes and Clarifications section) from 2 to 1.

NMFS proposes to update the number of participants in the HI handpick fishery from 135 to 37.

NMFS proposes to update the number of participants in the HI lobster diving fishery from 6 to 19.

NMFS proposes to update the number of participants in the HI squidding, spear fishery from 267 to 91.

NMFS proposes to update the number of participants on the AK BSAI Greenland turbot longline fishery from 36 to 12.

List of Species That are Incidentally Injured or Killed

NMFS proposes to add common dolphins to the list of marine mammal species and stocks incidentally injured or killed by the California squid purse seine fishery. An observer documented a mortality of a common dolphin (stock unknown) in 2005.

NMFS proposes to add the Hawaiian stocks of Blaineville's beaked whales and Pantropical spotted dolphins to the list of marine mammal species and stocks incidentally injured or killed by the Hawaii swordfish, tuna, billfish, mahi mahi, wahoo, and oceanic sharks longline/set line fishery. Serious injuries and mortalities of these stocks incidental to this fishery were documented by fisheries observers.

NMFS proposes to delete the Hawaiian stock of bottlenose dolphins from the list of marine mammal species and stocks incidentally injured or killed by the Hawaii inshore handline fishery as no interactions have been documented between this stock and the fishery within the last 5 years.

NMFS proposes to delete the Hawaiian stocks of bottlenose dolphins and rough tooth dolphins from the list of marine mammal species and stocks incidentally injured or killed by the Hawaii tuna handline fishery (proposed name change from "Hawaii tuna fishery", see Fishery Name and Organizational Changes and Clarifications section) as no interactions have been documented between these stocks and this fishery within the last 5 years.

NMFS proposes to correct some errors in the list of marine mammal species and stocks incidentally injured or killed incidental to the CA/OR thresher shark/swordfish drift gillnet fishery.

Specifically, NMFS proposes to change the CA/OR/WA Pacific coast stock to the Eastern North Pacific offshore stock of killer whales and the CA/OR/WA stock to the CA stock of long-beaked common dolphins. Additionally, NMFS proposes to combine the Northern and Southern species of Pacific white-sided dolphins to reflect how these species are currently characterized in the SARs.

NMFS proposes to correct some errors in the list of marine mammal species

and stocks incidentally injured or killed incidental to the WA, OR, CA groundfish trawl fishery. Specifically, NMFS proposes to change the Central North Pacific stock to the CA/OR/WA stock of Pacific white-sided dolphins and the Western stock to the Eastern stock of Steller sea lions.

Alaska Fisheries

The 2004 LOF revised the Federally managed fisheries in Alaska into more discrete fisheries according to area, gear, and target species in order to more accurately reflect the fisheries as managed under Federal Fishery Management Plans. At that time, the marine mammal stocks associated with the newly delineated fisheries in the LOF were not revised accordingly. NMFS proposes to include the following marine mammal stocks that have had documented injuries or mortalities in the following Federal fisheries as listed in this proposed rule.

NMFS proposes to add the Eastern North Pacific stock of Northern fur seals, the Bering Sea stocks of harbor porpoise and harbor seals, and the Alaska stocks of bearded seals, spotted seals, and walrus to the list of marine mammal species and stocks injured or killed incidental to the AK BSAI flatfish trawl fishery.

NMFS proposes to add the Bering Sea stock of harbor seals and the Alaska stocks of Dall's porpoise, minke whales, ribbon seals, and spotted seals to the list of marine mammal species and stocks injured or killed incidental to the AK BSAI pollock trawl fishery.

NMFS proposes to add the Alaska stock of ribbon seals and the Western U.S. stock of Steller sea lions to the list of marine mammal species and stocks injured or killed incidental to the AK BSAI Pacific cod longline fishery.

NMFS proposes to add the Eastern U.S. stock of Steller sea lions and the North Pacific stock of sperm whales to the list of marine mammal species and stocks injured or killed incidental to the AK GOA sablefish longline fishery.

NMFS proposes to add the Western U.S. stock of Steller sea lions and the Bering Sea stock of harbor seals to the list of marine mammal species and stocks injured or killed incidental to the AK BSAI Pacific cod trawl fishery.

NMFS proposes to add the Western U.S. stock of Steller sea lions to the list of marine mammal species and stocks injured or killed incidental to the AK GOA Pacific cod trawl fishery.

NMFS proposes to add the Western U.S. stock of Steller sea lions, the Northeast Pacific stock of fin whales, and the North Pacific stock of Northern elephant seals to the list of marine

mammal species and stocks injured or killed incidental to the AK GOA pollock trawl fishery.

NMFS proposes to add the GOA stock of harbor seals to the list of marine mammal species and stocks injured or killed incidental to the AK GOA Pacific cod pot fishery.

NMFS proposes to add the Eastern and Western U.S. stocks of Steller sea lions and an unknown stock of killer whales to the list of marine mammal species and stocks injured or killed incidental to the AK, WA, OR, CA commercial passenger fishing vessel fishery.

NMFS proposes to add the Central North Pacific (Southeast AK) stock of humpback whales to the list of marine mammal species and stocks injured or killed incidental to the AK Southeast Alaska crab pot fishery.

NMFS proposes to add the Central North Pacific (Southeast AK) stock of humpback whales to the list of marine mammal species and stocks injured or killed incidental to the AK Southeast Alaska shrimp pot fishery.

NMFS proposes to add the Central North Pacific (Southeast AK) stock of humpback whales to the list of marine mammal species and stocks injured or killed incidental to the AK Yakutat salmon set gillnet fishery.

NMFS proposes to add the Western U.S. stock of Steller sea lions to the list of marine mammal species and stocks injured or killed incidental to the AK Kodiak salmon set gillnet fishery.

NMFS proposes to delete the Eastern North Pacific transient stock of killer whales from the list of marine mammals species and stocks injured or killed in the Alaska BSAI flatfish trawl fishery.

Because NMFS did not have information regarding which stock was injured or killed incidental to this fishery, both the Eastern North Pacific transient and resident stocks of killer whales were listed in the 2005 LOF as interacting with this fishery. However, since publication of the 2005 LOF, NMFS has obtained the results of genetic analysis on the biopsy samples taken from killer whales seriously injured or killed in this fishery. The results indicate that the fishery interacted with the resident stock of Eastern North Pacific killer whales. Therefore, NMFS proposes to remove the stock (transient) that did not interact with this fishery.

NMFS proposes to delete the Eastern North Pacific resident stock of killer whales from the list of marine mammals species and stocks incidentally injured or killed in the Alaska BSAI pollock trawl fishery. Because NMFS did not have information regarding which stock

was injured or killed incidental to this fishery, both the Eastern North Pacific transient and resident stocks of killer whales were listed in the 2005 LOF as interacting with this fishery. However, since publication of the 2005 LOF, NMFS has obtained the results of genetic analysis on the biopsy samples taken from killer whales seriously injured or killed in this fishery. These results indicate that the fishery interacted with the transient stock of Eastern North Pacific killer whales. Therefore, NMFS proposes to remove the stock (resident) that did not interact with this fishery.

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean: Fishery Classification

NMFS proposes to reclassify the Chesapeake Bay inshore gillnet fishery from Category III to Category II based on its potential to seriously injure or kill the Western North Atlantic stock of bottlenose dolphins. Bottlenose dolphins are known to use the entire Chesapeake Bay, including waters landward of the Chesapeake Bay Bridge-Tunnel. Since the Chesapeake Bay inshore gillnet fishery is currently a Category III fishery, observer coverage is not required; therefore, no marine mammal interactions with this fishery have been documented. However, serious injuries and mortalities of the Western North Atlantic stock of bottlenose dolphins have been documented in similar gillnet fisheries in the Mid-Atlantic, such as the Mid-Atlantic gillnet fishery and the North Carolina inshore gillnet fishery, both of which are currently Category II fisheries. Reclassifying the Chesapeake Bay inshore gillnet fishery to Category II will allow NMFS to characterize marine mammal interactions with this fishery through the observer program. Based on the potential overlap in distribution of the Western North Atlantic stock of bottlenose dolphins and this fishery, in addition to documented serious injuries and mortalities in similar gillnet gear, NMFS proposes to reclassify this fishery to Category II based on analogy as provided in 50 CFR 229.2.

NMFS proposes to reclassify the Mid-Atlantic menhaden purse seine fishery from Category III to Category II based on its potential to seriously injure or kill the Western North Atlantic stock of bottlenose dolphins. Since this fishery is currently a Category III fishery, observer coverage is not required; therefore, no marine mammal interactions with this fishery have been documented. However, according to the most recent stock assessment of the Western North Atlantic stock of

bottlenose dolphins, menhaden purse seiners have reported annual interactions of one to five bottlenose dolphins. In addition, the Gulf of Mexico menhaden purse seine fishery is classified as a Category II fishery based on documented bycatch of several bottlenose dolphin stocks, including the Northern, Eastern, and Western Gulf of Mexico coastal stocks, and the Gulf of Mexico bay, sound, and estuarine stock. Elevating this fishery to Category II will allow NMFS to characterize marine mammal interactions with this fishery through the observer program. Based on documented bycatch of bottlenose dolphins in purse seine gear, NMFS proposes to reclassify this fishery in Category II.

Addition of Fisheries to the LOF

NMFS proposes to add the "Southeast Atlantic inshore gillnet fishery" to the LOF as a Category III fishery. This fishery typically targets shad and river herring in inshore rivers and bays (inside the COLREGS lines). Despite the lack of adequate observer coverage in this fishery, NMFS has no evidence to suggest that there is more than a remote likelihood of marine mammal serious injuries or mortalities incidental to this fishery. The number of participants in this fishery is unknown.

List of Species That are Incidentally Injured or Killed

NMFS proposes to remove the Western North Atlantic stock of fin whales from the list of marine mammal species and stocks incidentally injured or killed incidental to the Mid-Atlantic gillnet fishery. NMFS added this stock in the 2005 LOF and has since confirmed that the NMFS observer program does not have a documented interaction between this stock and this fishery.

NMFS proposes to add several bottlenose dolphin stocks to the list of marine mammal species and stocks incidentally injured or killed incidental to the Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel fishery based on anecdotal reports of dolphins interacting with hook and line gear in both the Atlantic and Gulf of Mexico. These bottlenose dolphin stocks include the Western North Atlantic coastal, Eastern Gulf of Mexico coastal, Northern Gulf of Mexico coastal, and Western Gulf of Mexico coastal.

NMFS proposes to remove the Western North Atlantic offshore stock of bottlenose dolphins and the Western North Atlantic stock of striped dolphins from the list of marine mammal species and stocks injured or killed incidental

to the Northeast bottom trawl fishery because NMFS has not documented any serious injuries or mortalities of these stocks incidental to this fishery in the past 5 years.

Fishery Name and Organizational Changes and Clarifications

Southeast Atlantic Gillnet Fishery

NMFS proposes to expand the list of target species associated with the "Southeast Atlantic gillnet fishery". In the 2001 LOF (66 FR 42780, August 15, 2001), NMFS renamed all southeastern Atlantic gillnet fisheries (except the Southeastern U.S. Atlantic shark gillnet fishery) as the "Southeast Atlantic gillnet fishery", and elevated this fishery from Category III to Category II. This fishery designation included fisheries identified in previous LOFs as the "Florida East Coast pelagics king and Spanish mackerel gillnet fishery" and the "Southeast U.S. Atlantic coastal shad, sturgeon gillnet fishery". In 2006, NMFS received information from the Florida Fish and Wildlife Commission's trip ticket database that landings from 2002–2005 using gillnet gear on the east coast of Florida also include landings of whiting, bluefish, pompano, spot, croaker, little tunny, bonita, jack crevalle, and cobia, in addition to king and Spanish mackerel and shad. These species are targeted using both pelagic and demersal gillnet gear, each of which poses similar risks of entanglement to marine mammals. Therefore, NMFS proposes to expand the list of fish species associated with the "Southeast Atlantic gillnet fishery" to include the following target species: king mackerel, Spanish mackerel, whiting, bluefish, pompano, spot, croaker, little tunny, bonita, jack crevalle, and cobia. Atlantic sturgeon are listed as a species of concern under the Endangered Species Act and are also managed under a fishery management plan; a moratorium on possession and harvest of this species currently exists throughout the U.S. East Coast. Additionally, fishing for shad in ocean waters is prohibited by Southeast coastal states and is therefore no longer included as a target species of the Southeast Atlantic gillnet fishery.

List of Fisheries

The following two tables list U.S. commercial fisheries according to their assigned categories under section 118 of the MMPA. The estimated number of vessels/participants is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a

particular fishery is provided. If no recent information is available on the number of participants in a fishery, the number from the most recent LOF is used.

The tables also list the marine mammal species and stocks that are incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fisher reports. This list includes all species or stocks known to experience injury or mortality in a given fishery, but also includes species or stocks for which there are anecdotal records of

interaction. Additionally, species identified by logbook entries may not be verified. Not all species or stocks identified are the reason for a fishery's placement in a given category. NMFS has designated those stocks that are responsible for a current fishery's classification by a "1".

There are several fisheries classified in Category II that have no recently documented interactions with marine mammals. Justifications for placement of these fisheries are by analogy to other gear types that are known to cause mortality or serious injury of marine

mammals, as discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995), and according to factors listed in the definition of a "Category II fishery" in 50 CFR 229.2. NMFS has designated those fisheries originally listed by analogy in Tables 1 and 2 by a "2" after that fishery's name.

Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

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Table 1 - List of Fisheries Commercial Fisheries in the Pacific
Ocean

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
Category I		
<u>GILLNET FISHERIES:</u>		
CA angel shark/halibut and other species set gillnet (>3.5 in. mesh)	58	California sea lion, U.S. Harbor seal, CA Harbor porpoise, Central CA ¹ Long-beaked common dolphin, CA Northern elephant seal, CA breeding Sea otter, CA Short-beaked common dolphin, CA/OR/WA
CA/OR thresher shark/swordfish drift gillnet (≥14 in. mesh)	85	Baird's beaked whale, CA/OR/WA Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Cuvier's beaked whale, CA/OR/WA Dall's porpoise, CA/OR/WA Fin whale, CA/OR/WA Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA-Mexico Killer whale, Eastern North Pacific offshore Long-beaked common dolphin, CA Mesoplodont beaked whale, CA/OR/WA Northern elephant seal, CA breeding Northern fur seal, San Miguel Island Northern right-whale dolphin, CA/OR/WA Pacific white-sided dolphin, CA/OR/WA Pygmy sperm whale, CA/OR/WA Risso's dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA ¹ Sperm whale, CA/OR/WA Steller sea lion, Eastern U.S. Striped dolphin, CA/OR/WA
<u>LONGLINE/SET LINE FISHERIES:</u>		
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line	140	Blainville's beaked whale, HI Bottlenose dolphin, HI False killer whale, HI ¹ Humpback whale, Central North Pacific Pantropical spotted dolphin, HI Risso's dolphin, HI Short-finned pilot whale, HI Spinner dolphin, HI Sperm whale, HI
Category II		
<u>GILLNET FISHERIES:</u>		

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
AK Bristol Bay salmon drift gillnet ²	1,903	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Spotted seal, AK Steller sea lion, Western U.S. ¹
AK Bristol Bay salmon set gillnet ²	1,014	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Spotted seal, AK
AK Cook Inlet salmon drift gillnet	576	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA ¹ Harbor seal, GOA Steller sea lion, Western U.S.
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA ¹ Harbor seal, GOA Sea otter, Southwest AK Steller sea lion, Western U.S.
AK Metlakatla/Annette Island salmon drift gillnet ²	60	None documented
AK Peninsula/Aleutian Islands salmon drift gillnet ²	164	Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Northern fur seal, Eastern Pacific
AK Peninsula/Aleutian Islands salmon set gillnet ²	116	Harbor porpoise, Bering Sea Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	541	Dall's porpoise, AK Harbor porpoise, GOA ¹ Harbor seal, GOA Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Sea Otter, South Central AK Steller sea lion, Western U.S. ¹
AK Southeast salmon drift gillnet	481	Dall's porpoise, AK Harbor porpoise, Southeast AK Harbor seal, Southeast AK Humpback whale, Central North Pacific ¹ Pacific white-sided dolphin, North Pacific Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet ²	170	Gray whale, Eastern North Pacific Harbor seal, Southeast AK Humpback whale, Central North Pacific (Southeast AK)

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
CA yellowtail, barracuda, white seabass, and tuna drift gillnet fishery (mesh size > 3.5 inches and < 14 inches) ²	24	California sea lion, U.S. Long-beaked common dolphin, CA Short-beaked common dolphin, CA/OR/WA
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded)	210	Dall's porpoise, CA/OR/WA Harbor porpoise, inland WA ¹ Harbor seal, WA inland
<u>PURSE SEINE FISHERIES:</u>		
AK Southeast salmon purse seine	416	Humpback whale, Central North Pacific ¹
CA anchovy, mackerel, tuna purse seine	110	Bottlenose dolphin, CA/OR/WA offshore ¹ California sea lion, U.S. Harbor seal, CA
CA sardine purse seine ²	110	California sea lion, U.S.
CA squid purse seine	65	Common dolphin, unknown Short-finned pilot whale, CA/OR/WA ¹
<u>TRAWL FISHERIES:</u>		
AK miscellaneous finfish pair trawl	2	None documented
AK Bering Sea, Aleutian Islands flatfish trawl	26	Bearded seal, AK Harbor porpoise, Bering Sea Harbor seal, Bering Sea Killer whale, AK resident ¹ Northern fur seal, Eastern North Pacific Spotted seal, AK Steller sea lion, Western U.S. ¹ Walrus, AK
AK Bering Sea, Aleutian Islands pollock trawl	120	Dall's porpoise, AK Harbor seal, AK Humpback whale, Central North Pacific ¹ Humpback whale, Western North Pacific ¹ Killer whale, Eastern North Pacific, GOA, Aleutian Islands, and Bering Sea transient ¹ Minke whale, AK Ribbon seal, AK Spotted seal, AK Steller sea lion, Western U.S. ¹
<u>LOONGLINE/SET LINE FISHERIES:</u>		

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
AK Bering Sea, Aleutian Islands Pacific cod longline	114	Killer whale, AK resident ¹ Killer whale, Eastern North Pacific, GOA, Aleutian Islands, and Bering Sea transient ¹ Ribbon seal, AK Steller sea lion, Western U.S.
CA pelagic longline ²	6	California sea lion, U.S. Risso's dolphin, CA/OR/WA
OR swordfish floating longline ²	0	None documented
OR blue shark floating longline ²	1	None documented
<u>POT, RING NET, AND TRAP FISHERIES:</u>		
AK Bering Sea sablefish pot	6	Humpback whale, Central North Pacific ¹ Humpback whale, Western North Pacific ¹
Category III		
<u>GILLNET FISHERIES:</u>		
AK Cook Inlet salmon set gillnet	745	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Steller sea lion, Western U.S.
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	1,922	Harbor porpoise, Bering Sea
AK miscellaneous finfish set gillnet	3	Steller sea lion, Western U.S.
AK Prince William Sound salmon set gillnet	30	Harbor seal, GOA Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	2,034	None documented
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less	341	None documented
Hawaii gillnet	35	Bottlenose dolphin, HI Spinner dolphin, HI
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing)	24	Harbor seal, OR/WA coast
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet	913	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
WA, OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S. Harbor seal, OR/WA coast
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
<u>PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:</u>		
AK Metlakatla salmon purse seine	10	None documented
AK miscellaneous finfish beach seine	1	None documented
AK miscellaneous finfish purse seine	3	None documented
AK octopus/squid purse seine	2	None documented
AK roe herring and food/bait herring beach seine	8	None documented
AK roe herring and food/bait herring purse seine	624	None documented
AK salmon beach seine	34	None documented
AK salmon purse seine (except Southeast Alaska, which is in Category II)	953	Harbor seal, GOA
CA herring purse seine	100	California sea lion, U.S. Harbor seal, CA
HI Kona crab loop net	42	None documented
HI opelu/akule net	12	None documented
HI purse seine	23	None documented
HI throw net, cast net	14	None documented
WA (all species) beach seine or drag seine	235	None documented
WA, OR herring, smelt, squid purse seine or lampara	130	None documented
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented
<u>DIP NET FISHERIES:</u>		
CA squid dip net	115	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
WA, OR smelt, herring dip net	119	None documented
<u>MARINE AQUACULTURE FISHERIES:</u>		
CA marine shellfish aquaculture	unknown	None documented
CA salmon enhancement rearing pen	>1	None documented
CA white seabass enhancement net pens	13	California sea lion, U.S.
HI offshore pen culture	2	None documented
OR salmon ranch	1	None documented
WA, OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
<u>TROLL FISHERIES:</u>		
AK North Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries	1,530 (330 AK)	None documented
AK salmon troll	2,335	Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
American Samoa tuna troll	<50	None documented
CA/OR/WA salmon troll	4,300	None documented
Commonwealth of the Northern Mariana Islands tuna troll	50	None documented
Guam tuna troll	50	None documented
HI trolling, rod and reel	1,321	None documented
<u>LONGLINE/SET LINE FISHERIES:</u>		
AK Bering Sea, Aleutian Islands Greenland turbot longline	12	Killer whale, AK resident Killer whale, Eastern North Pacific, GOA, Aleutian Islands, and Bering Sea transient
AK Bering Sea, Aleutian Islands rockfish longline	17	None documented
AK Bering Sea, Aleutian Islands sablefish longline	63	None documented
AK Gulf of Alaska halibut longline	1302	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
AK Gulf of Alaska Pacific cod longline	440	None documented
AK Gulf of Alaska rockfish longline	421	None documented
AK Gulf of Alaska sablefish longline	412	Sperm whale, North Pacific Steller sea lion, Eastern U.S.
AK halibut longline/set line (State and Federal waters)	3,079	Steller sea lion, Western U.S.
AK octopus/squid longline	7	None documented
AK state-managed waters groundfish longline/setline (including sablefish, rockfish, and miscellaneous finfish)	731	None documented
American Samoa longline	138	None documented
WA, OR, CA groundfish, bottomfish longline/set line	367	None documented
WA, OR North Pacific halibut longline/set line	350	None documented
<u>TRAWL FISHERIES:</u>		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	8	Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	87	Harbor seal, Bering Sea Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands rockfish trawl	9	None documented
AK Gulf of Alaska flatfish trawl	52	None documented
AK Gulf of Alaska Pacific cod trawl	101	Steller sea lion, Western U.S.
AK Gulf of Alaska pollock trawl	83	Fin whale, Northeast Pacific Northern elephant seal, North Pacific Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish trawl	45	None documented
AK food/bait herring trawl	3	None documented
AK miscellaneous finfish otter or beam trawl	6	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	58	None documented
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl	2	None documented
WA, OR, CA groundfish trawl	585	California sea lion, U.S. Dall's porpoise, CA/OR/WA Harbor seal, OR/WA coast Northern fur seal, Eastern Pacific Pacific white-sided dolphin, CA/OR/WA Steller sea lion, Eastern U.S.
WA, OR, CA shrimp trawl	300	None documented
<u>POT, RING NET, AND TRAP FISHERIES:</u>		
AK Aleutian Islands sablefish pot	8	None documented
AK Bering Sea, Aleutian Islands Pacific cod pot	76	None documented
AK Bering Sea, Aleutian Islands crab pot	329	None documented
AK Gulf of Alaska crab pot	unknown	None documented
AK Gulf of Alaska Pacific cod pot	154	Harbor seal, GOA
AK Southeast Alaska crab pot	unknown	Humpback whale, Central North Pacific (Southeast AK)
AK Southeast Alaska shrimp pot	unknown	Humpback whale, Central North Pacific (Southeast AK)
AK octopus/squid pot	72	None documented
AK snail pot	2	None documented
CA lobster, prawn, shrimp, rock crab, fish pot	608	Sea otter, CA
OR, CA hagfish pot or trap	25	None documented
WA, OR, CA crab pot	1,478	Gray whale, Eastern North Pacific
WA, OR, CA sablefish pot	176	None documented
WA, OR shrimp pot/trap	254	None documented
HI crab trap	22	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
HI fish trap	19	None documented
HI lobster trap	0	Hawaiian monk seal
HI shrimp trap	5	None documented
<u>HANDLINE AND JIG FISHERIES:</u>		
AK miscellaneous finfish handline and mechanical jig	100	None documented
AK North Pacific halibut handline and mechanical jig	93	None documented
AK octopus/squid handline	2	None documented
American Samoa bottomfish	<50	None documented
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented
Guam bottomfish	<50	None documented
HI aku boat, pole and line	4	None documented
HI Main Hawaiian Islands, Northwest Hawaiian Islands deep sea bottomfish	387	Hawaiian monk seal
HI inshore handline	307	None documented
HI tuna handline	298	Hawaiian monk seal
WA groundfish, bottomfish jig	679	None documented
Western Pacific squid jig	6	None documented
<u>HARPOON FISHERIES:</u>		
CA swordfish harpoon	30	None documented
<u>POUND NET/WEIR FISHERIES:</u>		
AK herring spawn on kelp pound net	452	None documented
AK Southeast herring roe/food/bait pound net	3	None documented
WA herring brush weir	1	None documented
<u>BAIT PENS:</u>		
WA/OR/CA bait pens	13	California sea lion, U.S.
<u>DREDGE FISHERIES:</u>		

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
Coastwide scallop dredge	108 (12 AK)	None documented
<u>DIVE, HAND/MECHANICAL COLLECTION FISHERIES:</u>		
AK abalone	1	None documented
AK clam	156	None documented
WA herring spawn on kelp	4	None documented
AK dungeness crab	3	None documented
AK herring spawn on kelp	363	None documented
AK urchin and other fish/shellfish	471	None documented
CA abalone	111	None documented
CA sea urchin	583	None documented
HI black coral diving	1	None documented
HI fish pond	N/A	None documented
HI handpick	37	None documented
HI lobster diving	19	None documented
HI squidding, spear	91	None documented
WA, CA kelp	4	None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection	637	None documented
WA shellfish aquaculture	684	None documented
<u>COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:</u>		
AK, WA, OR, CA commercial passenger fishing vessel	>7,000 (1,107 AK)	Killer whale, stock unknown Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
HI charter vessel	114	None documented
<u>LIVE FINFISH/SHELLFISH FISHERIES:</u>		
CA finfish and shellfish live trap/hook-and-line	93	None documented

List of Abbreviations and Symbols Used in Table 1: AK - Alaska; CA - California; GOA - Gulf of Alaska; HI - Hawaii; OR - Oregon; WA - Washington; ¹ - Serious injuries and mortalities of this stock are greater than 1 percent, but less than 50 percent of the stock's PBR; therefore, bycatch of this stock determines this fishery's classification; ² - Fishery classified by analogy.

Table 2 - List of Fisheries Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
Category I		
<u>GILLNET FISHERIES:</u>		
Mid-Atlantic gillnet	>655	Bottlenose dolphin, WNA coastal ¹ Bottlenose dolphin, WNA offshore ¹ Common dolphin, WNA Gray seal, WNA Harbor porpoise, GME/BF ¹ Harbor seal, WNA Harp seal, WNA Humpback whale, Gulf of Maine ¹ Long-finned pilot whale, WNA Minke whale, Canadian east coast ¹ Short-finned pilot whale, WNA White-sided dolphin, WNA
Northeast sink gillnet	341	Bottlenose dolphin, WNA offshore Common dolphin, WNA Fin whale, WNA Gray seal, WNA Harbor porpoise, GME/BF ¹ Harbor seal, WNA Harp seal, WNA Hooded seal, WNA Humpback whale, WNA ¹ Minke whale, Canadian east coast ¹ North Atlantic right whale, WNA ¹ Risso's dolphin, WNA White-sided dolphin, WNA
<u>LOGLINE FISHERIES:</u>		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline	<200	Atlantic spotted dolphin, Northern GMX Atlantic spotted dolphin, WNA Bottlenose dolphin, GMX outer continental shelf Bottlenose dolphin, GMX, continental shelf edge and slope Bottlenose dolphin, WNA offshore Common dolphin, WNA Cuvier's beaked whale, WNA Long-finned pilot whale, WNA ¹ Mesoplodon beaked whale, WNA Pantropical spotted dolphin, Northern GMX Pantropical spotted dolphin, WNA Pygmy sperm whale, WNA ¹ Risso's dolphin, Northern GMX Risso's dolphin, WNA Short-finned pilot whale, Northern GMX Short-finned pilot whale, WNA ¹

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
<u>TRAP/POT FISHERIES:</u>		
Northeast/Mid-Atlantic American lobster trap/pot	13,000	Fin whale, WNA Harbor seal, WNA Humpback whale, WNA ¹ Minke whale, Canadian east coast ¹ North Atlantic right whale, WNA ¹
<u>TRAWL FISHERIES:</u>		
Mid-Atlantic mid-water trawl (including pair trawl)	620	Bottlenose dolphin, WNA offshore Common dolphin, WNA ¹ Long-finned pilot whale, WNA ¹ Risso's dolphin, WNA Short-finned pilot whale, WNA ¹ White-sided dolphin, WNA ¹
Category II		
<u>GILLNET FISHERIES:</u>		
Chesapeake Bay inshore gillnet ²	45	None documented
Gulf of Mexico gillnet ²	724	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, and estuarine Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal
North Carolina inshore gillnet	94	Bottlenose dolphin, WNA coastal ¹
Northeast anchored float gillnet ²	133	Harbor seal, WNA Humpback whale, WNA White-sided dolphin, WNA
Northeast drift gillnet ²	unknown	None documented
Southeast Atlantic gillnet ²	779	Bottlenose dolphin, WNA coastal
Southeastern U.S. Atlantic shark gillnet	6	Atlantic spotted dolphin, WNA Bottlenose dolphin, WNA coastal ¹ North Atlantic right whale, WNA
<u>TRAWL FISHERIES:</u>		
Mid-Atlantic bottom trawl	>1,000	Common dolphin, WNA ¹ Long-finned pilot whale, WNA ¹ Short-finned pilot whale, WNA ¹
Northeast mid-water trawl (including pair trawl)	17	Harbor seal, WNA Long-finned pilot whale, WNA ¹ Short-finned pilot whale, WNA ¹ White-sided dolphin, WNA

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
Northeast bottom trawl	1,052	Common dolphin, WNA Harbor porpoise, GME/BF Harp seal, WNA ¹ Long-finned pilot whale, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA ¹
<u>TRAP/POT FISHERIES:</u>		
Atlantic blue crab trap/pot	>16,000	Bottlenose dolphin, WNA coastal ¹ West Indian manatee, FL ¹
Atlantic mixed species trap/pot	unknown	Fin whale, WNA Humpback whale, Gulf of Maine ¹
<u>PURSE SEINE FISHERIES:</u>		
Gulf of Mexico menhaden purse seine	50	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine Bottlenose dolphin, Northern GMX coastal ¹ Bottlenose dolphin, Western GMX coastal
Mid-Atlantic menhaden purse seine ²	22	Bottlenose dolphin, WNA coastal
<u>HAUL/BEACH SEINE FISHERIES:</u>		
Mid-Atlantic haul/beach seine	25	Bottlenose dolphin, WNA coastal ¹ Harbor porpoise, GME/BF
North Carolina long haul seine	33	Bottlenose dolphin, WNA coastal ¹
<u>STOP NET FISHERIES:</u>		
North Carolina roe mullet stop net	13	Bottlenose dolphin, WNA coastal ¹
<u>POUND NET FISHERIES:</u>		
Virginia pound net	187	Bottlenose dolphin, WNA coastal ¹
Category III		
<u>GILLNET FISHERIES:</u>		
Caribbean gillnet	>991	Dwarf sperm whale, WNA West Indian manatee, Antillean
Delaware River inshore gillnet	60	None documented
Long Island Sound inshore gillnet	20	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet	32	None documented
Southeast Atlantic inshore gillnet	unknown	None documented
<u>TRAWL FISHERIES:</u>		
Atlantic shellfish bottom trawl	972	None documented
Gulf of Mexico butterflyfish trawl	2	Bottlenose dolphin, Northern GMX outer continental shelf Bottlenose dolphin, Northern GMX continental shelf edge and slope
Gulf of Mexico mixed species trawl	20	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	>18,000	Bottlenose dolphin, WNA coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine West Indian Manatee, FL
<u>MARINE AQUACULTURE FISHERIES:</u>		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
<u>PURSE SEINE FISHERIES:</u>		
Gulf of Maine Atlantic herring purse seine	30	Harbor porpoise, GME/BF Harbor seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	50	None documented
Florida west coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
U.S. Atlantic tuna purse seine	5	Long-finned pilot whale, WNA Short-finned pilot whale, WNA
U.S. Mid-Atlantic hand seine	>250	None documented
<u>LONGLINE/HOOK-AND-LINE FISHERIES:</u>		
Northeast/Mid-Atlantic bottom longline/hook-and-line	46	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon	26,223	Humpback whale, WNA
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line	>5,000	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line	<125	None documented
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon	1,446	None documented
<u>TRAP/POT FISHERIES</u>		
Caribbean mixed species trap/pot	>501	None documented
Caribbean spiny lobster trap/pot	>197	None documented
Florida spiny lobster trap/pot	2,145	Bottlenose dolphin, Eastern GMX coastal
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine West Indian manatee, FL
Gulf of Mexico mixed species trap/pot	unknown	None documented
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot	10	None documented
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot	4,453	None documented
U.S. Mid-Atlantic eel trap/pot	>700	None documented
<u>STOP SEINE/WEIR/POUND NET FISHERIES:</u>		

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	Gray seal, Northwest North Atlantic Harbor porpoise, GME/BF Harbor seal, WNA Minke whale, Canadian east coast White-sided dolphin, WNA
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the North Carolina roe mullet stop net)	751	None documented
<u>DREDGE FISHERIES:</u>		
Gulf of Maine mussel	>50	None documented
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	233	None documented
U.S. Mid-Atlantic/Gulf of Mexico oyster	7,000	None documented
U.S. Mid-Atlantic offshore surf clam and quahog dredge	100	None documented
<u>HAUL/BEACH SEINE FISHERIES:</u>		
Caribbean haul/beach seine	15	West Indian manatee, Antillean
Gulf of Mexico haul/beach seine	unknown	None documented
Southeastern U.S. Atlantic, haul/beach seine	25	None documented
<u>DIVE, HAND/MECHANICAL COLLECTION FISHERIES:</u>		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection	20,000	None documented
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net	unknown	None documented
<u>COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:</u>		

Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel	4,000	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, WNA coastal
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List of Abbreviations and Symbols Used in Table 2: FL - Florida; GA - Georgia; GME/BF - Gulf of Maine/Bay of Fundy; GMX - Gulf of Mexico; NC - North Carolina; SC - South Carolina; TX - Texas; WNA - Western North Atlantic; ¹ - Serious injuries and mortalities of this stock are greater than 1 percent, but less than 50 percent of the stock's PBR; therefore, bycatch of this stock determines this fishery's classification; ² - Fishery classified by analogy.

BILLING CODE 3510-22-C

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule would not have a significant economic impact on a substantial number of small entities. For convenience, the factual basis leading to the certification is repeated below.

Under existing regulations, all fishers participating in Category I or II fisheries must register under the MMPA, obtain an Authorization Certificate, and pay a fee of \$25. Additionally, fishers may be subject to a take reduction plan and requested to carry an observer. The Authorization Certificate authorizes the taking of marine mammals incidental to commercial fishing operations. NMFS has estimated that approximately 41,730 fishing vessels, most of which are small entities, operate in Category I or II fisheries, and therefore, are required to register. However, registration has been integrated with existing state or Federal registration programs for the majority of these fisheries so that the majority of fishers do not need to register separately under the MMPA. Currently, approximately 500 fishers register directly with NMFS under the MMPA authorization program.

Though this proposed rule would affect approximately 500 small entities, the \$25 registration fee, with respect to anticipated revenues, is not considered a significant economic impact. If a vessel is requested to carry an observer, fishers will not incur any economic costs associated with carrying that observer. As a result of this certification, an initial regulatory flexibility analysis was not prepared. In the event that reclassification of a fishery to Category I or II results in a take reduction plan, economic analyses of the effects of that plan will be summarized in subsequent rulemaking actions. Further, if a vessel is requested to carry an observer, fishers

will not incur any economic costs associated with carrying that observer.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the registration of fishers under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648-0293 (0.15 hours per report for new registrants and 0.09 hours per report for renewals). The requirement for reporting marine mammal injuries or mortalities has been approved by OMB under OMB control number 0648-0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

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

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA (1995 EA). NMFS revised that EA relative to classifying U.S. commercial fisheries on the LOF in December 2005. Both the 1995 and 2005 EA concluded that implementation of MMPA section 118 regulations would not have a significant impact on the human environment. This proposed rule would not make any significant change

in the management of reclassified fisheries, and therefore, this proposed rule is not expected to change the analysis or conclusion of the 2005 EA. If NMFS takes a management action, for example, through the development of a Take Reduction Plan (TRP), NMFS will first prepare an environmental document, as required under NEPA, specific to that action.

This proposed rule would not affect species listed as threatened or endangered under the Endangered Species Act (ESA) or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this proposed rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would conduct consultation under ESA section 7 for that action.

This proposed rule would have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs or take reduction teams.

This proposed rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

Dated: April 18, 2006.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 06-3838 Filed 4-21-06; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 680**

[Docket No.: 060404093-6093-01; I.D. 033106A]

RIN 0648-AU24

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes changes to the regulations implementing the Crab Rationalization Program. This action is necessary to correct two discrepancies in the scope of the sideboard protections for Gulf of Alaska (GOA) groundfish fisheries provided in a previous rulemaking. Specifically, this action would remove the sideboard restrictions from vessels that did not generate Bering Sea snow crab (*Chionoecetes opilio*) quota share and would apply the sideboards to federally permitted vessels operating in the State of Alaska (State) parallel fisheries. This proposed rule is intended to promote the goals and objectives of the Fishery Management Plan for Bering Sea/Aleutian Islands (BSAI) King and Tanner Crabs (FMP), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable law.

DATES: Written comments must be received no later than May 9, 2006.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Records Administrator. Comments may be submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.
- Fax: 907-586-7557.
- E-mail: 0648-AU24-

sideboard680.22@noaa.gov. Include in the subject line of the e-mail the following document identifier: GOA sideboards. E-mail comments, with or without attachments, are limited to 5 megabytes.

- Webform at the Federal eRulemaking Portal: [http://](http://www.regulations.gov)

www.regulations.gov. Follow the instructions at that site for submitting comments.

Copies of the regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA), prepared for this action and copies of the Bering Sea Aleutian Islands Crab Fisheries Final Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis/Social Impact Assessment (EIS/RIR/IRFA/SIA) prepared for the Crab Rationalization Program are available from NMFS at the mailing address specified above or from the NMFS Alaska Region Web site at <http://www.fakr.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907-586-7228 or gretchen.harrington@noaa.gov.

SUPPLEMENTARY INFORMATION: In January 2004, the U.S. Congress amended section 313(j) of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Public Law 108-199, section 801). As amended, section 313(j)(1) requires the Secretary of Commerce to approve and implement by regulation the Crab Rationalization Program (Program), as it was approved by the North Pacific Fishery Management Council (Council). In June 2004, the Council consolidated its actions on the Program into Amendment 18 to the FMP. Additionally, in June 2004, the Council developed Amendment 19 to the FMP, which represents minor changes necessary to implement the Program.

A notice of availability for Amendments 18 and 19 was published in the **Federal Register** on September 1, 2004 (69 FR 53397). NMFS published a proposed rule to implement Amendments 18 and 19 on October 29, 2004 (69 FR 63200). NMFS approved Amendments 18 and 19 on November 19, 2004. NMFS published a final rule to implement Amendments 18 and 19 on March 2, 2005 (70 FR 10174) and a final rule (70 FR 13097; March 18, 2005) to correct OMB control numbers provided in the final rule dated March 2, 2005 (70 FR 10174). NMFS also published two final rules (70 FR 33390; June 8, 2005, and 70 FR 75419; December 20, 2005) to correct certain provisions in the final rule dated March 2, 2005 (70 FR 10174).

NMFS intends to correct two aspects of the sideboard provisions in the regulations implementing the Program. One change would remove the sideboard limits from vessels that did not generate Bering Sea snow crab quota share under the Program. The second change would clarify that the sideboards apply to federally permitted vessels that

fish in the State parallel groundfish fisheries. These changes are necessary to implement the Program's sideboard provisions.

State parallel fisheries occur in State waters but are opened at the same time as Federal fisheries in Federal waters. State parallel fishery harvests are considered part of the Federal total allowable catch (TAC) and federally-permitted vessels move between State and Federal waters during the concurrent parallel and Federal fisheries. The State opens the parallel fisheries through emergency order by adopting the groundfish seasons, bycatch limits, and allowable gear types that apply in the adjacent Federal fisheries.

Sideboard Provisions

Sideboard limits restrict the ability of vessels whose histories resulted in Bering Sea snow crab quota share, or fishing under License Limitation Program (LLP) licenses derived from those vessels, to participate in GOA groundfish fisheries. The purpose of the sideboard limits is to prevent vessels that traditionally participated in the Bering Sea snow crab fishery from using the flexibility of the Program to increase their participation in the GOA groundfish fisheries, and primarily the GOA Pacific cod fishery. Historically, the Bering Sea snow crab fishery and GOA groundfish fisheries operated concurrently from January through March, meaning that a crab vessel owner had to decide whether to fish for Bering Sea snow crab or GOA groundfish but could not participate fully in both fisheries. With crab rationalization, vessel owners have the flexibility to fish for snow crab during a greatly extended season, or to lease their crab individual fishing quota (IFQ) and not fish at all. This increased flexibility for crab fishermen could lead to increases in fishing effort in GOA groundfish fisheries, especially the Pacific cod fishery, and could negatively affect the other participants in those fisheries.

This concern about spillover effects is limited primarily to the GOA where the Pacific cod TAC is not allocated among gear types. In the BSAI, most of the Pacific cod TAC is allocated to vessels using longline and trawl gear, and LLP license restrictions prevent the entry of new pot vessels into the BSAI Pacific cod fishery. Hence, snow crab fishermen who wish to increase their groundfish fishing activity would do so primarily in the GOA Pacific cod fishery.

The GOA groundfish sideboard restrictions are intended to apply to any crab vessel that: (1) Is not authorized

under the American Fisheries Act, (2) has a fishing history that generated any amount of Bering Sea snow crab quota share, (3) has an LLP license earned in whole or in part by the crab fishing history of such vessels, or (4) is fishing under an LLP license derived in whole or in part from a vessel in (1) through (4). Those snow crab vessels subject to GOA groundfish sideboard restrictions are limited, in the aggregate, from harvesting an amount of each GOA groundfish species that exceeds the percentage of each species that such vessels retained, in the aggregate, from 1996 to 2000, relative to the total retained catch of each species by all groundfish vessels during the same period. The sideboard restrictions also are apportioned by season and/or area for each GOA groundfish TAC that is apportioned by season or area.

Some additional sideboard restrictions and exemptions for GOA Pacific cod do not apply to other GOA groundfish species. Any vessel subject to GOA groundfish sideboards that landed less than 50 mt (110,231 lb) of GOA groundfish between 1996 and 2000, is prohibited from engaging in directed fishing for GOA Pacific cod at all times. Additionally, any vessel that landed less than 100,000 pounds (45.4 mt) of Bering Sea snow crab and more than 500 mt (1,102,311 lb) of GOA Pacific cod between 1996 and 2000 is exempt from the GOA Pacific cod sideboard restrictions. These sideboard restrictions also apply to any vessel fishing under an LLP license earned by the crab fishing history of such vessel.

NMFS notified all persons who own a vessel or hold a LLP license subject to the sideboard restrictions by issuing amended Federal fisheries permits and LLP licenses to each affected vessel owner or LLP license holder. The amended Federal fisheries permits and LLP licenses display the type of sideboard restriction on the face of the permit or license.

Need for Regulatory Changes

This action proposes two changes to the regulations governing sideboard protections for the GOA groundfish fisheries at 50 CFR part 680.22. The first change would remove the sideboard restrictions from vessels whose histories did not generate Bering Sea snow crab quota share. The second change would clarify that the sideboard restrictions apply to federally permitted vessels that fish in the State parallel groundfish fisheries.

The Council intended the sideboards to apply to vessels that qualify for Bering Sea snow crab quota share under the Program. The proposed rule for the

Program included regulatory language to this effect (69 FR 63200, October 29, 2004). However, this language was changed in the final rule to apply the sideboards to vessels that had landings during the qualifying period. This change has the unintended consequence of applying the sideboards to vessels that did not qualify for quota share. NMFS proposes to change the regulatory language to reflect the original language in the Program's proposed rule. NMFS received no public comments on this aspect of the Program's proposed rule.

The existing regulations restrict participation in Federal fisheries but not in the adjacent State waters fisheries. This omission in the regulations would allow vessels whose history generated quota share to increase their participation in the groundfish fisheries. NMFS proposes to change the regulations to clarify that the GOA groundfish sideboard directed fishing closures apply to federally permitted vessels while fishing in the State parallel fisheries.

The Council developed the sideboard limits to prevent vessels that traditionally participated in the Bering Sea snow crab fishery from using the flexibility of the Program to increase their participation in the GOA groundfish fisheries, primarily the GOA Pacific cod fishery. Amendment 18 does not specifically apply the sideboard limits to vessels operating in the State parallel fisheries. Amendment 18 required cooperatives to limit their members' aggregate Pacific cod catch in both Federal and State waters to the sideboard amount. In a letter dated June 2, 2004, NMFS requested that the Council remove the requirement that cooperatives manage the sideboard fishing activity of their members because NMFS determined this provision was not practical or enforceable. In the same letter, NMFS informed the Council that it would manage the groundfish sideboards through fleet-wide directed fishing closures for Federal waters and the parallel fishery in State waters. The Council removed the cooperative management requirement paragraph in Amendment 19. However, deleting this paragraph had the effect of removing from the FMP the sideboard limits for vessels fishing in State waters.

NMFS finds it necessary to apply the sideboard limits to federally permitted vessels fishing in State parallel fisheries in order to implement the FMP. Without this regulatory change, vessels that traditionally participated in the Bering Sea snow crab fishery could use the flexibility of the Program to increase their participation in the GOA

groundfish fisheries, and primarily the GOA Pacific cod fishery, because they could circumvent the directed fishing closures by fishing in State waters. NMFS has notified the public that it will implement the sideboard limits in the State parallel fisheries in the preamble to the proposed and final rules for the Program and in the notice of availability for Amendments 18 and 19.

Classification

NMFS has determined that the proposed rule is consistent with the FMP and preliminarily determined that the rule is consistent with the Magnuson-Stevens Act and other applicable laws.

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

NMFS prepared an initial regulatory flexibility analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact 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 it are included at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Number and Description of Small Entities Directly Regulated by the Proposed Action

One hundred and ninety-five entities are subject to the sideboard regulations and fish in the GOA groundfish fisheries. A fishing operation is considered to be a small entity for RFA purposes if its total annual gross receipts, from all sources, is less than \$4 million. The 2004 gross revenue data from the State fishticket database is readily available and includes revenue from all fishing operations in Alaska and adjacent EEZ waters. Based on these data, as many as 189 of the 195 entities may be considered small.

Impacts on Directly Regulated Small Entities

The Council created the sideboards with the expressed purpose of restricting the owners of vessels acquiring snow crab quota share from using the resulting increased operational flexibility to expand their participation in the already fully subscribed GOA groundfish fisheries. The proposed regulatory changes are necessary owing to the introduction of two inconsistencies that exist between the Program provisions and the language in the implementing

regulations. These corrections will implement the sideboards as intended by the Council and mandated by section 313(j) of the Magnuson-Stevens Act.

Sideboards on vessels without quota share. Six small entities, as defined for RFA purposes, would be directly regulated by the removal of the sideboard provisions from vessels that did not generate snow crab quota shares. These six are currently, although inadvertently, subject to the economic burden of the sideboard restrictions, despite not having qualified for snow crab quota shares. The proposed action would lift this uncompensated burden from these six small entities by removing their sideboard restrictions.

Sideboards in the State parallel groundfish fisheries. As promulgated, the current language may allow federally permitted vessels to circumvent the Program's sideboards by fishing only in the State parallel groundfish fisheries in the GOA. Since the start of the 2006 A season Pacific cod fishery (the first GOA groundfish opening following implementation of the current Program provisions), no vessels prohibited by these sideboard provisions from fishing for Pacific cod have fished in the State parallel fisheries. The fact that no vessels currently are exploiting this loophole in the regulations is testament to the clear intent that the sideboards apply to the State parallel fisheries, and the plain language understanding of the term "GOA." This action proposes to correct the sideboard provisions of the Program's implementing regulations, by applying them to federally permitted vessels fishing in State parallel groundfish fisheries. Therefore, the preferred action has no economic effects beyond those considered in the EIS/RIR/IRFA/SIA prepared for the Program (see **ADDRESSES**).

Sideboard restrictions prevent adverse spillover effects in other fisheries from an influx of effort from the rationalized crab fisheries. The Crab Rationalization Program, because it issued quota share to vessel owners and provided them the ability to form cooperatives, provides these directly regulated entities huge economic benefits, as discussed in the EIS/RIR/IRFA/SIA prepared for the

Program (see **ADDRESSES**). As discussed in that analysis, the sideboard limits prevent these participants from using these benefits to increase their effort in the GOA groundfish fisheries. The sideboard restrictions provide the sideboarded vessels the ability to maintain their historic harvest levels in GOA groundfish fisheries therefore they do not make the sideboarded vessels worse-off economically. Vessels with minimal harvests in the snow crab fisheries and substantial harvests in the Pacific cod fishery would be exempt from the sideboard restrictions, since these vessels have little dependence on the crab fisheries. In addition, vessels with less than a minimum historic harvest from GOA groundfish fisheries are not permitted to participate in GOA groundfish fisheries.

The proposed action does not likely have the potential to impose disproportionate impacts on small entities, relative to large entities. The regulatory change applying the sideboard constraints to State waters during the parallel fisheries would provide all qualifying vessels, large and small, a level playing field upon which to operate, as had been the intention of the Council from the outset. Because this change merely rescinds an unintentional and unexploited regulatory loophole, the only possible effect is to codify the commonly held understanding among the fishing industry of the sideboard rule.

This proposed rule does not have the potential to significantly reduce profits for small entities. The absence of cost data precludes quantitative estimation of potential impacts on profitability, although these would be expected to be minimal, because no vessels chose to exploit this loophole in the 2006 A season (the first groundfish fishery after sideboard implementation).

This regulation does not impose new recordkeeping and reporting requirements on any directly regulated small entities.

This analysis did not reveal any Federal rules that duplicate, overlap or conflict with the proposed action.

No significant alternatives to the proposed rule exist that accomplish the stated objectives, are consistent with applicable statutes, and would

minimize the economic impact of the proposed rule on small entities. A no action alternative was considered, but was rejected because it did not meet the objectives of the Program's sideboard provisions. No significant adverse effects are shown for this action.

List of Subjects in 50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 17, 2006.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 680 as follows:

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 680 continues to read as follows:

Authority: 16 U.S.C. 1862.

2. In § 680.22, paragraph (a)(1)(i) is revised and paragraph (f) is added to read as follows:

§ 680.22 Sideboard protections for GOA groundfish fisheries.

* * * * *

(a) * * *

(1) * * *

(i) Any non-AFA vessel that made a legal landing of Bering Sea snow crab (*C. opilio*) between January 1, 1996, and December 31, 2000, that generated any amount of Bering Sea snow crab (*C. opilio*) fishery QS; and

* * * * *

(f) *Sideboard protections in the State of Alaska parallel groundfish fisheries.* Vessels subject to the sideboard restrictions under paragraph (a) of this section, that are required to have a Federal Fisheries Permit and/or LLP license, shall be subject to the regulations of this section while participating in any groundfish fishery in State waters adjacent to the GOA opened by the State of Alaska and for which the State of Alaska adopts a Federal fishing season.

[FR Doc. E6-6030 Filed 4-21-06; 8:45 am]

BILLING CODE 3510-22-S

Notices

Federal Register

Vol. 71, No. 78

Monday, April 24, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of submission may be obtained by calling (202) 712-1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412-NEW.

Form Number: N/A.

Title: Mentor-Protégé Program Application.

Type of Submission: New Information Collection.

Purpose: The U.S. Agency for International Development (USAID) requests comment on its Mentor-Protégé Program Application. The form will be used to apply for participation in the USAID Mentor-Protégé Program. Firms interested in becoming a mentor firm must apply in writing to the USAID/OSDBU. The application shall be evaluated by the nature and extent of technical and managerial support proposed as well as the extent of financial assistance in the form of equity investment, loans, joint-venture support, and traditional subcontracting support proposed.

The Mentor-Protégé agreement contains:

(1) Name, address, phone, and E-mail of mentor and protégé firm(s) and a point of contact within both firms who will oversee the agreement;

(2) Procedures for the mentor's voluntary withdrawal from the program including notification of the protégé firm and the USAID OSDBU; Withdrawal notification must be in writing, at least 30 days in advance of the mentor's intent to withdraw;

(3) Procedures for a protégé's voluntary withdrawal from the program. The protégé shall notify the mentor firm in writing at least 30 days in advance of the protégé firm's intent to voluntarily terminate the Mentor-Protégé agreement. The mentor shall notify OSDBU and the contracting officer immediately upon receipt of notice from the protégé;

(4) A description of the type of developmental program that will be provided by the mentor firm to the protégé firm, to include a description of the subcontract work, a schedule for providing assistance, and criteria for evaluation of the protégé's developmental success;

(5) A listing of the number and types of subcontractors to be awarded to the protégé firm;

(6) Program participation term;

(7) Termination procedures;

(8) Plan for accomplishing work should the agreement be terminated; and

(9) Other terms and conditions, as appropriate.

Review of Agreement

(1) OSDBU will review the information to ensure the mentor and protégé are both eligible and the information that is required in this Mentor-Protégé Program Guide is included. OSDBU may consult with the Contracting Officer on the adequacy of the proposed mentor-protégé arrangement, and its review will be completed no later than 30 calendar days after receipt by OSDBU.

(2) Upon completion of the review, the mentor may implement the developmental assistance program.

(3) The agreement defines the relationship between the mentor and protégé firms only. The agreement itself does not create any privity of contract between the mentor or protégé and the USAID.

(4) An approved agreement will be incorporated into the mentor or protégé firm's contract with the USAID. It should be added to the subcontracting plan of the contract.

(b) If the application is disapproved, the mentor may provide additional information for reconsideration. OSDBU will complete review of any supplemental material no later than 30 days after receipt. Upon finding deficiencies the USAID considers correctable, OSDBU will notify the mentor and request information regarding correction of deficiencies to be provided within 30 days.

Annual Reporting Burden:

Respondents: 20.

Total annual responses: 20.

Total annual hours requested: 5.

Dated: April 17, 2006.

Joanne Paskar,

*Chief, Information and Records Division,
Office of Administrative Services, Bureau for
Management.*

[FR Doc. 06-3835 Filed 4-21-06; 8:45 am]

BILLING CODE 6116-01-M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be sent via e-mail to David_Rostker@omb.eop.gov or fax to 202-395-7285. Copies of submission may be obtained by calling (202) 712-1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412-0011.

Form Number: AID 1010-2.

Title: Application for Assistance—American Schools And Hospitals Abroad.

Type of Submission: USAID finances grant assistance to U.S. founders or sponsors who apply for grant assistance from ASHA on behalf of their institutions overseas. ASHA is a competitive grants program. The office of ASHA is charged with judging which applicants may be eligible for consideration and receive what amounts of funding for what purposes. To aid in such determination, the office of ASHA

has established guidelines as the basis for deciding upon the eligibility of the applicants and the resolution on annual grant awards. These guidelines are published in the **Federal Register**, Doc. 79-36221.

Annual Reporting Burden:

Respondents: 85.

Total annual responses: 85.

Total annual hours requested: 900 hours.

Dated: April 17, 2006.

Joanne Paskar,

*Chief, Information and Records Division,
Office of Administrative Services, Bureau for
Management.*

[FR Doc. 06-3836 Filed 4-21-06; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 19, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_submission@omb.eop.gov* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs

potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Request for Administrative Review.

OMB Control Number: 0584-0520.

Summary of Collection: The Food and Nutrition Service (FNS) of the U.S. Department of Agriculture is the Federal agency responsible for the Food Stamp Program. The Food Stamp Act of 1977, as amended, (7 U.S.C. 2011-2036), as codified under 7 CFR Parts 278 and 279, requires that the FNS determine the eligibility of retail food stores and certain food service organizations to participate in the Food Stamp Program. If a retail or wholesale firm is found to be ineligible by FNS, or is otherwise aggrieved by certain FNS actions(s), that firm has the right to file a written request for review of the administrative action with FNS.

Need and Use of the Information: The request for administrative review is a formal memorandum, provided by the requester, with an original signature. FNS receives the letter requesting an administrative review and maintains it as part of the official review record. The designated reviewer will adjudicate the appeals process and make a final determination regarding the aggrieved action.

Description of Respondents: Business or other for profit.

Number of Respondents: 652.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 133.

Ruth Brown,

*Departmental Information Collection
Clearance Officer.*

[FR Doc. E6-6087 Filed 4-21-06; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 20, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_submission@omb.eop.gov* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: Operating Reports for Telecommunications and Broadband Borrowers.

OMB Control Number: 0572-0031.

Summary of Collection: The Rural Utilities Service's (RUS) is a credit agency of the Department of Agriculture. The Rural Electrification Act of 1936, as amended (RE Act) (7 U.S.C. 901 *et seq.*) authorizes the Secretary to make mortgage loans and loan guarantees to finance electric, telecommunications, broadband, and water and waste facilities in rural areas. In addition to providing loans and loan guarantees, one of RUS' main objectives is to safeguard loan security until the loan is repaid. The RE Act also authorizes the Secretary to make studies, investigations, and reports concerning the progress of borrowers' furnishing of adequate telephone service and publish and disseminate this information.

Need and Use of the Information: Information from the Operating Report for both telecommunication and broadband borrowers provides RUS with vital financial information needed to ensure the maintenance of the

security for the Government's loans and service data which enables RUS to ensure the provision of quality telecommunications and broadband service as mandated by the RE Act of 1936. Form 674, "Certificate of Authority to Submit or Grant Access to Data" will allow telecommunication and broadband borrowers to file electronic Operating Reports with the agency using the new USDA Data Collection System. Accompanied by a Board Resolution, it will identify the name and USDA eAuthentication ID for a certifier and security administrator that will have access to the system for purposes of filing electronic Operating Reports.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 1,290.

Frequency of Responses: Reporting: On occasion; quarterly; annually.

Total Burden Hours: 3,643.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6-6088 Filed 4-21-06; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 19, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_submission@omb.eop.gov* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC

20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Grain Inspection, Packers and Stockyard Administration

Title: Survey of Customers of the Official Grain Inspection and Weighing System.

OMB Control Number: 0580-0018.

Summary of Collection: The United States Grain Standards Act, as amended (7 U.S.C. 71-87) (USGSA), and the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627) (AMA), authorizes the Secretary of the United States Department of Agriculture to establish official inspection, grading, and weighing programs for grains and other agricultural commodities. Under the USGSA and AMA, Grain Inspection, Packers and Stockyard Administration (GIPSA's) Federal Grain Inspection Service (FGIS) offers inspecting, weighing, grading, quality assurance, and certification services for a user-fee to facilitate the efficient marketing of grain, oilseeds, rice, lentils, dry peas, edible beans, and related agricultural commodities in the global marketplace. The goal of FGIS and the official inspection, grading, and weighing system is to provide timely, high-quality, accurate, consistent, and professional service that facilitates the orderly marketing of grain and related commodities. FGIS will collect information using a survey.

Need and Use of the Information: FGIS will collect information to determine where and to what extent services are satisfactory, and where and to what extent they can be improved. The information will be shared with other managers and program leaders who will be responsible for making any necessary improvements at the office/ agency, program, and project level.

Description of Respondents: Business or other for-profit; State, local or tribal government.

Number of Respondents: 1,840.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 307.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6-6089 Filed 4-21-06; 8:45 am]

BILLING CODE 3410-KD-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. TM-06-05]

Nominations for Members of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Organic Foods Production Act (OFPA) of 1990, as amended, requires the establishment of a National Organic Standards Board (NOSB). The NOSB is a 15-member board that is responsible for developing and recommending to the Secretary a proposed National List of Approved and Prohibited Substances. The NOSB also advises the Secretary on other aspects of the National Organic Program. The U.S. Department of Agriculture (USDA) is requesting nominations to fill four (4) upcoming vacancies on the NOSB. The positions to be filled are: Organic handler (1 position), scientist (1 position), consumer public interest (1 position), and an environmentalist (1 position). The Secretary of Agriculture will appoint a person to each position to serve a 5-year term of office that will commence on January 24, 2007, and run until January 24, 2012. USDA encourages eligible minorities, women, and persons with disabilities to apply for membership on the NOSB.

DATES: Written nominations, with cover letters and resumes, must be post-marked on or before July 14, 2006.

ADDRESSES: Nominations should be sent to Ms. Katherine E. Benham, Advisory Board Specialist, USDA-AMS-TMP-NOP, 1400 Independence Avenue, SW., Room 4008-So., Ag Stop 0268, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine E. Benham, (202) 205-7806; E-mail: *katherine.benham@usda.gov*; Fax: (202) 205-7808.

SUPPLEMENTARY INFORMATION: The OFPA of 1990, as amended (7 U.S.C. 6501 *et seq.*), requires the Secretary to establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods. In developing this program, the Secretary is required to establish an NOSB. The purpose of the

NOSB is to assist in the development of a proposed National List of Approved and Prohibited Substances and to advise the Secretary on other aspects of the National Organic Program.

The NOSB made recommendations to the Secretary regarding the establishment of the initial organic program. It is anticipated that the NOSB will continue to make recommendations on various matters, including recommendations on substances it believes should be allowed or prohibited for use in organic production and handling.

The NOSB is composed of 15 members; 4 organic producers, 2 organic handlers, a retailer, 3 environmentalists, 3 public/consumer representatives, a scientist, and a certifying agent. Nominations are being sought to fill the following four (4) upcoming NOSB vacancies: Organic handler (1 position), scientist (1 position), consumer public interest (1 position), and an environmentalist (1 position). Individuals desiring to be appointed to the NOSB at this time must be either an owner or operator of a certified organic handling operation; an individual with expertise in areas of environmental protection and resource conservation; an individual with expertise in the fields of toxicology, ecology, or biochemistry; or an individual who represents public interest or consumer interest groups. Selection criteria will include such factors as: Demonstrated experience and interest in organic production, organic certification, support of consumer and public interest organizations; demonstrated experience with respect to agricultural products produced and handled on certified organic farms; and such other factors as may be appropriate for specific positions.

Nominees will be supplied with a biographical information form that must be completed and returned to USDA within 10 working days of its receipt. Completed biographical information forms are required for a nominee to receive consideration for appointment by the Secretary.

Equal opportunity practices will be followed in all appointments to the NOSB in accordance with USDA policies. To ensure that the members of the NOSB take into account the needs of the diverse groups that are served by the Department, membership on the NOSB will include, to the extent practicable, individuals who demonstrate the ability to represent minorities, women, and persons with disabilities.

The information collection requirements concerning the

nomination process have been previously cleared by the Office of Management and Budget (OMB) under OMB Control No. 0505-0001.

Dated: April 18, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6-6075 Filed 4-21-06; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV-06-377]

Fruit and Vegetable Industry Advisory Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The purpose of this notice is to notify all interested parties that the Agricultural Marketing Service (AMS) will hold a Fruit and Vegetable Industry Advisory Committee (Committee) meeting that is open to the public. The U.S. Department of Agriculture (USDA) established the Committee to examine the full spectrum of issues faced by the fruit and vegetable industry and to provide suggestions and ideas to the Secretary of Agriculture on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. This notice sets forth the schedule and location for the meeting.

DATES: Tuesday, June 27, 2006, from 8 a.m. to 5 p.m., and Wednesday, June 28, 2006, from 8 a.m. to 2 p.m.

ADDRESSES: The Committee meeting will be held at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Andrew Hatch, Designated Federal Official, USDA, AMS, Fruit and Vegetable Programs. Telephone: (202) 690-0182. Facsimile: (202) 720-0016. e-mail: andrew.hatch@usda.gov.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App. II), the Secretary of Agriculture established the Committee in August 2001 to examine the full spectrum of issues faced by the fruit and vegetable industry and to provide suggestions and ideas to the Secretary on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. The Committee was rechartered in July 2003 and again in June 2005 with new members appointed by USDA from industry nominations.

AMS Deputy Administrator for Fruit and Vegetable Programs, Robert C.

Keeney, serves as the Committee's Executive Secretary. Representatives from USDA mission areas and other government agencies affecting the fruit and vegetable industry will be called upon to participate in the Committee's meetings to the public so that they may attend and present their recommendations. Reference the date and address section of this announcement for the time and place of the meeting.

Topics of discussion at the advisory committee meeting will include: the Speciality Crop Block Grant Program; sustainable agriculture; U.S. produce industry labor and immigration issues; the Women, Infants and Children (WIC) program; the 2007 Farm Bill; state and federal minimum quality requirements and grade standards; and overviews of the Perishable Agricultural Commodities Act (PACA) program and government support of Produce for Better Health Foundation initiatives.

Those parties that would like to speak at the meeting should register on or before June 16, 2006. To register as a speaker, please e-mail your name, affiliation, business address, e-mail address, and phone number to Mr. Andrew Hatch at: andrew.hatch@usda.gov or facsimile to (202) 720-0016. Speakers who have registered in advance will be given priority. Groups and individuals may submit comments for the Committee's consideration to the same e-mail address. The meeting will be recorded, and information about obtaining a transcript will be provided at the meeting.

The Secretary of Agriculture selected a diverse group of members representing a broad spectrum of persons interested in providing suggestions and ideas on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. Equal opportunity practices were considered in all appointments to the Committee in accordance with USDA policies.

If you require special accommodations, such as a sign language interpreter, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: April 18, 2006.

Lloyd Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06-3846 Filed 4-21-06; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF AGRICULTURE**Agricultural Research Service****National Agricultural Library; Notice of Intent To Seek Approval To Collect Information**

AGENCY: Agricultural Research Service, National Agricultural Library, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Library's (NAL) intent to request renewal for an information collection from the Technical Services Division to obtain suggestions for additions/changes to the NAL Agricultural Thesaurus.

DATES: Comments on this notice must be received by June 28, 2006 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Lori Finch, Thesaurus Coordinator, 10301 Baltimore Ave., Room 011; Beltsville, MD 20705; Phone: 301–504–6853; Fax: 301–504–5213. Submit electronic comments to lfinch@nal.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Suggestions for Changes to NAL Agricultural Thesaurus Form.

OMB Number: 0518–0035.

Expiration Date: 10/31/2006.

Type of Request: Approval for renewal of data collection.

Abstract: The collection of suggestions for changes to the NAL Agricultural Thesaurus will provide Web site users with the opportunity to suggest the addition of new terminology of interest to them. The Thesaurus Staff will review the suggestion via a Proposal Review Board and provide feedback to the user. This form will provide the NAL Thesaurus Staff with valuable suggestions to improve the content and organization of the NAL Agricultural Thesaurus. It is hoped that an online form that is readily available to users who search the thesaurus would encourage users to submit their ideas and needs for terminology.

The Suggestions for Changes to NAL Agricultural Thesaurus Form is a document comprised of 8 inquiry components where users submit suggestions for changes to the thesaurus. Information to be submitted includes, user contact information (name, affiliation, e-mail, phone), their proposed change to the thesaurus, the field of study or subject area of the term

being proposed, justification for the change, and any reference material which the user would like to provide as background information. Name, e-mail and phone components are mandatory.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: The agricultural community, USDA personnel and their cooperators, including, public and private users, or providers of agricultural information.

Estimated Number of Respondents: 100 per year.

Estimated Total Annual Burden on Respondents: 1000 minutes.

Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the 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 collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: April 6, 2006.

Antoinette Betschart,

Associate Administrator, ARS.

[FR Doc. E6–6029 Filed 4–21–06; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE**Federal Crop Insurance Corporation****Request for Applications (RFA): Research and Development Risk Management Research Partnerships**

Announcement Type: Notice of availability of funds and request for application for risk management research partnerships.

Catalog of Federal Domestic Assistance Number (CFDA): 10.456.

Dates: The closing date and time for receipt of an application is 5 p.m. CDT, June 8, 2006. Applications received after

the deadline will not be evaluated by the technical review panel and will not be considered for funding. All awards will be made and agreements completed no later than September 30, 2006.

Overview: The purpose of the Risk Management Research Partnerships is to fund the development of non-insurance risk management tools that will be utilized by agricultural producers to assist them in mitigating the risks inherent in agricultural production. The proposal must address the objectives listed in part I.D. In conducting activities to achieve the purpose of this proposed research, the recipient will be responsible for the activities listed under section II.A.1 of this part. RMA will be responsible for the activities listed under section II.A.2 of this part. In addition, all proposals must clearly demonstrate the usefulness and benefits of the tool to producers of priority commodities and provide a plan for on-going maintenance and support as described in part III.C.2. Approximately \$4 million is available to fund an undetermined number of partnerships. Projects may be funded for a period of up to three years. Applications are accepted from public and private entities; individuals are not eligible to apply. No cost sharing by the applicant is required. There are no limitations on the number of applications each applicant may submit.

I. Funding Opportunity Description**A. Background**

The Risk Management Agency (RMA), on behalf of the Federal Crop Insurance Corporation (FCIC), is committed to meeting the risk management needs and improving or developing risk management tools for the nation's farmers and ranchers. It does this by offering Federal crop insurance and other risk management products and tools through a network of private-sector entities and by overseeing the creation of new products, seeking enhancements in existing products, and by expanding the use of a variety of risk management tools. Risk management tools include a variety of risk management options and strategies developed to assist producers in mitigating the risks inherent in agricultural production. For the purposes of this announcement, risk management tools do not include insurance products, plans of insurance, policies, modifications thereof or any related material.

B. Purpose

The purpose of this program is to fund partnership agreements that assist producers, minimize their production

risks, and/or develop risk management tools. The agreements are for the development of risk management tools for use directly by agricultural producers. To aid in meeting these goals each partnership agreement awarded through this program will provide the recipient with funds, guidance, and the substantial involvement of RMA to carry out these risk management initiatives. Applications requesting funding for the development of insurance products, plans of insurance, policies, modifications thereof or related materials are excluded from consideration under this announcement.

C. Authorization

In accordance with section 522(d) of the Federal Crop Insurance Act (Act), FCIC announces the availability of funding for risk management research activities. Priority will be given to those activities addressing the need for risk management tools for producers of the following agricultural commodities (For purposes of this announcement, these commodities are collectively referred to as "Priority Commodities"):

- *Agricultural commodities covered by section 196 of the Agricultural Market Transition Act (7 U.S.C. 7333) (Noninsured Assistance Program (NAP)).* Commodities in this group are commercial crops that are not covered by catastrophic risk protection crop insurance, are used for food or fiber (except livestock), and specifically include, but are not limited to, floricultural, ornamental nursery, Christmas trees, turf grass sod, aquaculture (including ornamental fish), and industrial crops.

- *Specialty crops.* Commodities in this group may be covered under a Federal crop insurance plan and include, but are not limited to, fruits, vegetables, tree nuts, syrups, honey, roots, herbs, and highly specialized varieties of traditional crops.

- *Underserved commodities.* This group includes: (a) Commodities, including livestock that are covered by a Federal crop insurance plan but for which participation in an area is below the national average; and (b) commodities, including livestock, with inadequate crop insurance coverage.

D. Objectives

The project objectives listed below highlight the research priorities of RMA. The objectives are listed in priority order, with the most important objective designated as 1, the second most important designated as 2, etc. The order of priority will be considered in making awards. The suggested emphasis discussed within each objective is not

meant to be exhaustive. Applicants may propose other topics within any project objective but justification for those topics must be provided.

RMA encourages proposals that address multiple risks and will result in the development of tools that provide an integrated or holistic approach to risk mitigation. Preference will be given to such proposals.

Proposals may address multiple objectives, but each proposal must specify a single primary objective for funding purposes.

In order of priority, the project objectives are:

1. To develop risk management tools that would provide producers facing reduced water allocations with the information needed for one or more of the following: Determining the amount of acres that could be planted and irrigated; determining expected yield reductions associated with reduced irrigation water application; determining expected water deliveries for making planting decisions.

2. To develop risk management tools to assist producers (including livestock) in finding alternative products, techniques or strategies related to disease management.

3. To develop risk management tools to assist producers in finding alternative products, techniques or strategies related to pest mitigation under various farming practices.

4. To develop risk management tools encouraging self-protection for production agricultural enterprises vulnerable to losses due to terrorism.

II. Award Information

A. Award Description

Approximately \$4 million is available for partnership agreements that will fund the development of risk management tools. Awards under this program will be made on a competitive basis. Projects may be funded for a period of up to three years for the activities described in this announcement. Projects can also be in two parts with the first part including the research and feasibility studies and the second part including the development, implementation, delivery and maintenance of the risk management tool. If the development of the tool is determined not to be feasible, the partnership may be terminated by RMA after completion of the first part with funding reduced accordingly.

There is no commitment by RMA to fund any particular project or to make a specific number of awards. Applicants awarded a partnership agreement for an amount that is less than the amount

requested will be required to modify their application to conform to the reduced amount before execution of the partnership agreement. No maximum or minimum funding levels have been established for individual projects. All awards will be made and agreements completed no later than September 30, 2006.

Recipients of awards must demonstrate non-financial benefits from a partnership agreement and must agree to substantial involvement of RMA in the project.

1. Recipient Activities

The applicant will be required to perform the following activities:

- a. Finalize, in cooperation with RMA, the partnership agreement.

- b. Finalize, in cooperation with RMA, the plan to administer, maintain and update the risk management tool in the future. The applicant must develop a plan for the delivery of the risk management tool to producers and the ongoing maintenance and support of the risk management tool, including how the applicant will fund the delivery, support, maintenance and updating of the tool to maintain its applicability, benefits, usefulness, and value to producers. The applicant must also deliver the risk management tool to producers and support, maintain and update the tool as applicable.

- c. Define non-financial benefits and the substantial involvement of the RMA.
- d. Coordinate, manage, document and implement the timely completion of the approved research and development activities.

- e. Abide by the plans and provisions contained in the partnership agreement.

- f. Report on program performance in accordance with the partnership agreement.

- g. The recipient may be required to make a presentation to the FCIC Board of Directors.

- h. Adhere to RMA guidelines for systems development and information technology development.

2. RMA Activities

RMA will be substantially involved during the performance of the funded activity. Potential types of substantial involvement may include, but are not limited to the following activities:

- a. Collaborate on the research plan;

- b. Assist in the selection of subcontractors and project staff;

- c. Review and approve critical stages of project development before subsequent stages may be started;

- d. Provide assistance in the management or technical performance of the project;

e. Collaborate with the recipient in the development of materials associated with the funded project, as it relates to publication or presentation of the results and the distribution of the risk management tools to the public, any producer groups, RMA, and the FCIC Board of Directors;

f. Assist in the collection of data and information that may be available in RMA databases;

g. Collaborate with the recipient in the development of a proposal to administer, maintain and update the risk management tool in the future.

h. Similar types of activities.

B. Other Activities

In addition to the specific activities listed above, the applicant may suggest other activities that would contribute directly to the purpose of this program. For any additional activity suggested, the applicant should identify the objective of the activity, the specific tasks required to meet the objective, specific timelines for performing the tasks, and specific responsibilities of the partners. The applicant should also identify specific ways in which RMA could or should have substantial involvement in that activity.

III. Eligibility Information

A. Eligible Applicants

Proposals are invited from qualified public and private entities. Eligible applicants include colleges and universities, Federal, State, and local agencies, Native American tribal organizations, non-profit and for-profit private organizations or corporations, and other entities. Individuals are not eligible applicants.

Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program (e.g. debarment and suspension; a determination of non-performance on a prior contract, cooperative agreement, grant or partnership; a determination of a violation of applicable ethical standards).

B. Cost Sharing or Matching

Cost sharing, matching, in-kind contributions, or cost participation is not required.

C. Other

1. Applicants must demonstrate the usefulness of the proposed risk management tool and the benefits of the tool to producers of priority commodities. Applicants must include information supporting the need for the

tool, such as a market analysis, or communications from producers or producer organizations expressing a need for the proposed tool. The proposal must also clearly define how the proposed tool will meet the needs of the producer groups identified. Refer to part V.A.3 for the review and selection process.

2. If the project proposed for development requires ongoing maintenance, support and delivery to producers beyond the development stage, the applicant must submit a plan to continue the maintenance, support and delivery of the tool without relying on RMA's resources. If the applicant does not plan to directly support, maintain and deliver the tool using non-award funds after the development period funded by this award is completed, then the proposal should identify a third party sponsor who will do so. For example, if a proposed tool would require constant updating of data and availability on a website in order to be utilized by producers, then a sponsor should be identified that would be able to provide the funds necessary to maintain and host the tool. Third party sponsors may include government agencies, grower organizations, industry organizations, private sector entities, etc. If the tool proposed does not require support, maintenance, updating or revisions to maintain applicability or value or does not require continued delivery to producers, the proposal should so state and provide the basis why such actions are not required. Refer to part V.A.4 for the review and selection process.

3. Applicants must be able to demonstrate they will receive non-financial benefits as a result of the partnership agreement. Non-financial benefits must accrue to the applicant and must include more than the ability to provide income to the applicant or for the applicant's employees or the community. The applicant must demonstrate that performance under the partnership agreement will further the specific mission of the applicant (such as providing research or activities necessary for graduate or other students to complete educational programs or benefits derived through the furtherance of an organization's mission). Refer to part V.A.2 for evaluation criteria.

IV. Application and Submission Information

A. Address To Request Application Package

Applicants may download an application package from the Risk Management Agency Web site at: <http://www.rma.usda.gov>. Applicants may also request an application package from: RMA/RED Partnership Agreement Program, USDA, RMA/RED, 6501 Beacon Drive, Stop 0813, Kansas City, Missouri 64133-4676, phone: (816) 926-6343, fax: (816) 926-7343, e-mail: RMA.Research.Application@rma.usda.gov.

Completed and signed application packages must be sent to: RMA/RED Partnership Agreement Program, USDA, RMA/RED, 6501 Beacon Drive, Stop 0813, Kansas City, Missouri 64133-4676. Applicants are encouraged to submit completed and signed application packages using overnight mail or delivery service, or electronic submission to ensure timely receipt by the USDA. Applicants using the U.S. Postal Service should allow for extra security-processing time for mail delivered to government offices.

B. Content and Form of Application Submission

B. Content and Form of Application Submission

If submitting a hardcopy application, a complete and valid application package must include an original, twelve complete paper copies are requested, three copies are required, and one copy (Microsoft Word format preferred) of the application package on diskette or compact disc, and:

1. A completed and signed OMB Standard Form 424, "Application for Federal Assistance".

2. A completed and signed OMB Standard Form 424-A, "Budget Information—Non-construction Programs". Reviewers will need sufficient information to effectively evaluate the budget. Indirect cost for projects submitted in response to this solicitation are limited to 10 percent of the total direct cost of the agreement. A sample budget narrative, including suggestions for format and content, is available on the RMA Web site (<http://www.rma.usda.gov>) or upon request.

3. A completed and signed OMB Standard Form 424-B, "Assurances, Non-construction Programs".

4. A statement of the non-financial benefits of any partnership agreement to the recipient. (Refer to Part II.B "Non-financial Benefits").

5. A completed Form R&D-1, "Title Page and Proposal Summary." Each proposal must specify the single primary objective for evaluation and funding purposes. The same or similar proposals cannot be submitted multiple times with different primary objectives specified. If the same or similar proposals are submitted, the first received will be the only one evaluated.

6. A proposal narrative submitted with the application package should be

limited to 10 single-sided pages. Reviewers will need sufficient information to effectively evaluate the application under the criteria contained in part V. A sample narrative, including suggestions for format and content, is available on the RMA Web site (<http://www.rma.usda.gov>) or upon request.

7. An appendix containing any attachments that may support information in the narrative (Optional).

8. A completed Form R&D-2, "Statement of Work."

If submitting the above materials electronically, as described in the RMA website, copies of the submission will not be required. Applicants are responsible for ensuring the application materials are received by the closing date. Incomplete application packages will not receive further consideration.

C. Submission Dates and Times

The closing date and time for receipt of an application is 5 p.m. CDT, June 8, 2006. Applications received after the deadline will not be evaluated by the technical review panel and will not be considered for funding.

D. Funding Restrictions

No maximum or minimum funding levels have been established for individual projects or for categories of objectives. The funding level by category of objective will be determined by FCIC. Indirect cost for projects submitted in response to this solicitation are limited to 10 percent of total direct cost of the agreement. Each project may be funded for a period of up to three years for the activities described in this announcement.

Partnership agreement funds may not be used to:

1. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;
2. To purchase, rent, or install fixed equipment;
3. Repair or maintain privately owned vehicles;
4. Pay for the preparation of the partnership application;
5. Fund political activities;
6. Pay costs incurred prior to receiving this partnership agreement;
7. Fund any activities prohibited in 7 CFR parts 3015 and 3019, as applicable.

E. Other Submission Requirements

Mailed Submissions

1. If submitting the application via regular mail, an original and twelve (12) paper copies are requested, three copies are required, of the complete and signed application, and one copy (Microsoft Word format preferred) on diskette or

compact disk must be submitted in one package at the time of initial submission.

2. If submitting the application via regular mail all applications must be submitted and received by the deadline. Applications that do not meet all of the requirements in this announcement are considered incomplete applications. Late or incomplete applications will not be considered in this competition and will be returned to the applicant.

3. Applications will be considered as meeting the announced deadline if they are received in the mailroom at the address stated above in section IV.A., on or before the deadline. Applicants are cautioned that express, overnight mail or other delivery services do not always deliver as agreed. Applicants are responsible for mailing applications well in advance, to ensure that applications are received on or before the deadline time and date. Applicants should be aware that there may be significant delays in delivery if applications are mailed using the U.S. Postal Service due to the additional security measures that mail delivered to government offices now requires. Applicants should take this into account because failure of such delivery services will not extend the deadline.

4. Address when using U.S. Postal Service: USDA, RMA/RED, 6501 Beacon Drive, Stop 0813, Kansas City, Missouri 64133-4676.

Electronic Submissions

Applications transmitted electronically via Grants.gov will be accepted prior to the application date or time deadline. The application package can be accessed via *Grants.gov*: go to <http://www.grants.gov>, click on "Find Grant Opportunities," then click on "Search Grant Opportunities," and enter the CFDA number (located at the beginning of this RFA) to search by CFDA number. From the search results, select the item that correlates to the title of this RFA. If you do not have electronic access to the RFA or have trouble downloading material and you would like a hardcopy, or have any questions you may contact Kristin Chow, USDA, RMA/RED, 6501 Beacon Drive, Stop 0813, Kansas City, Missouri 64133-4676, phone (816) 926-6399, fax (816) 926-7343, e-mail: RMA.Research.Application@rma.usda.gov.

F. Acknowledgement of Application

Receipt of applications will be acknowledged by e-mail, whenever possible. Therefore, each applicant is encouraged to provide an e-mail address in the application. If an e-mail address

is not indicated on an application, receipt will be acknowledged by letter. There will be no notification of incomplete, unqualified or unfunded applications until the awards have been made.

When received by RMA, applications will be assigned an identification number. This number will be communicated to applicants in the acknowledgement of receipt of applications. An application identification number should be referenced in all correspondence regarding the application. If the applicant does not receive an acknowledgement within 15 days of the submission deadline, the applicant should contact the Research and Development Division at (816) 926-6343.

V. Application Review Information

A. Criteria

1. Research Objectives—Maximum 30 Points

The application must receive a minimum score of 20 points under this criterion in order to be considered for further evaluation and funding. Applications receiving less than 20 points will be eliminated and will not be evaluated under criterion 2 through 4.

The proposal must clearly define the development, management and implementation of a risk management tool designed to meet the needs of producers under the objectives listed in part I.D. A proposal that best meets the objectives and addresses multiple risks that result in the development of tools that provide an integrated or holistic approach to risk mitigation will be given the highest score. The proposal will be reviewed to determine if it is similar to a project that has been funded, has been recommended for funding, or is currently under development through other means.

2. Indication of RMA Involvement and Non-Financial Benefits—Maximum 10 Points

The proposal clearly indicates areas of substantial involvement by RMA and clearly indicates benefits derived from the partnership that extend beyond the financial benefits or funding of the research proposal. Those proposals that clearly outline the involvement of RMA in all aspects of the project and demonstrate non-financial benefits will receive the highest score.

3. Research Approach, Methodology, Development and Implementation—Maximum 45 Points

The proposal clearly demonstrates a sound research approach and defines the methodology to be used as well as describes the development and implementation of the risk management tool. The proposal must clearly demonstrate the usefulness of the tool and the benefits of the tool to producers of priority commodities and demonstrate that there is a reasonable expectation that the tool will actually be used by a substantial number of such producers. The plan will be evaluated to ensure that the risk management tool can be delivered to producers and will be supported, maintained, updated or revised as necessary. Proposals that demonstrate a clear, concise and generally accepted research methodology and innovative approach will receive the highest number of points.

4. Management and Plan for Maintenance and Support—Maximum 15 Points

The proposal clearly demonstrates the applicant's ability and resources to coordinate and manage all aspects of the proposed research project. Applicants must provide a detailed budget summary that clearly explains and justifies costs associated with the project. The applicant must submit a plan, if necessary, to continue the maintenance, support and delivery of the tool without relying on RMA's resources. The applicant whose approach is the most cost effective and optimizes the use and effective application of the funding will receive the highest score.

B. Review and Selection Process

Each application will be evaluated using a four-part process. First, each application will be screened by RMA to ensure that each proposal specifies a single primary objective for evaluation and funding purposes and the proposal meets an objective stated in part I.D. The same or similar proposals cannot be submitted multiple times with different primary objectives specified. If the same or similar proposals are submitted, the first received will be the only one evaluated. Applications that do not meet an objective stated in part I.D. and all other requirements in this announcement or are incomplete, will not receive further consideration.

Second, all eligible applications will be evaluated using the criterion in part V.A.1. Applications must score at least

20 points under this criterion in order to be evaluated further.

Third, all applications scoring the required 20 points will be evaluated further under parts V.A.2 through 4.

For the second and third steps, a review panel will consider all applications that are complete and meet the objectives in part I.D. and all other requirements in this announcement. The panel will review the merits of the applications. The evaluation of each application will be conducted by a panel of not less than three independent reviewers. The panel will be comprised of representatives from USDA, other Federal agencies, and others representing public and private organizations, as needed. The narrative and any appendixes provided by each applicant will be used by the review panel to evaluate the merits of the project that is being proposed for funding. The panel will examine and score applications based on the evaluation criteria and weights contained in part V.A. The identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants.

In order to be considered for funding, a proposal must score at least 75 points.

For the last step, those applications meeting the minimum number of points will be listed in initial rank order by objective. The highest-ranking proposal for each objective will be funded in the order of priority (the highest ranking proposal meeting objective 2 will be funded second, etc.). It is possible that funds could be exhausted before funding projects for every objective. If there are funds remaining, the process will be repeated until the funds are obligated. The projects proposed for funding will be presented, along with funding level recommendations, to the Manager of FCIC, who will make the final decision on awarding a partnership agreement.

If the Manager of FCIC determines that any application is sufficiently similar to a project that has been funded or has been recommended to be funded under this announcement or any other research and development program, then the Manager may elect to not fund that application in whole or in part.

VI. Award Administration Information

A. Administrative and National Policy Requirements

1. Access to Panel Review Information

Upon written request, scores from the evaluation panel, not including the identity of reviewers, will be sent to the

applicant after the review and awards process has been completed.

2. Notification of Partnership Agreement Awards and Notification of Non-Selection

Following approval of the applications selected for funding, notice of project approval and authority to draw down funds will be made to the selected applicants in writing. Within the limit of funds available for such purpose, the awarding official of RMA shall enter into partnership agreements with those applicants whose applications are judged to be most meritorious under the procedures set forth in this announcement. The partnership agreement provides the amount of Federal funds for use in the project period, the terms and conditions of the award, and the time period for the project.

The effective date of the partnership agreement shall be the date the agreement is executed by both parties. All funds provided to the applicant by FCIC must be expended solely for the purpose for which funds are obligated in accordance with the approved application and budget, the regulations, the terms and conditions of the award, and the applicability of Federal cost principles. No commitment of Federal assistance beyond the project period is made or implied, as a result of any award made pursuant to this announcement.

Notification of denial of funding will be sent to applicants after final funding decisions have been made. Reasons for denial of funding can include incomplete proposals, proposals that did not meet the objectives, scored low or were duplicative.

3. Confidential Aspects of Proposals and Awards

When an application results in a partnership agreement, it becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within the application, including the basis for such designation. The original copy of a proposal that does not result in an award will be retained by RMA for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the express written consent of the applicant or to the extent

required by law. A proposal may be withdrawn at any time prior to award. The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will all be kept confidential, except to those involved in the review process, to the extent permitted by law.

4. Administration

All partnership agreements are subject to 7 CFR part 3015.

5. Prohibitions and Requirements With Regard to Lobbying

Section 1352 of Public Law 101-121, enacted on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian Tribes and tribal organizations. Current and prospective recipients, and any subcontractors, are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of \$100,000 (\$150,000 for loans) the law requires recipients and any subcontractors: (1) To certify that they have neither used nor will use any appropriated funds for payment of lobbyists; (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients of their subcontractors will pay with profits or other non-appropriated funds on or after December 22, 1989; and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for non-compliance. All recipients must provide a copy of the certification and disclosure forms prior to the beginning of the project period.

6. Applicable OMB Circulars

All partnership agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars.

7. Audit Requirements

Applicants awarded partnership agreements are subject to audit.

8. Requirement To Assure Compliance With Federal Civil Rights Laws

Project leaders of all partnership agreements funded as a result of this notice are required to know and abide by Federal civil rights laws and to

assure USDA and RMA that the recipient is in compliance with and will continue to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), 7 CFR part 15, and USDA regulations promulgated under, 7 CFR 1901.202. RMA requires that recipients submit Form RD 400-4, Assurance Agreement (Civil Rights), assuring RMA of this compliance prior to the beginning of the project period.

B. Reporting

Applicants awarded a partnership agreement will be required to submit quarterly written progress and financial reports (SF-269) throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period.

Recipients will be required to submit prior to the award:

- A completed and signed Form RD 400-4, Assurance Agreement (Civil Rights).
- A completed and signed OMB Standard Form LLL, "Disclosure of Lobbying Activities."
- A completed and signed AD-1047, "Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions."
- A completed and signed AD-1049, "Certification Regarding Drug-Free Workplace."
- A completed and signed Faith-Based Survey on EEO.

VII. Agency Contact

If applicants have any questions they may contact: USDA, RMA/RED, 6501 Beacon Drive, Stop 0813, Kansas City, Missouri 64133-4676, phone (816) 926-6343, fax (816) 926-7343, e-mail: RMA.Research.Application@rma.usda.gov.

VIII. Other Information

A. Dun and Bradstreet Data Universal Numbering System (DUNS)

A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of over 70 million businesses worldwide. The Office of Management and Budget published a notice of final policy issuance in the **Federal Register** June 27, 2003 (68 FR 38402) that requires a DUNS number in every application (*i.e.*, hard copy and electronic) for a grant or cooperative agreement on or after October 1, 2003. Therefore, potential applicants should verify that they have a DUNS number or take the steps needed to obtain one. For information about how to obtain a DUNS number, go to [http://](http://www.grants.gov)

www.grants.gov. Please note that the registration may take up to 14 business days to complete.

B. Required Registration With the Central Contract Registry for Submission of Proposals

The Central Contract Registry (CCR) is a database that serves as the primary Government repository for contractor information required for the conduct of business with the Government. This database will also be used as a central location for maintaining organizational information for organizations seeking and receiving grants from the Government. Such organizations must register in the CCR prior to the submission of applications. A DUNS number is needed for CCR registration. For information about how to register in the CCR, visit "Get Started" at <http://www.grants.gov>. Allow a minimum of 5 business days to complete the CCR registration.

Signed in Washington, DC, on April 17, 2006.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E6-6086 Filed 4-21-06; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF AGRICULTURE

Forest Service

National Tree-Marking Paint Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Tree-marking Paint Committee will meet in Eureka, California on May 16-18, 2006. The purpose of the meeting is to discuss activities related to improvements in, concerns about, and the handling and use of tree-marking paint by personnel of the Forest Service and the Department of the Interior's Bureau of Land Management.

DATES: The meeting will be held May 16-18, 2006, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Red Lion Inn, 1929 Fourth Street, Eureka, California, 95501. Persons who wish to file written comments before or after the meeting must send written comments to Bob Simonson, Acting Chairman, National Tree-marking Paint Committee, Forest Service, USDA, San Dimas Technology and Development Center, 444 East Bonita Avenue, San Dimas, California 91773, or electronically to bsimonson@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Bob Simonson, Program Leader, San Dimas Technology and Development Center, Forest Service, USDA, (909) 599-1267, extension 242 or bsimonson@fs.fed.us.

SUPPLEMENTARY INFORMATION: The National Tree-Marking Paint Committee comprises representatives from the Forest Service national headquarters, each of the nine Forest Service Regions, the Forest Products Laboratory, the Forest Service San Dimas Technology and Development Center, and the Bureau of Land Management. The General Services Administration and the National Institute for Occupational Safety and Health are ad hoc members and provide technical advice to the committee.

A field trip will be held on May 16 and is designed to supplement information related to tree-marking paint. This trip is open to any member of the public participating in the public meeting on May 17-18. However, transportation is provided only for committee members.

The main session of the meeting, which is open to public attendance, will be held on May 17-18.

Closed Sessions

While certain segments of this meeting are open to the public, there will be two closed sessions during the meeting. The first closed session is planned for approximately 9 to 11 a.m. on May 17. This session is reserved for individual paint manufacturers to present products and information about tree-marking paint for consideration in future testing and use by the agency. Paint manufacturers also may provide comments on tree-marking paint specifications or other requirements. This portion of the meeting is open only to paint manufacturers, the Committee, and committee staff to ensure that trade secrets will not be disclosed to other paint manufacturers or to the public. Paint manufacturers wishing to make presentations to the Tree-Marking Paint Committee during the closed session should contact the Acting Chairman at the telephone number listed at **FOR FURTHER INFORMATION CONTACT** in this notice. The second closed session is planned for approximately 2 to 4 p.m. on May 18, 2005. This session is reserved for Federal Government employees only.

Any person with special access needs should contact the Acting Chairman to make those accommodations. Space for individuals who are not members of the National Tree-Marking Paint Committee is limited and will be available to the public on a first-come, first-served basis.

Dated: April 7, 2006.

Frederick R. Norbury,
Associate Deputy Chief, National Forest System.
[FR Doc. E6-6081 Filed 4-21-06; 8:45 am]
BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92-463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106-393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Thursday, May 11th in Susanville, California for a business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on May 11th will begin at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. This meeting will be reviewing February meeting minutes; have an update on the proposed legislation and coalition meeting; summer trips designations; and review the schedule for the final round of funding through the "Secure Rural Schools and Self Determination Act of 2000," commonly known as Payments to States. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Robert Andrews, District Ranger, Designated Federal Officer, at (530) 257-4188; or Public Affairs Officer, Heidi Perry, at (530) 252-6604.

Laurie Tippin,
Forest Supervisor.
[FR Doc. 06-3839 Filed 4-21-06; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne County Resource Advisory Committee (RAC) will meet on May 15, 2006 at the City of Sonora Fire Department, in Sonora, California. The primary purpose of the meeting is to review new project proposals. The committee will also review requests for grant extensions and/or changing the focus of approved projects.

DATES: The meeting will be held May 15, 2006, from 12 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

FOR FURTHER INFORMATION CONTACT: Pat Kaunert, Committee Coordinator, USDA, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370, (209) 532-3671; E-mail pkaunert@fs.fed.us.

SUPPLEMENTARY INFORMATION: Agenda items include: (1) Review requests for grant extensions and/or changing the focus of previously submitted projects and consider for approval; (2) Review new project proposals; (3) Public comment. This meeting is open to the public.

Dated: April 17, 2006.

Tom Quinn,
Forest Supervisor.
[FR Doc. 06-3840 Filed 4-21-06; 8:45 am]
BILLING CODE 3410-ED-M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Capital Construction Fund—Deposit/Withdrawal Report.

Form Number(s): None.

OMB Approval Number: 0648-0041.

Type of Request: Regular submission.

Burden Hours: 1,200.

Number of Respondents: 3,600.

Average Hours Per Response: 20 minutes.

Needs and Uses: The respondents are fishermen holding Fishing Vessel Capital Construction Fund (FVCCF) agreements. The FVCCF is a tax-deferral program for fishing vessel construction, acquisition, or reconstruction. Information collected on the NOAA

Form 34–82 is used in checking for respondents' compliance with program requirements and for inconsistencies in their reporting to NOAA and the Internal Revenue Service of program-related adjustments to their income. The deposit and withdrawal information is also required, by statute, to be annually reported to the Secretary of Treasury.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or David_Rostker@omb.eop.gov.

Dated: April 18, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–6041 Filed 4–21–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Survey of Housing Starts, Sales, and Completions.

Form Number(s): SOC–Q1/SF.1; SOC–Q1/MF.1.

Agency Approval Number: 0607–0110.

Type of Request: Extension of a currently approved collection.

Burden: 14,688 hours.

Number of Respondents: 28,200.

Avg Hours Per Response: 5 minutes.

Needs and Uses: The U.S. Census Bureau is requesting an extension of the currently approved collection for the Survey of Housing Starts, Sales, and Completions, otherwise known as the Survey of Construction (SOC). Government agencies and private

companies use statistics from SOC to monitor and evaluate the large and dynamic housing construction industry. Data for two principal economic indicators are produced from the SOC: New Residential Construction (housing starts and housing completions) and New Residential Sales. In addition, a number of other statistical series are produced, including extensive information on the physical characteristics of new residential buildings, and indexes measuring rates of inflation in the price of new buildings. These statistics are based on a sample of residential buildings in permit-issuing places and a road canvass in a sample of land areas not covered by building permit systems.

The field representatives (FRs) mail forms SOC–QI/SF.1 and SOC–QI/MF.1 to the respondents to complete. A few days later, the FRs either call or visit the respondents to enter their survey responses into a laptop computer using the Computer Assisted Personal Interviewing (CAPI) software formatted for the SOC–QI/SF.1 and SOC–QI/MF.1 forms. The respondents are homebuilders, real estate agents, rental agents, or new homeowners of sampled residential buildings. FR's contact respondents multiple times based on the number of projects in the sample and the number of months required to complete the project. Approximately 28,200 new buildings are added to our sample each year. A total of 176,250 responses are collected annually from all respondents. The Census Bureau uses the information collected in the SOC to publish estimates of the number of new residential housing units started, under construction, completed, and the number of new houses sold and for sale. The Census Bureau also publishes many financial and physical characteristics of new housing units. Government agencies use these statistics to evaluate economic policy, measure progress towards the national housing goal, make policy decisions, and formulate legislation. For example, the Board of Governors of the Federal Reserve System uses data from this survey to evaluate the effect of interest rates in this interest-rate sensitive area of the economy. The Bureau of Economic Analysis uses the data in developing the Gross Domestic Product (GDP). The private sector uses the information for estimating the demand for building materials and the many products used in new housing and to schedule production, distribution, and sales efforts. The financial community uses the data to estimate the demand for

short-term (construction loans) and long-term (mortgages) borrowing.

Affected Public: Business or other for-profit, Individuals or households.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202)482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dhynek@doc.gov). Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (susan_schechter@omb.eop.gov).

Dated: April 18, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–6042 Filed 4–21–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 23, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jason Rueter, (727) 824–5350 or jason.rueter@noaa.gov.

SUPPLEMENTARY INFORMATION:**I. Abstract**

National Marine Fisheries Service (NMFS) Southeast Region manages the U.S. fisheries of the Exclusive Economic Zone (EEZ) off the South Atlantic, Caribbean, and Gulf of Mexico under the Fishery Management Plans (FMP) for each Region. The Regional Fishery Management Councils prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. The regulations implementing the FMPs are at 50 CFR part 622.

The recordkeeping and reporting requirements at 50 CFR part 622 form the basis for this collection of information. NMFS Southeast Region requests information from fishery participants. This information, upon receipt, results in an increasingly more efficient and accurate database for management and monitoring of the fisheries of the EEZ off the South Atlantic, Caribbean, and Gulf of Mexico.

II. Method of Collection

Paper applications, electronic reports, and telephone calls are required from participants, and methods of submittal include Internet and facsimile transmission of paper forms.

III. Data

OMB Number: 0648-0205.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 16,820.

Estimated Time per Response: 1 hour and 24 minutes.

Estimated Total Annual Burden Hours: 24,121.

Estimated Total Annual Cost to Public: \$2,887,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 18, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-6043 Filed 4-21-06; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**Census Bureau**

2007 Economic Census Covering the Information; Professional, Scientific, and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services; Educational Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; and Other Services (Except Public Administration) Sectors

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 23, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at DHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Jack Moody, U.S. Census Bureau, Room 2784, Building 3, Washington, DC 20233-0001 on (301) 763-5181 or via the Internet at jmoody@census.gov.

SUPPLEMENTARY INFORMATION:**I. Abstract**

The economic census, conducted under the authority of Title 13, United States Code (U.S.C.), is the primary source of facts about the structure and functioning of the Nation's economy.

Economic statistics serve as part of the framework for the national accounts and provide essential information for government, business, and the general public. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The 2007 Economic Census covering the Information; Professional, Scientific, and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services; Educational Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; and Other Services (Except Public Administration) sectors (as defined by the North American Industry Classification System (NAICS)) will measure the economic activity of 2.9 million establishments. The information collected will produce basic statistics by kind of business on the number of establishments, receipts/revenue, expenses, payroll, and employment. It will also yield a variety of subject statistics, including receipts/revenue by product line, receipts/revenue by class of customer, and other industry-specific measures. Primary strategies for reducing burden in Census Bureau economic data collections are to increase reporting through standardized questionnaires and broader electronic data collection methods.

II. Method of Collection*Mail Selection Procedures*

Establishments for the mail canvass will be selected from the Census Bureau's Business Register. To be eligible for selection, an establishment will be required to satisfy the following conditions: (i) It must be classified in the information; professional, scientific, and technical services; management of companies and enterprises; administrative and support and waste management and remediation services; educational services; health care and social assistance; arts, entertainment, and recreation; or other services (except public administration) sector; (ii) it must be an active operating establishment of a multi-establishment firm (*i.e.*, a firm that operates at more than one physical location), or it must be a single-establishment firm with payroll (*i.e.*, a firm that operates at only one physical location); and (iii) it must be located in one of the 50 states or the District of Columbia. Mail selection procedures will distinguish the following groups of establishments:

1. Establishments of Multi-Establishment Firms

Selection procedures will assign all active operating establishments of multi-establishing firms to the mail component of the potential respondent universe. We estimate that the 2007 Economic Census mail canvasses will include approximately 467,000 establishments of multi-establishment firms.

2. Single-Establishment Firms With Payroll

As an initial step in the selection process, we will conduct a study of the potential respondent universe. This study will produce a set of industry-specific payroll cutoffs that we will use to distinguish large versus small single-establishment firms within each industry or kind of business. This payroll size distinction will affect selection as follows:

a. Large Single-Establishment Firms

Selection procedures will assign single-establishment firms having annualized payroll (from Federal administrative records) that equals or exceeds the cutoff for their industry to the mail component of the potential respondent universe. We estimate that the 2007 Economic Census mail canvasses will include approximately 769,000 large single-establishment firms.

b. Small Single-Establishment Firms

Selection procedures also will assign a sample of single-establishment firms having annualized payroll below the cutoff for their industry to the mail component of the potential respondent universe. Sampling strata and corresponding probabilities of selection will be determined by a study of the potential respondent universe conducted shortly before mail selection operations begin. We estimate that the 2007 Economic Census mail canvasses will include approximately 79,000 small single-establishment firms selected in this sample.

All remaining single-establishment firms with payroll will be represented in the census by data from Federal administrative records. Generally, we will not include these small employers in the census mail canvass. However, administrative records sometimes have fundamental industry classification deficiencies that make them unsuitable for use in producing detailed industry statistics by geographic area. When we find such a deficiency, we will mail the firm a census classification form to collect basic information needed to resolve the problem. We estimate that

the 2007 Economic Census mail canvasses for the sectors covered by this submission will include approximately 472,000 small single-establishment firms that receive these classification forms.

III. Data

OMB Number: Not available.

Form Number: The 78 standard forms, 19 classification forms, and 6 ownership or control flyers used to collect information from businesses in these sectors of the economic census are tailored to specific business practices and are too numerous to list separately in the notice. Requests for information on the proposed content of the forms should be directed to Jack Moody, U.S. Census Bureau, Room 2784, Building 3, Washington, DC 20233-0001 on (301) 763-5181 or via the Internet at jmoody@census.gov.

Type of Review: Regular review.

Affected Public: State or local governments, businesses or other for profit, non-profit institutions, and small businesses or organizations.

Estimated Number of Respondents:

Information:

Standard Form—101,197.

Classification Form—none.

Professional, Scientific, and Technical Services:

Standard Form—258,276.

Classification Form—117,844.

Management of Companies and Enterprises

Standard Form—66,020.

Classification Form—none.

Administrative and Support and Waste Management and Remediation Services:

Standard Form—152,050.

Classification Form—117,844.

Educational Services:

Standard Form—24,740.

Classification Form—14,141.

Health Care and Social Assistance:

Standard Form—366,097.

Classification Form—89,561.

Arts, Entertainment, and Recreation:

Standard Form—65,320.

Classification Form—18,855.

Other Services (Except Public Administration)

Standard Form—280,957.

Classification Form—113,130.

Total: 1,786,032.

Estimated Time Per Response:

Information:

Standard Form—1.2 hours.

Classification Form—none.

Professional, Scientific, and Technical Services:

Standard Form—1.6 hours.

Classification Form—.1 hours.

Management of Companies and Enterprises

Standard Form—.8 hours.

Classification Form—none.

Administrative and Support and Waste Management and Remediation Services:

Standard Form—1.2 hours.

Classification Form—.1 hours.

Educational Services:

Standard Form—.9 hours.

Classification Form—.1 hours.

Health Care and Social Assistance:

Standard Form—1.1 hours.

Classification Form—.1 hours.

Arts, Entertainment, and Recreation:

Standard Form—1.2 hours.

Classification Form—.1 hours.

Other Services (Except Public Administration)

Standard Form—1.0 hours.

Classification Form—.1 hours.

Estimated Total Annual Burden Hours: 1,601,405 hours.

Estimated Total Annual Cost: \$39,506,661.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S.C., 131 and 224.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 18, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-6045 Filed 4-21-06; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE**Economic Development Administration****Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance**

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated

separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE FOR THE PERIOD MARCH 30, 2006 THROUGH APRIL 18, 2006

Firm	Address	Date petition accepted	Product
Berliss Bearing Co	644 Route 10, Livingston, NJ 07039.	3/30/06	Roller and ball bearings.
Inland Tool & Manufacturing Co., Inc.	630 South 5th Street, Kansas City, KS 66105.	4/3/06	Stamped parts and tool room projects.
Wood Classics, Inc	47 Stevens Lane, Gardiner, NY 12525.	4/3/06	Teakwood outdoor garden and patio furniture.
Ray Distributing Co	1085 Northside Road, Victoria, TX 77904.	4/4/06	Fishing supplies.
Murnch-Kreuzer Candle Co	617 E. Hiawatha Boulevard, Syracuse, NY 03208.	4/5/06	Paraffin wax candles.
M.S. Willett, Inc	220 Cockeysville Road, Cockeysville, MD 21030.	4/5/06	Tool and die and stamping equipment.
Schubert Environmental Equipment, Inc.	2000 Bloomingdale Road, #115, Glendale Heights, IL 60139.	4/5/06	Industrial air cleaning, dust control and ventilation equipment.
J.D. Phillips Corp	181 North Industrial Highway, Alpena, MI 49707.	4/6/06	Metalworking machinery for the removal of metal.
Funblock, Inc	6515 Railroad, Raytown, MO 64133.	4/10/06	Children's furniture.
Bless Precision Tool, Inc	80 Pacific Drive, Quakertown, PA 18951.	4/10/06	Tooling and machine components.
Anderson Copper and Brass Co.	4325 Frontage Road, Oak Forest, IL 60452.	4/11/06	Brass fittings and steel adapters.
Columbia Architectural Products, Inc.	10722 Tucker Street, Beltsville, MD 20705.	4/11/06	Architectural wall panels.
Security Detection Systems, Inc. dba Ranger Security Detectors.	11900 Montana Avenue, El Paso, TX 79936.	4/12/06	Metal detectors.
Crabs, LLC	157 Twin Acres Drive, Lockport, LA 70374.	4/12/06	Seafood.
Elenel Industries, Inc. & Subsidiaries dba Photofabrication Engineering, Inc.	500 Fortune Boulevard, Milford, MA 01757.	4/18/06	Decorative products and precision parts.
Down Range Manufacturing, LLC.	4170 North Gun Powder Circle, Hastings, NE 68901.	4/18/06	Shotgun shell cartridges and accessories.
Ceramo Company, Inc	681 Kasten Drive, Jackson, MO 63755.	4/18/06	Pottery products.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Chief Counsel, Room 7005, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's interim final rule (70 FR 47002) for procedures for requesting a public hearing. The Catalog of Federal

Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Barry Bird,

Chief Counsel.

[FR Doc. E6-6058 Filed 4-21-06; 8:45 am]

BILLING CODE 3510-24-P

DEPARTMENT OF COMMERCE**Bureau of Industry and Security****Transportation and Related Equipment Technical Advisory Committee; Notice of Open Meeting**

The Transportation and Related Equipment Technical Advisory Committee will meet on May 3, 2006, 9:30 a.m., in the Herbert C. Hoover Building, Room 6087B, 14th Street between Pennsylvania & Constitution Avenues, NW., Washington, DC. The

Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda:

1. Welcome and Introductions.
2. Regulatory Overview.
3. Policy Overview.
4. Missile Technology Control Regime.
5. Report on the Wassenaar Experts Group Meeting.
6. Jurisdiction Technical Working Group Report.
7. Proposal by Boeing for a New Working Group Focused on Composite Materials.
8. Presentation of Papers and Comments by the Public.
9. Follow-up on Open Action Items.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials to Yvette Springer at Yspringer@bis.doc.gov

For more information contact Ms. Springer on (202) 482-4814.

Dated: April 17, 2006.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 06-3832 Filed 4-27-06; 8:45 am]

BILLING CODE 3510-JT-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application to Amend an Export Trade Certificate of Review.

SUMMARY: Export Trading Company Affairs ("ETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, (202) 482-5131

(this is not a toll-free number) or E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021-B H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 05-A0001."

A summary of the application for an amendment follows.

Summary of the Application:

Applicant: Central America Poultry Export Quota, Inc. ("CA-PEQ"), 901 New York Avenue, NW., Third Floor, Washington, DC 20001-4413.

Contact: Kyd D. Brenner, Partner, DTB Associates, LLP, Telephone: (202) 661-7098.

Application No.: 05-A0001.

Date Deemed Submitted: April 12, 2006.

The original CA-PEQ Certificate was issued on January 30, 2006 (71 FR 6753, February 9, 2006).

Proposed Amendment: CA-PEQ seeks to amend its Certificate to:

1. Add the following company as a new "Member" of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): Federacion de Avicultores de Honduras ("FEDAVIH"), San Pedro Sula, Honduras.

Dated: April 19, 2006.

Jeffrey C. Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. 06-3903 Filed 4-21-06; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041806D]

Atlantic Striped Bass Conservation Act; Atlantic Striped Bass Fishery

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

ACTION: Notice of scoping process; request for comments.

SUMMARY: Based on recommendations contained in Amendment 6 to Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for Atlantic Striped Bass (Amendment 6) and comments received from an advance notice of proposed rulemaking (ANPR), NMFS previously announced its intent to begin a scoping process to gather information for the preparation of an environmental impact statement (EIS). Initial scoping occurred during nine public hearings in November-December 2003. Due to the significant time that had passed since these initial scoping hearings, NMFS is seeking additional scoping on its preliminary draft analyses of Federal management options to open the EEZ to the harvest of Atlantic Striped Bass. The purpose of this notice is to alert the interested public of this further scoping process and to provide for public participation in compliance with environmental documentation requirements.

DATES: Comments on this notice must be received (see **ADDRESSES**) no later than 5 p.m. Eastern Standard Time on or before May 24, 2006.

ADDRESSES: Written comments and requests for copies of the draft document should be sent to: Tom

Meyer, State-Federal Fisheries Division, Office of Sustainable Fisheries, NMFS, 1315 East West Highway, Room 13248, Silver Spring, MD 20910. Mark the outside of the envelope "Striped Bass Scoping." An electronic copy of the draft document and supporting documents (ANPR and a Notice of Intent to Prepare an EIS (NOI)) may also be obtained on the State-Federal Fisheries Division's website under Regulatory Activities at http://www.nmfs.noaa.gov/sfa/state_federal/state_federal.htm. Comments may also be sent via fax to (301) 713-0596, or via e-mail to: *Striped-Bass.Comments@noaa.gov*. Include in the subject line of the fax or e-mail the following document identifier: *Striped Bass Scoping*.

FOR FURTHER INFORMATION CONTACT: Tom Meyer, telephone (301) 713-2334, x173.

SUPPLEMENTARY INFORMATION:

Background

An ANPR was published in the **Federal Register** on July 21, 2003 (68 FR 43074), with the comment period closing on August 20, 2003. The comment period was subsequently reopened on August 26, 2003 (68 FR 51232) for an additional 30-days. NMFS announced that it was considering proposed rulemaking to revise Federal Atlantic striped bass regulations to be compatible with the Atlantic States Marine Fisheries Commission's (ASMFC) Amendment 6 to the Interstate Fishery Management Plan for Atlantic Striped Bass (Amendment 6), and was seeking comments on the implementation of ASMFC's recommendations to the Secretary of Commerce (Secretary) to open the EEZ to the harvest of Atlantic striped bass. NMFS also solicited comments on possible alternative management measures and issues that NMFS should consider relative to these recommendations. After review of comments received from the public during the ANPR comment period, NMFS determined there were sufficient issues raised, both in support of and in opposition to the ASMFC recommendation, to warrant further evaluation of the potential impacts of opening the EEZ to striped bass fishing. That determination resulted in the initiation of a decision-making process required under the National Environmental Policy Act (NEPA). A "Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of scoping process" (NOI) was published in the **Federal Register** on October 20, 2003 (68 FR 59906). The notice presented a summary of the

ANPR comments, and requested further public input on a list of potential alternatives and other management measures. Public meetings were held in nine Atlantic coast states between November 5 - December 10, 2003, and public comment period closed on December 22, 2003. See **ADDRESSES** for information on how to obtain a copy of the ANPR or the NOI.

Atlantic striped bass management is based on ASMFC's Atlantic Striped Bass Interstate Fishery Management Plan (ISFMP), first adopted in 1981. From 1981 - 1994, four ISFMP Amendments were developed that provided a series of management measures that led to the rebuilding of the stocks. In 1995, ASMFC declared the Atlantic striped bass population fully restored and implemented Amendment 5 to the ISFMP to perpetuate the stock so as to allow a commercial and recreational harvest consistent with the long-term maintenance of the striped bass stock. Since then the population has expanded to record levels of abundance. To maintain this recovered population, ASMFC approved Amendment 6 in February 2003 (copies of Amendment 6 are available via ASMFC's website under *Interstate Fisheries Management- striped bass* at <http://www.asmfc.org>). ASMFC believes that the measures contained in Amendment 6 are necessary to prevent the overfishing of the Atlantic striped bass resource while allowing growth in both the commercial and recreational fishery. Development of Amendment 6 took almost 4 years and involved extensive input from technical and industry advisors, and provided numerous opportunities for the public to comment on the future management of the species.

Amendment 6 incorporates results of the 2001 Atlantic striped bass stock assessment, developed by the Atlantic Coast States, ASMFC, NMFS, and the U.S. Fish and Wildlife Service (see section 1.2.2 of Amendment 6 for summary). Amendment 6 also included recommendations to the Secretary on the development of complementary measures in the EEZ. Management of Atlantic striped bass in the EEZ was one of the issues that was considered throughout development of Amendment 6.

Recommendation to the Secretary

In addition to the recommendations to the Secretary in Amendment 6, the Secretary also received a letter on April 24, 2003, from ASMFC with the following three recommendations for implementation of regulations in the EEZ: (1) Remove the moratorium on the harvest of Atlantic striped bass in the

EEZ; (2) implement a 28-inch (71.1-cm) minimum size limit for recreational and commercial Atlantic striped bass fisheries in the EEZ; and (3) allow states the ability to adopt more restrictive rules for fishermen and vessels licensed in their jurisdictions.

In support of its request, ASMFC cited a number of reasons, including: ASMFC declared the triped bass stock restored in 1995; commercial harvest is controlled by individual state quotas; with the EEZ closed striped bass caught there are required to be discarded, and are often dead when thrown back - Opening the EEZ will convert some of the discarded bycatch of striped bass to landings; and Amendment 6 incorporates measures that would address future concerns about the stock status. See **ADDRESSES** for information on how to obtain a copy of the NOI, which has a complete list of ASMFC's cited reasons.

ASMFC also stated that its Atlantic Striped Bass Technical Committee would monitor annually the Atlantic striped bass population, and, if at some point in the future ASMFC determines that the Atlantic striped bass population is overfished or that overfishing is occurring, it may recommend further management measures for the EEZ.

Delay in the Development of an EIS

In September 2004, ASMFC's Striped Bass Technical Committee prepared its 2004 Stock Assessment Report for use by the Striped Bass Management Board (Board), which included data through 2003. That assessment contradicted previous assessments, which had indicated that the striped bass population was not overfished and continued to grow in abundance. Instead, the results of the modeling portion of the 2004 assessment indicated that the stock was overfished and that spawning stock biomass had been reduced to below target levels. However, the members of the Technical Committee did not feel the assessment provided an accurate representation of stock status, especially given that results of tagging study analyses did not show a similar increase in fishing mortality. The Technical Committee was concerned with any conclusions that might be derived from these estimated and recommended the 2004 assessment results not be used for management decisions until both the modeling software and the input data sets were reevaluated during the 2005 assessment process. The results from the 2004 stock assessment have not been used by ASMFC for management decisions.

With the great uncertainty in estimates of spawning stock biomass,

and fishing mortality rates during 2003, as presented in the 2004 stock assessment, NMFS decided to delay the completion of the EIS to be able to incorporate the 2005 stock assessment in the EIS.

During 2005, the Technical Committee and Stock Assessment Subcommittee reviewed model inputs and the model itself to determine if the results from the 2004 assessment truly reflected status of the population or were an artifact of data or model errors. They concluded that a number of the indices used in the 2004 effort were not consistent with what was observed in the population as a whole, or were contradictory to the majority of other reliable time series. Those indices were removed from subsequent model runs. The Technical Committee believes the current assessment reflects the true status of the population (within reasonable ranges of certainty). Both the 2004 and 2005 Striped Bass Stock Assessments are available on ASMFC's website under *Interstate Fisheries Management-striped bass* at <http://www.asmfc.org>.

Addendum I to Amendment 6

During the development of Amendment 6, there were concerns over the impacts of bycatch mortality on the overall population. To address these concerns, ASMFC is currently developing Addendum 1 to Amendment 6 to increase the accuracy of data on striped bass bycatch in all sectors of the striped bass fishery. Addendum I will outline mandatory data collection and bycatch mortality studies for the commercial, recreational, and for-hire fisheries for striped bass.

Further Public Participation

Due to the significant time that has passed since the nine initial scoping hearings were held in November-December 2003, NMFS is seeking additional scoping on its preliminary draft analyses of Federal management options to open the EEZ to the harvest of Atlantic Striped Bass. See **ADDRESSES** for information on how to obtain a copy of the draft document and where to send comments.

At this time, a preferred option has not been identified. Options being considered in this draft document include: (1) Open the entire EEZ, implement a 28-inch (71.1-cm) minimum size limit, and allow states to adopt more restrictive regulations for fishermen and vessels licensed in their state (ASMFC recommendation); (2) open the entire EEZ, implement a 28-inch (71.1-cm) minimum size limit, allow states to adopt more restrictive

regulations for fishermen and vessels licensed in their state, implement a recreational bag limit of 2 fish per day, require circle hooks for all commercial and recreational hook and line fishing using bait, and commercial trip limits and bycatch trip limit options; (3) open the entire EEZ, implement a 28-inch (71.1-cm) minimum size limit, allow states to adopt more restrictive regulations for fishermen and vessels licensed in their state, allow hook and line gear only, implement a recreational bag limit of 2 fish per day, require circle hooks for all commercial and recreational hook and line fishing using bait, and implement a commercial trip limit of 30 fish per trip or day whichever is greater; and (4) status quo - maintain moratorium in EEZ.

Authority: 16 U.S.C. 5151 *et seq.*

Dated: April 19, 2006.

James P. Burgess,

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

[FR Doc. E6-6108 Filed 4-21-06; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011806L]

Small Takes of Marine Mammals Incidental to Specified Activities; Rim of the Pacific (RIMPAC) Antisubmarine Warfare (ASW) Exercise Training Events Within the Hawaiian Islands Operating Area (OpArea)

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

ACTION: Notice; receipt of application and proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from the U.S. Navy (Navy) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting RIMPAC ASW training events, in which submarines, surface ships, and aircraft from the United States and multiple foreign nations participate in ASW training exercises, utilizing mid-frequency sonar (1 kilohertz (kHz) to 10 kHz), in the U.S. Navy's Hawaiian Operating Area (OpArea) in the summer of 2006. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to the Navy to

incidentally harass several species of marine mammals during the training exercises.

DATES: Comments and information must be received no later than May 24, 2006.

ADDRESSES: Comments on the application should be addressed to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for providing email comments is PR1.011806L@noaa.gov. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

In March, 2006, the Navy prepared a revised 2006 Supplement on the 2002 Programmatic Environmental Assessment on RIMPAC. That document will be posted on the Navy's website (<http://www.smdcen.us/rimpac06/>) concurrently with this notice and the Navy will be accepting public comments.

The Navy has also prepared a Draft Environmental Impact Statement (DEIS) for its Undersea Warfare Training Range (USWTR), which contains detailed supporting information for some of the issues discussed in this document and may be viewed at: <http://projects.earthtech.com>.

NMFS' Ocean Acoustics Program has made additional information and references relating to the effects of anthropogenic sound available on the NMFS website at: <http://www.nmfs.noaa.gov/pr/acoustics/bibliography.htm>.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713-2289, ext 166.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals

by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The National Defense Authorization Act of 2004 (NDAA) (Public Law 108-136) removed the "small numbers" limitation and amended the definition of "harassment" as it applies to a "military readiness activity" to read as follows:

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment]

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

NMFS received an application from the Navy for the taking, by harassment, of several species of marine mammals incidental to conducting RIMPAC ASW training events, in which submarines, surface ships, and aircraft from the United States and multiple foreign

nations participate in ASW training exercises, in the OpArea, in the summer of 2006. The RIMPAC ASW exercises are considered a military readiness activity. Based on discussions between the agencies regarding behavioral thresholds and mitigation and monitoring, the Navy submitted a modified application on March 16, 2006.

Description of the Activity

RIMPAC 2006 ASW activities are scheduled to take place from June 26, 2006, to about July 28, 2006, with ASW training events planned on 21 days. The OpArea is approximately 210,000 square nautical miles (nm), however, nearly all RIMPAC ASW training would occur in the six areas delineated in Figure 2-1 in the Navy's application (approximate 46,000 square nm). ASW events typically rotate between these six modeled areas. Sonar training exercises will occur within these areas for the most part; however, sonar may be operated briefly for battle preparation while forces are in transit from one of the modeled areas to another. These six areas were used for analysis as being representative of the marine mammal habitats and the bathymetric, seabed, wind speed, and sound velocity profile conditions within the entire OpArea. For purposes of this analysis, all likely RIMPAC ASW events were modeled as occurring in these six areas.

As a combined force during the exercises, submarines, surface ships, and aircraft will conduct ASW against opposition submarine targets. Submarine targets include real submarines, target drones that simulate the operations of an actual submarine, and virtual submarines interjected into the training events by exercise controllers. ASW training events are complex and highly variable. For RIMPAC, the primary event involves a Surface Action Group (SAG), consisting of one to five surface ships equipped with sonar, with one or more helicopters, and a P-3 aircraft searching for one or more submarines. There will be approximately four SAGs for RIMPAC 2006. For the purposes of analysis, each event in which a SAG participates is counted as an ASW operation. There will be approximately 44 ASW operations during RIMPAC with an average event length of approximately 12 hours.

One or more ASW events may occur simultaneously within the OpArea. Each event was identified and modeled separately. If a break of more than 1 hour in ASW operations occurred, then the subsequent event was modeled as a separate event. Training event durations

ranged from 2 hours to 24 hours. A total of 532 training hours were modeled for RIMPAC acoustic exposures. This total includes all potential ASW training that is expected to occur during RIMPAC.

Active Acoustic Sources

Tactical military sonars are designed to search for, detect, localize, classify, and track submarines. There are two types of sonars, passive and active. Passive sonars only listen to incoming sounds and, since they do not emit sound energy in the water, lack the potential to acoustically affect the environment. Active sonars generate and emit acoustic energy specifically for the purpose of obtaining information concerning a distant object from the sound energy reflected back from that object.

Modern sonar technology has developed a multitude of sonar sensor and processing systems. In concept, the simplest active sonars emit omnidirectional pulses ("pings") and time the arrival of the reflected echoes from the target object to determine range. More sophisticated active sonar emits an omnidirectional ping and then rapidly scans a steered receiving beam to provide directional, as well as range, information. More advanced sonars transmit multiple preformed beams, listening to echoes from several directions simultaneously and providing efficient detection of both direction and range.

The tactical military sonars to be deployed in RIMPAC are designed to detect submarines in tactical operational scenarios. This task requires the use of the sonar mid-frequency (MF) range (1 kilohertz [kHz] to 10 kHz) predominantly.

The types of tactical acoustic sources that would be used in training events during RIMPAC are discussed in the following paragraphs. For more information regarding how the Navy's determined which sources should not be included in their analysis, see the Estimates of Take Section later in this document.

Surface Ship Sonars – A variety of surface ships participate in RIMPAC, including guided missile cruisers, destroyers, guided missile destroyers, and frigates. Some ships (e.g., aircraft carriers) do not have any onboard active sonar systems, other than fathometers. Others, like guided missile cruisers, are equipped with active as well as passive sonars for submarine detection and tracking. For purposes of the analysis, all surface ship sonars were modeled as equivalent to SQS-53 having the nominal source level of 235 decibels (dB) re 1mPa_{2-s} (SEL). Since the SQS-

53 hull mounted sonar is the U.S. Navy's most powerful surface ship hull mounted sonar, modeling this source is a conservative assumption tending towards an overestimation of potential effects (although, the conservativeness is offset some by the fact that the Navy did not model for any of the times (though brief and infrequent) that they may use a source level higher than 235 dB). Sonar ping transmission durations were modeled as lasting 1 second per ping and omnidirectional, which is a conservative assumption that overestimates potential exposures, since actual ping durations will be less than 1 second. The SQS-53 hull mounted sonar transmits at center frequencies of 2.6 kHz and 3.3 kHz.

Submarine Sonars – Submarine sonars can be used to detect and target enemy submarines and surface ships. However, submarine active sonar use is very rare in the planned RIMPAC exercises, and, when used, very brief. Therefore, use of active sonar by submarines is unlikely to have any effect on marine mammals, and it was not modeled for RIMPAC 2006.

Aircraft Sonar Systems – Aircraft sonar systems that would operate during RIMPAC include sonobuoys and dipping sonar. Sonobuoys may be deployed by P-3 aircraft or helicopters; dipping sonars are used by carrier-based helicopters. A sonobuoy is an expendable device used by aircraft for the detection of underwater acoustic energy and for conducting vertical water column temperature measurements. Most sonobuoys are passive, but some can generate active acoustic signals as well. Dipping sonar is an active or passive sonar device lowered on cable by helicopters to detect or maintain contact with underwater targets. During RIMPAC, these systems active modes are only used briefly for localization of contacts and are not used in primary search capacity. Because active mode dipping sonar use is very brief, it is extremely unlikely its use would have any effect on marine mammals. The AN/AQS 13 (dipping sonar) used by carrier based helicopters was determined in the Environmental Assessment/Overseas Environmental Assessment of the SH-60R Helicopter/ALFS Test Program, October 1999, not to be problematic due to its limited use and very short pulse length. Therefore, the aircraft sonar systems were not modeled for RIMPAC 2006.

Torpedoes – Torpedoes are the primary ASW weapon used by surface ships, aircraft, and submarines. The

guidance systems of these weapons can be autonomous or electronically controlled from the launching platform through an attached wire. The autonomous guidance systems are acoustically based. They operate either passively, exploiting the emitted sound energy by the target, or actively, ensonifying the target and using the received echoes for guidance. All torpedoes used for ASW during RIMPAC would be located in the range area managed by Pacific Missile Range Facility (PMRF) and would be non-explosive and recovered after use.

Acoustic Device Countermeasures (ADC) – ADCs are, in effect, submarine simulators that make noise to act as decoys to avert localization and/or torpedo attacks. Previous classified analysis has shown that, based on the operational characteristics (source output level and/or frequency) of these acoustic sources, the potential to affect marine mammals was unlikely, and therefore they were not modeled for RIMPAC 2006.

Training Targets – ASW training targets are used to simulate target submarines. They are equipped with one or a combination of the following devices: (1) acoustic projectors emanating sounds to simulate submarine acoustic signatures; (2) echo repeaters to simulate the characteristics of the echo of a particular sonar signal reflected from a specific type of submarine; and (3) magnetic sources to trigger magnetic detectors. Based on the operational characteristics (source output level and/or frequency) of these acoustic sources, the potential to affect marine mammals is unlikely, and therefore they were not modeled for RIMPAC 2006.

Range Sources – Range pingers are active acoustic devices that allow each of the in-water platforms on the range (e.g., ships, submarines, target simulators, and exercise torpedoes) to be tracked by the range transducer nodes. In addition to passively tracking the pinger signal from each range participant, the range transducer nodes also are capable of transmitting acoustic signals for a limited set of functions. These functions include submarine warning signals, acoustic commands to submarine target simulators (acoustic command link), and occasional voice or data communications (received by participating ships and submarines on range). Based on the operational characteristics (source output level and/or frequency) of these acoustic sources, the potential to affect marine mammals

is unlikely, and therefore they were not modeled for RIMPAC 2006.

For detailed information regarding the proposed activity, please see the Navy's application and the associated Environmental Assessment (EA) (see **ADDRESSES**).

Description of Marine Mammals Potentially Affected by the Activity

There are 27 marine mammal species with possible or confirmed occurrence in the Navy's OpArea (Table 1): 25 cetacean species (whales, dolphins, and porpoises) and 2 pinnipeds (seals). In addition, five species of sea turtles are known to occur in the OpArea.

The most abundant marine mammals are rough-toothed dolphins, dwarf sperm whales, and Fraser's dolphins. The most abundant large whales are sperm whales. There are three seasonally migrating baleen whale species that winter in Hawaiian waters: minke, fin, and humpback whales. Humpback whales utilize Hawaiian waters as a major breeding ground during winter and spring (November through April), but should not be present during the RIMPAC exercise, which takes place in July. Because definitive information on the other two migrating species is lacking, their possible presence during the July timeframe is assumed, although it is considered unlikely. Seven marine mammal species listed as federally endangered under the Endangered Species Act (ESA) occur in the area: the humpback whale, North Pacific right whale, sei whale, fin whale, blue whale, sperm whale, and Hawaiian monk seal.

The Navy has used data compiled from available sighting records, literature, satellite tracking, and stranding and bycatch data to identify the species of marine mammals present in the OpArea. A combination of inshore survey data (within 25 nm; Mobley *et al.*, 2000) and offshore data (from 25 nm offshore out to the U.S. EEZ, Barlow 2003) was used to estimate the density and abundance of marine mammals within the OpArea (Table 1). Additional information regarding the status and distribution of the 27 marine mammal species that occur in the OpArea may be found in the Navy's application and the associated EA (See **ADDRESSES**) and in NMFS' Stock Assessment Reports, which are available at: http://www.nmfs.noaa.gov/pr/PR2/Stock_Assessment_Program/individual_sars.html.

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Scientific Name	Occurs ¹	Group Size ²	Overall Abund.	Animals/km2 Offshore Inshore	Estimated Takes sub-tts UnID'd total	Model'd Expos ÷ Abund. (%)
Order Cetacea						
Suborder Mysticeti (baleen whales)						
North Pacific right whale*	Rare			-	0	
Humpback whale*	Regular			-	0	
Minkie whale	Rare			-	0	
Sei whale*	Rare	3.4	77	0	1	29
Fin whale*	Rare	2.6	174	0.0001	3	61
Blue whale*	Rare			-	0	0
Bryde's whale	Regular	1.5	493	0.0002	0	96
Suborder Odontoceti (toothed whales)						
Sperm whale*	Regular	7.8	7,082	0.0029	34	1,417
Pygmy sperm whale	Regular	1	7,251	0.003	14	1,367
Dwarf sperm whale	Regular	2.3	19,172	0.0078	48	3,898
Cuvier's beaked whale	Regular	2	12,728	0.0052	29	2,428
Blainville's beaked whale	Regular	2.3	2,138	0.0009	3	443
Longman's beaked whale	Regular	17.8	766	0.0003	0	140
Rough-toothed dolphin	Regular	14.8	19,904	0.0081	49	3,809
Common bottlenose dolphin	Regular	9.5	3,263	0.0013	11	1,137
Pantropical spotted dolphin	Regular	60	10,260	0.0042	52	4,129
Spinner dolphin	Regular	29.5	2,804	0.0011	37	2,776
Striped dolphin	Regular	37.3	10,385	0.0042	26	2,438
Risso's dolphin	Regular	15.4	2,351	0.001	3	443
Melon-headed whale	Regular	89.2	2,947	0.0012	4	621
Fraser's dolphin	Rare	286.3	16,836	0.0069	41	3,212
Pygmy killer whale	Regular	14.4	817	0.0003	0	140
False killer whale	Regular	10.3	268	0.0001	0	137
Killer whale	Regular	6.5	430	0.0002	0	96
Short-finned pilot whale	Regular	22.3	8,846	0.0036	37	2,938
Order Carnivora						
Suborder Pinnipedia (seals, sea lions, walruses)						
Family Phocidae (true seals)						
Hawaiian monk seal*	Regular				1	0
Northern elephant seal	Rare				0	1

Table 1. Estimated Abundance and Take of Animals in OpArea During RIMPAC ASW exercises

Potential Effects on Marine Mammals

The Navy has requested an IHA for the take, by harassment, of marine mammals incidental to RIMPAC ASW exercises in the OpArea. Section 101(a)(5)(D) of the MMPA, the section pursuant to which IHAs are issued, may not be used to authorize mortality or serious injury leading to mortality. The Navy's analysis of the RIMPAC ASW exercises concluded that no mortality or serious injury leading to mortality would result from the proposed activities. However, NMFS believes, based on our interpretation of the limited available data bearing on this point, that some marine mammals may react to mid-frequency sonar, at received levels lower than those thought to cause direct physical harm, with behaviors that may, in some circumstances, lead to physiological harm, stranding, or, potentially, death. Therefore, NMFS is proposing to require additional mitigation and monitoring measures that were not originally proposed in the Navy's application to ensure (in addition to the standard statutory requirement to effect the "least practicable adverse impact upon the affected species or stock") that mortality or serious injury leading to mortality does not result from the proposed activities. Below, NMFS describes the potential effects on marine mammals of exposure to tactical sonar. However, due to the mitigation and monitoring required by this IHA, NMFS does not expect marine mammals to be exposed to sound of the strength or duration necessary to potentially induce the more severe of the effects discussed below.

Metrics Used in Acoustic Effect Discussions

This section includes a brief explanation of the two sound measurements (sound pressure level (SPL) and sound exposure level (SEL)) frequently used in the discussions of acoustic effects in this document.

SPL

Sound pressure is the sound force per unit area, and is usually measured in micropascals (mPa), where 1 Pa is the pressure resulting from a force of one newton exerted over an area of one square meter.

The sound levels to which most mammals are sensitive extend over many orders of magnitude and, for this reason, it is convenient to use a logarithmic scale (the decibel (dB) scale) when measuring sound. SPL is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure

level in underwater acoustics is 1 mPa, and the units for SPLs are dB re: 1 mPa.

$SPL \text{ (in dB)} = 20 \log \left(\frac{\text{pressure}}{\text{reference pressure}} \right)$

SPL is an instantaneous measurement and can be expressed as the peak, the peak-peak, or the root mean square (rms). Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates. SPL does not take the duration of a sound into account.

SEL

In this proposed authorization, effect thresholds are expressed in terms of sound exposure level SEL. SEL is an energy metric that integrates the squared instantaneous sound pressure over a stated time interval. The units for SEL are dB re: 1 mPa²-s.

$SEL = SPL + 10 \log(\text{duration})$

As applied to tactical sonar, the SEL includes both the ping SPL and the duration. Longer-duration pings and/or higher-SPL pings will have a higher SEL.

If an animal is exposed to multiple pings, the SEL in each individual ping is summed to calculate the total SEL. Since mammalian threshold shift (TS) data show less effect from intermittent exposures compared to continuous exposures with the same energy (Ward, 1997), basing the effect thresholds on the total received SEL may be a conservative approach for treating multiple pings; as some recovery may occur between pings and lessen the effect of a particular exposure.

The total SEL depends on the SPL, duration, and number of pings received. The acoustic effects on hearing that result in temporary threshold shift (TTS) and permanent threshold shift (PTS), do not imply any specific SPL, duration, or number of pings. The SPL and duration of each received ping are used to calculate the total SEL and determine whether the received SEL meets or exceeds the effect thresholds. For example, the sub-TTS behavioral effects threshold of 173 dB SEL would be reached through any of the following exposures:

A single ping with SPL = 173 dB re 1 mPa and duration = 1 second.

A single ping with SPL = 170 dB re 1 mPa and duration = 2 seconds.

Two pings with SPL = 170 dB re 1 mPa and duration = 1 second.

Two pings with SPL = 167 dB re 1 mPa and duration = 2 seconds.

Potential Physiological Effects

Physiological function is any of a collection of processes ranging from

biochemical reactions to mechanical interaction and operation of organs and tissues within an animal. A physiological effect may range from the most significant of impacts (i.e., mortality and serious injury) to lesser effects that would define the lower end of the physiological impact range, such as non-injurious short-term impacts to auditory tissues.

Exposure to some types of noise may cause a variety of physiological effects in mammals. For example, exposure to very high sound levels may affect the function of the visual system, vestibular system, and internal organs (Ward, 1997). Exposure to high-intensity sounds of sufficient duration may cause injury to the lungs and intestines (e.g., Dalecki *et al.*, 2002). Sudden, intense sounds may elicit a "startle" response and may be followed by an orienting reflex (Ward, 1997; Jansen, 1998). The primary physiological effects of sound, however, are on the auditory system (Ward, 1997).

Hearing Threshold Shift

In mammals, high-intensity sound may rupture the eardrum, damage the small bones in the middle ear, or over-stimulate the electromechanical hair cells that convert the fluid motions caused by sound into neural impulses that are sent to the brain. Lower level exposures may cause hearing loss, which is called a threshold shift (TS) (Miller, 1974). Incidence of TS may be either permanent, in which case it is called a permanent threshold shift (PTS), or temporary, in which case it is called a temporary threshold shift (TTS). PTS consists of non-recoverable physical damage to the sound receptors in the ear, which can include total or partial deafness, or an impaired ability to hear sounds in specific frequency ranges. TTS is recoverable and is considered to result from temporary, non-injurious impacts to hearing-related tissues. Hearing loss may affect an animal's ability to react normally to the sounds around it.

The amplitude, duration, frequency, and temporal pattern of sound exposure all affect the amount of associated TS. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS. For continuous sounds, exposures of equal energy will lead to approximately equal effects (Ward, 1997). For intermittent sounds, less TS will occur than from a continuous exposure with the same energy (some recovery will occur between exposures) (Kryter *et al.*, 1966; Ward, 1997). Additionally, though TTS is temporary, very prolonged exposure to sound strong enough to elicit TTS, or

shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985).

Additional detailed information regarding threshold shifts may be viewed in the Navy's RIMPAC application and in the USWTR DEIS.

Acoustically Mediated Bubble Growth

One theoretical cause of injury to marine mammals is rectified diffusion (Crum and Mao, 1996), the process of increasing the size of a bubble by exposing it to a sound field. This process could be facilitated if the environment in which the ensonified bubbles exist is supersaturated with gas. Repetitive diving by marine mammals can cause the blood and some tissues to accumulate gas to a greater degree than is supported by the surrounding environmental pressure (Ridgway and Howard, 1979). The deeper and longer dives of some marine mammals (for example, beaked whales) are theoretically predicted to induce greater supersaturation (Houser *et al.*, 2001b). If rectified diffusion were possible in marine mammals exposed to high-level sound, conditions of tissue supersaturation could theoretically speed the rate and increase the size of bubble growth. Subsequent effects due to tissue trauma and emboli would presumably mirror those observed in humans suffering from decompression sickness.

It is unlikely that the short duration of sonar pings would be long enough to drive bubble growth to any substantial size, if such a phenomenon occurs. However, an alternative but related hypothesis has also been suggested: stable bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. In such a scenario the marine mammal would need to be in a gas-supersaturated state for a long enough period of time for bubbles to become of a problematic size. Yet another hypothesis has speculated that rapid ascent to the surface following exposure to a startling sound might produce tissue gas saturation sufficient for the evolution of nitrogen bubbles (Jepson *et al.*, 2003). In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. Collectively, these hypotheses can be referred to as "hypotheses of acoustically mediated bubble growth."

Although theoretical predictions suggest the possibility for acoustically mediated bubble growth, there is

considerable disagreement among scientists as to its likelihood (Piantadosi and Thalmann, 2004; Evans and Miller, 2003). To date, Energy Levels (ELs) predicted to cause *in vivo* bubble formation within diving cetaceans have not been evaluated (NOAA, 2002b). Further, although it has been argued that traumas from some recent beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.*, 2003), there is no conclusive evidence of this. Because evidence supporting the potential for acoustically mediated bubble growth is debatable, this proposed IHA does not give it any special treatment. Additionally, the required mitigation measures, which are designed to avoid behavioral disruptions that could result in abnormal vertical movement by whales through the water column, should also reduce the potential for creating circumstances that theoretically contribute to harmful bubble growth.

Additional information on the physiological effects of sound on marine mammals may be found in the Navy's IHA application and associated Environmental Assessment, the USWTR DEIS, and on the Ocean Acoustic Program section of the NMFS website (see **ADDRESSES**).

Stress Responses

In addition to PTS and TTS, exposure to mid-frequency sonar is likely to result in other physiological changes that have other consequences for the health and ecological fitness of marine mammals. There is mounting evidence that wild animals respond to human disturbance in the same way that they respond to predators (Beale and Monaghan, 2004; Frid, 2003; Frid and Dill, 2002; Gill *et al.*, 2000; Gill and Sutherland, 2001; Harrington and Veitch, 1992; Lima, 1998; Romero, 2004). These responses manifest themselves as interruptions of essential behavioral or physiological events, alteration of an animal's time or energy budget, or stress responses in which an animal perceives human activity as a potential threat and undergoes physiological changes to prepare for a flight or fight response or more serious physiological changes with chronic exposure to stressors (Frid and Dill, 2002; Romero, 2004; Sapolsky *et al.*, 2000; Walker *et al.*, 2005).

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Sapolsky *et al.*, 2005; Seyle, 1950).

Once an animal's central nervous system perceives a threat, it develops a biological response or defense that consists of a combination of the four general biological defense responses: behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune response.

The physiological mechanisms behind stress responses involving the hypothalamus-pituitary-adrenal glands have been well-established through controlled experiment in the laboratory and natural settings (Korte *et al.*, 2005; McEwen and Seeman, 2000; Moberg, 1985; 2000; Sapolsky *et al.*, 2005). Relationships between these physiological processes, animal behavior, neuroendocrine responses, immune responses, inhibition of reproduction (by suppression of pre-ovulatory luteinizing hormones), and the costs of stress responses have also been documented through controlled experiment in both laboratory and free-living animals (for examples see, Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005; Reneerkens *et al.*, 2002; Thompson and Hamer, 2000; Tilbrook *et al.*, 2000).

The available evidence suggests that: with the exception of unrelieved pain or extreme environmental conditions, in most animals (including humans) chronic stress results from exposure to a series of acute stressors whose cumulative biotic costs produce a pathological or pre-pathological state in an animal. The biotic costs can result from exposure to an acute stressor or from the accumulation of a series of different stressors acting in concert before the animal has a chance to recover.

Although these responses have not been explicitly identified in marine mammals, they have been identified in other vertebrate animals and every vertebrate mammal that has been studied, including humans. Because of the physiological similarities between marine mammals and other mammal species, NMFS believes that acoustic energy sufficient to trigger onset PTS or TTS is likely to initiate physiological stress responses. More importantly, NMFS believes that marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS.

Potential Behavioral Effects

For a military readiness activity, Level B Harassment is defined as "any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural

behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered.”

As discussed above, TTS consists of temporary, short-term impacts to auditory tissue that alter physiological function, but that are fully recoverable without the requirement for tissue replacement or regeneration. An animal that experiences a temporary reduction in hearing sensitivity suffers no permanent injury to its auditory system, but, for an initial time post-exposure, may not perceive some sounds due to the reduction in sensitivity. As a result, the animal may not respond to sounds that would normally produce a behavioral reaction (such as a predator or the social calls of conspecifics, which play important roles in mother-calf relations, reproduction, foraging, and warning of danger). This lack of response qualifies as a temporary disruption of normal behavioral patterns - the animal is impeded from responding in a normal manner to an acoustic stimulus.

NMFS also considers disruption of the behavior of marine mammals that can result from sound levels lower than those considered necessary for TTS to occur (often referred to as sub-TTS behavioral disruption). Though few studies have specifically documented the effects of tactical mid-frequency sonar on the behavior of marine mammals in the wild, many studies have reported the effects of a wide range of intense anthropogenic acoustic stimuli on specific facets of marine mammal behavior, including migration (Malme *et al.*, 1984; Ljungblad *et al.*, 1988; Richardson *et al.*, 1999), feeding (Malme *et al.*, 1988), and surfacing (Nowachek *et al.*, 2004). Below, NMFS summarizes the results of two studies and one after-the-fact investigation wherein the natural behavior patterns of marine mammals exposed to levels of tactical mid-frequency sonar, or sounds similar to mid-frequency sonar, lower than those thought to induce TTS were disrupted to the point where it was abandoned or significantly altered:

(1) Finneran and Schlundt (2004) analyzed behavioral observations from related TTS studies (Schlundt *et al.*, 2000; Finneran *et al.*, 2001; 2003) to

calculate cetacean behavioral reactions as a function of known noise exposure. During the TTS experiments, 4 dolphins and 2 white whales were exposed during a total of 224 sessions to 1-s pulses between 160 and 204 dB re 1 microPa (root-mean-square sound pressure level (SPL)), at 0.4, 3, 10, 20, and 75 kHz. Finneran and Schlundt (2004) evaluated the behavioral observations in each session and determined whether a “behavioral alteration” (ranging from modifications of response behavior during hearing sessions to attacking the experimental equipment) occurred. For each frequency, the percentage of sessions in which behavioral alterations occurred was calculated as a function of received noise SPL. By pooling data across individuals and test frequencies, respective SPL levels coincident with responses by 25, 50, and 75 percent behavioral alteration were documented. 190 dB re 1 microPa (SPL) is the point at which 50 percent of the animals exposed to 3, 10, and 20 kHz tones were deemed to respond with some behavioral alteration, and the threshold that the Navy originally proposed for sub-TTS behavioral disturbance.

(2) Nowacek *et al.* (2004) conducted controlled exposure experiments on North Atlantic right whales using ship noise, social sounds of con-specifics, and an alerting stimulus (frequency modulated tonal signals between 500 Hz and 4.5 kHz). Animals were tagged with acoustic sensors (D-tags) that simultaneously measured movement in three dimensions. Whales reacted strongly to alert signals at received levels of 133–148 dB SPL, mildly to conspecific signals, and not at all to ship sounds or actual vessels. The alert stimulus caused whales to immediately cease foraging behavior and swim rapidly to the surface. Although SEL values were not directly reported, based on received exposure durations, approximate received values were on the order of 160 dB re: 1 microPa²-s.

(3) NMFS (2005) evaluated the acoustic exposures and coincident behavioral reactions of killer whales in the presence of tactical mid-frequency sonar. In this case, none of the animals were directly fitted with acoustic dosimeters. However, based on a Naval Research Laboratory (NRL) analysis that

took advantage of the fact that calibrated measurements of the sonar signals were made in situ and using advanced modeling to bound likely received exposures, estimates of received sonar signals by the killer whales were possible. Received SPL values ranged from 121 to 175 dB re: 1 microPa. The most probable SEL values were 169.1 to 187.4 dB re: 1 microPa²-s; worst-case estimates ranged from 177.7 to 195.8 dB re: 1 microPa²-s. Researchers observing the animals during the course of sonar exposure reported unusual alterations in swimming, breathing, and diving behavior.

For more detailed information regarding how marine mammals may respond to sound, see the Navy’s IHA application, the Navy’s associated EA, Richardson’s Marine Mammals and Noise (1995), or the references cited on NMFS’ Ocean Acoustic Program website (see ADDRESSES)

Proposed Harassment Thresholds

For the purposes of the proposed IHA for this activity, NMFS recognizes three levels of take; Level A Harassment (Injury), Level B Harassment (Behavioral Disruption), and mortality (or serious injury that may lead to mortality) (Table 2). Mortality, or serious injury leading to mortality, may not be authorized with an IHA.

NMFS has determined that for acoustic effects, acoustic thresholds are the most effective way to consistently both apply measures to avoid or minimize the impacts of an action and to quantitatively estimate the effects of an action. Thresholds are commonly used in two ways: (1) To establish a shut-down or power down zone, i.e., if an animal enters an area calculated to be ensonified above the level of an established threshold, a sound source is powered down or shut down; and (2) to calculate take, for example, if the Level A Harassment threshold is 215 dB, a model may be used to calculate the area around the sound source that will be ensonified to that level or above, then, based on the estimated density of animals and the distance that the sound source moves, NMFS can estimate the number of marine mammals exposed to 215 dB. The rationale behind the acoustic thresholds proposed for this authorization are discussed below.

Levels of Take Pursuant to the MMPA	Basis of Threshold	Proposed Threshold
Level A harassment (Injury)	Permanent Threshold Shift (PTS).	215 dB (SEL).
Level B Harassment (Behavioral Effects)	Temporary Threshold Shift (PTS).	195 dB.
Mortality, or Serious Injury That May Lead to Mortality (Stranding)	Sub-TTS Behavioral Effects .. Not enough information for quantitative threshold.	173 dB (SEL). May not be authorized with an IHA.

Table 2. The three levels of take addressed in the MMPA, how NMFS measures them in regard to acoustic effects, and the proposed thresholds for this authorization.

TTS

Because it is non-injurious, NMFS considers TTS as Level B harassment (behavioral disruption) that is mediated by physiological effects on the auditory system. The smallest measurable amount of TTS (onset-TTS) is taken as the best indicator for slight temporary sensory impairment. However, as mentioned earlier, NMFS believes that behavioral disruptions may result from received levels of tactical sonar lower than those thought to induce TTS and, therefore, NMFS does not consider onset TTS to be the lowest level at which Level B Harassment may occur. NMFS considers the threshold for Level B Harassment as the received levels from which sub-TTS behavioral disruptions are likely to result (discussed in Sub-TTS sub-section). However, the threshold for Level A Harassment (PTS) is derived from the threshold for TTS and, therefore, it is necessary to describe how the TTS threshold was developed.

The proposed TTS threshold is primarily based on the cetacean TTS data from Schlundt *et al.* (2000). These tests used short-duration tones similar to sonar pings, and they are the most directly relevant data for the establishing TTS criteria. The mean exposure EL required to produce onset-TTS in these tests was 195 dB re 1 microPa²-s. This result is corroborated by the short-duration tone data of Finneran *et al.* (2000, 2003) and the long-duration noise data from Nachtigall *et al.* (2003a,b). Together, these data demonstrate that TTS in cetaceans is correlated with the received EL and that onset-TTS exposures are fit well by an equal-energy line passing through 195 dB re 1 microPa²-s.

The justification for establishing the 195 dB acoustic criteria for TTS is described in detail in both the Navy's RIMPAC IHA application and the USWTR DEIS (see ADDRESSES).

PTS

PTS consists of non-recoverable physical damage to the sound receptors in the ear and is, therefore, classified as Level A harassment under the MMPA. For acoustic effects, because the tissues

of the ear appear to be the most susceptible to the physiological effects of sound, and because threshold shifts (TSS) tend to occur at lower exposures than other more serious auditory effects, NMFS has determined that permanent threshold shift (PTS) is the best indicator for the smallest degree of injury that can be measured. Therefore, the acoustic exposure associated with onset-PTS is used to define the lower limit of the Level A harassment.

PTS data do not currently exist for marine mammals and are unlikely to be obtained due to ethical concerns. However, PTS levels for these animals may be estimated using TTS data and relationships between TTS and PTS. NMFS proposes the use of 215 dB re 1 mPa²-s as the acoustic threshold for PTS. This threshold is based on a 20 dB increase in exposure EL over that required for onset-TTS (195 dB). Extrapolations from terrestrial mammal data indicate that PTS occurs at 40 dB or more of TS, and that TS growth occurs at a rate of approximately 1.6 dB TS per dB increase in EL. There is a 34 dB TS difference between onset-TTS (6 dB) and onset-PTS (40 dB). Therefore, an animal would require approximately 20dB of additional exposure (34 dB divided by 1.6 dB) above onset-TTS to reach PTS.

The justification for establishing the 215 dB acoustic criteria for PTS is described in detail in both the Navy's RIMPAC IHA application and the Undersea Warfare Training Range USWTR DEIS (see ADDRESSES).

Sub-TTS Behavioral Disruption

NMFS believes that behavioral disruption of marine mammals may result from received levels of mid-frequency sonar lower than those believed necessary to induce TTS, and further, that the lower limit of Level B Harassment may be defined by the received sound levels associated with these sub-TTS behavioral disruptions. As of yet, no controlled exposure experiments have been conducted wherein wild cetaceans are deliberately exposed to tactical mid-frequency sonar and their reactions carefully observed.

However, NMFS believes that in the absence of controlled exposure experiments, the following investigations and reports (described previously in the Behavioral Effects section) constitute the best available scientific information for establishing an appropriate acoustic threshold for sub-TTS behavioral disruption: (1) Finneran and Schlundt (2004), in which behavioral observations from TTS studies of captive bottlenose dolphins and beluga whales are analyzed as a function of known noise exposure; (2) Nowachek *et al.* (2004), in which controlled exposure experiments were conducted on North Atlantic right whales using ship noise, social sounds of con-specifics, and an alerting stimulus; and (3) NMFS (2005), in which the behavioral reactions of killer whales in the presence of tactical mid-frequency sonar were observed, and analyzed after the fact. Based on these three studies, NMFS has set the sub-TTS behavioral disruption threshold at 173 dB re 1 mPa²-s (SEL).

The Finneran and Schlundt (2004) analysis is an important piece in the development of an appropriate acoustic threshold for sub-TTS behavioral disruption because: (1) researchers had superior control over and ability to quantify noise exposure conditions; (2) behavioral patterns of exposed marine mammals were readily observable and definable; and, (3) fatiguing noise consisted of tonal noise exposures with frequencies contained in the tactical mid-frequency sonar bandwidth. In Finneran and Schlundt (2004) 190 dB re 1 mPa (SPL) is the point at which 50 percent of the animals exposed to 3, 10, and 20 kHz tones were deemed to respond with some behavioral alteration. This 50 percent behavior alteration level (190 dB SPL) may be converted to an SEL criterion of 190 dB re 1 mPa²-s (the numerical values are identical because exposure durations were 1-s), which provides consistency with the Level A (PTS) effects threshold, which are also expressed in SEL. The Navy proposed 190 dB (SEL) as the acoustic threshold for sub-TTS

behavioral disruption in the first IHA application they submitted to NMFS.

NMFS acknowledges the advantages arising from the use of behavioral observations in controlled laboratory conditions; however, there is considerable uncertainty regarding the validity of applying data collected from trained captives conditioned to not respond to noise exposure in establishing thresholds for behavioral reactions of naive wild individuals to a sound source that apparently evokes strong reactions in some marine mammals. Although wide-ranging in terms of sound sources, context, and type/extent of observations reported, the large and growing body of literature regarding behavioral reactions of wild, naive marine mammals to anthropogenic exposure generally suggests that wild animals are behaviorally affected at significantly lower levels than those determined for captive animals by Finneran and Schlundt (2004). For instance, some cetaceans exposed to human noise sound sources, such as seismic airgun sounds and low frequency sonar signals, have been shown to exhibit avoidance behavior when the animals are exposed to noise levels of 140–160 dB re: 1 mPa under certain conditions (Malme *et al.*, 1983; 1984; 1988; Ljungblad *et al.*, 1988; Tyack and Clark, 1998). Richardson *et al.* (1995) reviewed the behavioral response data for many marine mammal species and a wide range of human sound sources.

Two specific situations for which exposure conditions and behavioral reactions of free-ranging marine mammals exposed to sounds very similar to those proposed for use in RIMPAC are considered by Nowacek *et al.* (2004) and NMFS (2005) (described previously in Behavioral Effects subsection). In the Nowacek *et al.* (2004) study, North Atlantic right whales reacted strongly to alert signals at received levels of 133–148 dB SPL, which, based on received exposure durations, is approximately equivalent to 160 dB re: 1 mPa²-s (SEL). In the NMFS (2005) report, unusual alterations in swimming, breathing, and diving behaviors of killer whales observed by researchers in Haro Strait were correlated, after the fact, with the presence of estimated received sound levels between 169.1 and 187.4 dB re: 1 mPa²-s (SEL).

While acknowledging the limitations of all three of these studies and noting that they may not necessarily be predictive of how wild cetaceans might react to mid-frequency sonar signals in the OpArea, NMFS believes that these three studies are the best available

science to support the selection of an acoustic sub-TTS behavioral disturbance threshold at this time. Taking into account all three studies, NMFS has established 173 dB re: 1 mPa² (SEL) as the threshold for sub-TTS behavioral disturbance.

Stranding and Mortality

Over the past 10 years, there have been four stranding events coincident with military mid-frequency sonar use that are believed to most likely have been caused by exposure to the sonar. These occurred in Greece (1996), the Bahamas (2000), Madeira (2000) and Canary Islands (2002). A number of other stranding events coincident to the operation of mid-frequency sonar and resulting in the death of beaked whales or other species (minke whales, dwarf sperm whales, pilot whales) have been reported, though the majority have not been investigated to the level of the Bahamas stranding and, therefore, other causes cannot be ruled out. One of these strandings occurred in Hanalei Bay during the last RIMPAC exercise in 2004.

Greece, Madeira, and Canary Islands

Twelve Cuvier's beaked whales stranded along the western coast of Greece in 1996. The test of a low- and mid-frequency active sonar system conducted by NATO was correlated with the strandings by an analysis published in *Nature*. A subsequent NATO investigation found the strandings to be closely related, in time, to the movements of the sonar vessel, and ruled out other physical factors as a cause.

In 2000, four beaked whales stranded in Madeira while several NATO ships were conducting an exercise near shore. Scientists investigating the stranding found that the injuries, which included blood in and around the eyes, kidney lesions, and pleural hemorrhage, as well as the pattern of the stranding suggested that a similar pressure event precipitated or contributed to strandings in both Madeira and Bahamas (see Bahamas sub-section).

In 2002, at least 14 beaked whales of three different species stranded in the Canary Islands while a naval exercise including Spanish vessels, U.S. vessels, and at least one vessel equipped with mid-frequency sonar was conducted in the vicinity. Four more beaked whales stranded over the next several days. The subsequent investigation, which was reported in both *Nature* and *Veterinary Pathology*, revealed a variety of traumas, including emboli and lesions suggestive of decompression sickness.

Bahamas

NMFS and the Navy prepared a joint report addressing the multi-species stranding in the Bahamas in 2000, which took place within 24 hours of U.S. Navy ships using active mid-frequency sonar as they passed through the Northeast and Northwest Providence Channels. Of the 17 cetaceans that stranded (Cuvier's beaked whales, Blainsville's beaked whales, Minke whales, and a spotted dolphin), seven animals died on the beach (5 Cuvier's beaked whales, 1 Blainsville's beaked whale, and the spotted dolphin) and the other 10 were returned to the water alive (though their fate is unknown). A comprehensive investigation was conducted and all possible causes of the stranding event were considered, whether they seemed likely at the outset or not. The only possible contributory cause to the strandings and cause of the lesions that could not be ruled out was intense acoustic signals (the dolphin necropsy revealed a disease and the death is considered unrelated to the others).

Based on the way in which the strandings coincided with ongoing naval activity involving tactical mid-frequency sonar use, in terms of both time and geography, the nature of the physiological effects experienced by the dead animals, and the absence of any other acoustic sources, the investigation team concluded that mid-frequency sonars aboard U.S. Navy ships that were in use during the sonar exercise in question were the most plausible source of this acoustic or impulse trauma. This sound source was active in a complex environment that included the presence of a surface duct, unusual and steep bathymetry, a constricted channel with limited egress, intensive use of multiple, active sonar units over an extended period of time, and the presence of beaked whales that appear to be sensitive to the frequencies produced by these sonars. The investigation team concluded that the cause of this stranding event was the confluence of the Navy mid-frequency sonar and these contributory factors working together, and further recommended that the Navy avoid operating mid-frequency sonar in situations where these five factors would be likely to occur. This report does not conclude that all five of these factors must be present for a stranding to occur, nor that beaked whales are the only species that could potentially be affected by the confluence of the other factors. Based on this, NMFS believes that the presence of surface ducts, steep bathymetry, and/or constricted channels added to the operation of mid-frequency

sonar in the presence of cetaceans (especially beaked whales and, potentially, deep divers) may increase the likelihood of producing a sound field with the potential to cause cetaceans to strand, and therefore, necessitates caution.

Hanalei Bay

Approximately 150–200 melon-headed whales (*Peponocephala electra* - a deep water species) live stranded (i.e. the animals entered and remained in unusual habitat) in Hanalei Bay on the morning of July 3, 2004 at approximately 7 a.m. RIMPAC exercises involving mid-frequency sonar were conducted on July 3, but the official exercise did not commence until approximately 8 a.m. and, thus, could not have been the original triggering event. However, as six naval surface vessels traveled to the operational area the previous day, each intermittently transmitted active sonar during “coordinated submarine training exercises” as they approached Kauai from the south. NMFS conducted a detailed sound propagation analysis of the sonar transmissions of Japanese and U.S. naval vessels transiting from Pearl Harbor to Kauai on the afternoon and evening of 2 July 2004. Predicted sound fields were calculated for five positions along the known tracks. For each ship position where active sonar was used, transit speeds from areas to the south and east of Kauai necessary to reach Hanalei Bay by 7 a.m. were determined. These transit rates were then compared with the ship locations and predicted sound fields. Results indicate that animals exposed to military sonar signals near the vessels could have reached the Bay while swimming at rates believed sustainable over relatively long periods for this species.

The analysis is by no means conclusive evidence that exposure to tactical sonar on 2 July resulted in the pod of whales stranding in Hanalei Bay on July 3. However, based on these results, NMFS concludes that it was possible that sonar transmissions caused behavioral responses in the animals that led to their swimming away from the sound source, into the sound shadow of the island of Kauai, and entering Hanalei Bay (a shallower environment than they usually inhabit). Further, it is possible that sonar transmissions during the official RIMPAC exercise on July 3 could have prevented some of whales from leaving the Bay (witnesses observed whales attempting several times to depart the Bay, only to return rapidly once just outside it). The Navy modeled the sound transmissions during the event and calculated that the

received level at Hanalei Bay from the sonar operated at the PMRF range on July 3 would have been approximately 147.5 dB re 1 mPa.

Beaked Whales

Recent beaked whale strandings have prompted inquiry into the relationship between mid-frequency active sonar and the cause of those strandings. Although Navy mid-frequency active tactical sonar has been identified as the most plausible contributory source to the 2000 Bahamas stranding event, the specific mechanisms that led to that stranding are not understood, and there is uncertainty regarding the ordering of effects that led to the stranding. It is uncertain whether beaked whales were directly injured by sound (a physiological effect) prior to stranding or whether a behavioral response to sound occurred that ultimately caused the beaked whales to strand and be injured.

Several potential physiological outcomes caused by behavioral responses to high-intensity sounds have been suggested by Cox *et al.* (in press). These include: gas bubble formation caused by excessively fast surfacing; remaining at the surface too long when tissues are supersaturated with nitrogen; or diving prematurely when extended time at the surface is necessary to eliminate excess nitrogen. Baird *et al.* (2005) found that slow ascent rates from deep dives and long periods of time spent within 50 m of the surface were typical for both Cuvier's and Blainville's beaked whales, the two species involved in mass strandings related to naval sonar. These two behavioral mechanisms may be necessary to purge excessive dissolved nitrogen concentrated in their tissues during their frequent long dives (Baird *et al.*, 2005). Baird *et al.* (2005) further suggests that abnormally rapid ascents or premature dives in response to high-intensity sonar could indirectly result in physical harm to the beaked whales, through the mechanisms described above (gas bubble formation or non-elimination of excess nitrogen).

During the RIMPAC exercise there will be use of multiple sonar units in an area where three beaked whale species may be present. A surface duct may be present in a limited area for a limited period of time. Although most of the ASW training events will take place in the deep ocean, some will occur in areas of high bathymetric relief. However, none of the training events will take place in a location having a constricted channel with limited egress similar to the Bahamas. Consequently, not all five of the environmental factors believed to

contribute to the Bahamas stranding (mid-frequency sonar, beaked whale presence, surface ducts, steep bathymetry, and constricted channels with limited egress) will be present during RIMPAC ASW exercises.

However, as mentioned previously, NMFS believes caution should be used anytime either steep bathymetry, surface ducting conditions, or a constricted channel is present in addition to the operation of mid-frequency tactical sonar and the presence of cetaceans (especially beaked whales).

In order to avoid the potential for mortality or serious injury leading to mortality (in the form of strandings), NMFS is requiring additional mitigation and monitoring beyond that proposed in the Navy's application. However, given the information regarding beaked whale strandings and the uncertainty regarding the mechanisms for the strandings, NMFS will treat all predicted behavioral disturbance of beaked whales as potential non-lethal injury. All predicted Level B harassment of beaked whales is therefore given consideration as non-lethal Level A harassment.

Estimated Take by Incidental Harassment

In order to estimate acoustic exposures from the RIMPAC ASW operations, acoustic sources to be used were examined with regard to their operational characteristics. Systems with acoustic source levels below 205 dB re 1 mPa were not included in the analysis given that at this source level (205 dB re 1 mPa) or below, a 1-second ping would attenuate below the behavioral disturbance threshold of 173 dB at a distance of about 100 meters. As additional verification that they did not need to be considered further, sources at this level were modeled, using spreadsheet calculations, to determine the marine mammal exposures estimated to result from their operation. For example, a sonobuoy's typical use yielded an exposure area that produced 0 marine mammal exposures based on the maximum animal density. Such a source was called non-problematic and was not modeled in the sense of running its parameters through the environmental model Comprehensive Acoustic System Simulation (CASS), generating an acoustic footprint, etc. The proposed counter measures source level was less than 205 dB but its operational modes were such that a simple “look” was not applicable, and a separate study was conducted to ensure it did not need to be considered further.

In addition, systems with an operating frequency greater than 100 kHz were not

analyzed in the detailed modeling as these signals attenuate rapidly, resulting in very short propagation distances. Acoustic countermeasures were previously examined and found not to be problematic. The AN/AQS 13 (dipping sonar) used by carrier based helicopters was determined in the Environmental Assessment/Overseas Environmental Assessment of the SH-60R Helicopter/ALFS Test Program, October 1999, not to be problematic due to its limited use and very short pulse length (2 to 5 pulses of 3.5 to 700 msec). Since 1999, during the time of the test program, there have been over 500 hours of operation, with no environmental effects observed. The Directional Command Activated Sonobuoy System (DICASS) sonobuoy was determined not to be problematic having a source level of 201dB re 1 mPa. These acoustic sources, therefore, did not require further examination in this analysis.

Based on the information above, only hull mounted mid-frequency active tactical sonar was determined to have the potential to affect marine mammals protected under the MMPA and ESA during RIMPAC ASW training events.

Model

An analysis was conducted for RIMPAC 2006, modeling the potential interaction of hull mounted mid-frequency active tactical sonar with marine mammals in the OpArea. The model incorporates site-specific bathymetric data, time-of-year-specific sound speed information, the sound source's frequency and vertical beam pattern, and multipath pressure information as a function of range, depth and bearing. Results were calculated based on the typical ASW activities planned for RIMPAC 2006. Acoustic propagation and mammal population and density data were analyzed for the July timeframe since RIMPAC occurs in July. The modeling occurred in five broad steps, listed below.

Step 1. Perform a propagation analysis for the area ensonified using spherical spreading loss and the Navy's CASS/GRAB program, respectively.

Step 2. Convert the propagation data into a two-dimensional acoustic footprint for the acoustic sources engaged in each training event as they move through the six acoustic exposure model areas.

Step 3. Calculate the total energy flux density level for each ensonified area summing the accumulated energy of all received pings.

Step 4. Compare the total energy flux density to the thresholds and determine

the area at or above the threshold to arrive at a predicted marine mammal exposure area.

Step 5. Multiply the exposure areas by the corresponding mammal population density estimates. Sum the products to produce species sound exposure rate. Analyze this rate based on the annual number of events for each exercise scenario to produce annual acoustic exposure estimates.

The modeled estimate indicates the potential for a total of 33,331 Level B harassment exposures across all marine mammal species.

The results of the model (estimated Level B Harassment takes (Level A Harassment for beaked whales)) are presented in Table 1. When analyzing the results of the acoustic exposure modeling to provide an estimate of effects, it is important to understand that there are limitations to the ecological data used in the model, and that the model results must be interpreted within the context of a given species' ecology and biology.

NMFS believes that the model take estimates are overestimates for the following reasons:

(1) The implementation of the extensive mitigation and monitoring that will be required by the IHA (Including large power-down/shut-down zones, geographic restrictions, and monitors that will almost certainly sight groups of animals, if not individuals, in time to avoid/minimize impacts) have not been taken into account.

(2) In the model the Navy used to estimate take, marine mammals remain stationary as the sound source passes by and their immediate area is ensonified. NMFS believes that some, if not the majority of animals, will move away from the sound to some degree, thus receiving a lower level of energy than estimated by the model.

(3) NMFS interprets the results of the Navy's model as the number of times marine mammals might be exposed to particular received levels of sound. However, NMFS believes it would be unrealistic, considering the fast-paced, multi-vessel nature of the exercise and the fact that the exercise continues over the course of a month in an area with resident populations of cetaceans, to assume that each exposure involves a different whale; some whales are likely to be exposed once, while others are likely to be exposed more than once. Some elements of the Navy's modeling, such as its calculation of received levels without regard to where animals occur in the water column, are conservative. Other elements, such as its evaluation of some but not all acoustic

sources that would be used during the exercise, may not be conservative. With regard to RIMPAC 2006, it is NMFS initial view that an extensive set of mitigation and monitoring requirements like those set forth in this notice would ensure that impacts on species and stocks are negligible. This conclusion would not necessarily apply to other naval acoustic activities whose operational and environmental parameters may differ. Additional detailed information regarding potential effects on individual species may be viewed in the Navy's IHA application (see ADDRESSES).

Potential Effects on Habitat

The primary source of marine mammal habitat impact is acoustic exposures resulting from ASW activities. However, the exposures do not constitute a long term physical alteration of the water column or bottom topography, as the occurrences are of limited duration and are intermittent in time. Surface vessels associated with the activities are present in limited duration and are intermittent as well.

Potential Effects on Subsistence Harvest of Marine Mammals

There is no known legal subsistence hunting for marine mammals in or near the survey area, so the proposed activities will not have any impact on the availability of the species or stocks for subsistence users.

Mitigation, Monitoring, and Reporting

The Navy has requested an Incidental Harassment Authorization (IHA) from NMFS for the take, by harassment, of marine mammals incidental to RIMPAC ASW exercises in the OpArea. Section 101(a)(5)(D) of the MMPA, the section pursuant to which IHAs are issued, may not be used to authorize mortality or serious injury leading to mortality. The Navy's analysis of the RIMPAC ASW exercises concluded that no mortality or serious injury leading to mortality would result from the proposed activities. However, NMFS believes that some marine mammals may react to mid-frequency sonar, at received levels lower than those thought to cause direct physical harm, with behaviors that may lead to physiological harm, stranding, or, potentially, death. Therefore, in processing the Navy's IHA request, NMFS has required additional mitigation and monitoring than originally proposed in the Navy's application to ensure that mortality or serious injury leading to mortality does not result from the proposed activities.

In any IHA issued there is the requirement to supply the "means of

effecting the least practicable [adverse] impact upon the affected species.” NMFS’ determination of “the least practicable adverse impact on the affected species” includes consideration of personnel safety, practicality of implementation, and impact on the effectiveness of military readiness activities. While NMFS’ proposed mitigation and monitoring requirements discussed below are intended to effect the “least practicable adverse impact”, they are also designed to ensure that no mortality or serious injury leading to mortality occurs, so that an IHA may be legally issued under the MMPA.

Standard Operating Procedures Proposed in Navy Application

Navy shipboard lookout(s) are highly qualified and experienced observers of the marine environment. Their duties require that they report all objects sighted in the water to the Officer of the Deck (e.g., trash, a periscope, a marine mammal) and all disturbances (e.g., surface disturbance, discoloration) that may be indicative of a threat to the vessel and its crew. There are personnel serving as lookouts on station at all times (day and night) when a ship or surfaced submarine is moving through the water.

Navy lookouts undergo extensive training in order to qualify as a watchstander. This training includes on-the-job instruction under the supervision of an experienced watchstander, followed by completion of the Personal Qualification Standard program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects). In addition to these requirements, many Fleet lookouts periodically undergo a 2-day refresher training course.

The Navy includes marine species awareness as part of its training for its bridge lookout personnel on ships and submarines. Marine species awareness training was updated in 2005 and the additional training materials are now included as required training for Navy lookouts. This training addresses the lookout’s role in environmental protection, laws governing the protection of marine species, Navy stewardship commitments, and general observation information to aid in avoiding interactions with marine species. Marine species awareness and training is reemphasized by the following means:

Bridge personnel on ships and submarines – Personnel utilize marine species awareness training techniques as standard operating procedure, they have available the “whale wheel”

identification aid when marine mammals are sighted, and they receive updates to the current marine species awareness training as appropriate.

Aviation units – All pilots and aircrew personnel, whose airborne duties during ASW operations include searching for submarine periscopes, report the presence of marine species in the vicinity of exercise participants.

Sonar personnel on ships, submarines, and ASW aircraft – Both passive and active sonar operators on ships, submarines, and aircraft utilize protective measures relative to their platform.

The Environmental Annex to the RIMPAC Operational Order mandates specific actions to be taken if a marine mammal is detected and these actions are standard operating procedure throughout the exercise.

Implementation of these protective measures is a requirement and involves the chain of command with supervision of the activities and consequences for failing to follow orders. Activities undertaken on a Navy vessel or aircraft are highly controlled. Very few actions are undertaken on a Navy vessel or aircraft without oversight by and knowledge of the chain of command. Failure to follow the orders of one’s superior in the chain of command can result in disciplinary action.

Operating Procedures

The following procedures are implemented to maximize the ability of operators to recognize instances when marine mammals are close aboard and avoid adverse effects to listed species:

Visual detection/ships and submarines – Ships and surfaced submarines have personnel on lookout with binoculars at all times when the vessel is moving through the water. Standard operating procedure requires these lookouts maintain surveillance of the area visible around their vessel and to report the sighting of any marine species, disturbance to the water’s surface, or object (unknown or otherwise) to the Officer in Command.

Visual detection/aircraft – Aircraft participating in RIMPAC ASW events will conduct and maintain, whenever possible, surveillance for marine species prior to and during the event. The ability to effectively perform visual searches by participating aircraft crew will be heavily dependent upon the primary duties assigned as well as weather, visibility, and sea conditions. Sightings would be immediately reported to ships in the vicinity of the event as appropriate.

Passive detection for submarines – Submarine sonar operators will review

detection indicators of close-aboard marine mammals prior to the commencement of ASW operations involving active mid-frequency sonar.

When marine mammals are detected close aboard, all ships, submarines, and aircraft engaged in ASW would reduce mid-frequency active sonar power levels in accordance with the following specific actions:

(1) Helicopters shall observe/survey the vicinity of an event location for 10 minutes before deploying active (dipping) sonar in the water. Helicopters shall not dip their sonar within 200 yards of a marine mammal and shall secure pinging if a marine mammal closes within 200 yards after pinging has begun.

(2) Note: Safety radii, power-down, and shut-down zones proposed by the Navy have been replaced with more conservative measures required by NMFS and are discussed in the next section.

The RIMPAC Operational Order Environmental Annex (Appendix A) includes these specific measures that are to be followed by all exercise participants.

The Navy proposes that training be provided to exercise participants and NOAA officials before and during the in port phase of RIMPAC (26–30 Jun 06). This will consist of exercise participants (CO/XO/Ops) reviewing the C3F Marine Mammal Brief, available OPNAV N45 video presentations, and a NOAA brief presented by C3F on marine mammal issues in the Hawaiian Islands. The Navy will also provide the following training for RIMPAC participants:

(1) NUWC will train observers on marine mammal identification observation techniques

(2) Third fleet will brief all participants on marine mammal mitigation requirements

(3) Participants will receive video training on marine mammal awareness

(4) Navy offers NOAA/NMFS opportunity to send a rep to the ashore portion of the exercise to address participants and/or observe training.

Conservation Measures (Research)

The Navy will continue to fund ongoing marine mammal research in the Hawaiian Islands. Results of conservation efforts by the Navy in other locations will also be used to support efforts in the Hawaiian Islands. The Navy is coordinating long term monitoring/ studies of marine mammals on various established ranges and operating areas:

(1) Coordinating with NMFS to conduct surveys within the selected

Hawaiian Islands Operating Area as part of a baseline monitoring program.

(2) Implementing a long-term monitoring program of marine mammal populations in the OpArea, including evaluation of trends.

(3) Continuing Navy research and Navy contribution to university/external research to improve the state of the science regarding marine species biology and acoustic effects.

(4) Sharing data with NMFS and the public, via the literature, for research and development efforts.

The Navy has contracted with a consortium of researchers from Duke University, University of North Carolina at Wilmington, University of St. Andrews, and the NMFS Northeast Fisheries Science Center to conduct a pilot study analysis and develop a survey and monitoring plan that lays out the recommended approach for surveys (aerial/shipboard, frequency, spatial extent, etc.) and data analysis (standard line-transect, spatial modeling, etc.) necessary to establish a baseline of protected species distribution and abundance and monitor for changes that might be attributed to ASW operations on the Atlantic Fleet Undersea Warfare Training Range. The Research Design for the project will be utilized in evaluating the potential for implementing similar programs in the Hawaiian Islands ASW operations areas. In addition, a Statement of Interest has been promulgated to initiate a similar research and monitoring project in the Hawaiian Islands and the remainder of the Pacific Fleet OPAREAs. The execution of funding to begin the resultant monitoring is planned for the fall of 2006.

Reporting

The RIMPAC Operational Order Environmental Annex (see example in Appendix A of the application) includes specific reporting requirements related to marine mammals.

Additional Proposed Mitigation, Monitoring, and Reporting Measures Required by NMFS

The following protective mitigation and monitoring measures are proposed to be implemented in addition to the standard operating procedures discussed in the previous section:

(1) The Navy will operate sonar at the lowest practicable level, not to exceed 235 dB, except for occasional short periods of time to meet tactical training objectives.

(2) Safety Zones – When marine mammals are detected by any means (aircraft, lookout, or aurally) within 1000 m of the sonar dome (the bow), the

ship or submarine will limit active transmission levels to at least 6 dB below the equipment's normal operating level for sector search modes. Within the water depths encompassed by the proposed RIMPAC areas, a 6-dB reduction in ping levels would reduce the range of potential acoustic effects to about half of its original distance. This, in turn, would reduce the area of acoustic effects to about one quarter of its original size. Ships and submarines would continue to limit maximum ping levels by this 6-dB factor until the animal has been seen to leave the area, has not been seen for 30 minutes, or the vessel has transited more than 2000 m beyond the location of the sighting.

Should the marine mammal be detected within or closing to inside 500 m of the sonar dome, active sonar transmissions will be limited to at least 10 dB below the equipment's normal operating level for sector search modes. Ships and submarines would continue to limit maximum ping levels by this 10-dB factor until the animal has been seen to leave the area, has not been seen for 30 minutes, or the vessel has transited more than 1500 m beyond the location of the sighting.

Should the marine mammal be detected within or closing to inside 200 m of the sonar dome, active sonar transmissions will cease. When a marine mammal or sea turtle is detected closing to inside approximately 200 m of the sonar dome, the principal risk becomes potential physical injury from collision. Accordingly, ships and submarines shall maneuver to avoid collision if the marine species closes within 200 m to the extent possible, with safety of the vessel being paramount. Sonar will not resume until the animal has been seen to leave the area, has not been seen for 30 minutes, or the vessel has transited more than 1200 m beyond the location of the sighting.

(3) In strong surface ducting conditions, the Navy will enlarge the safety zones such that a 6-dB power-down will occur if a marine mammal enters the zone within a 2000 m radius around the source, a 10-dB power-down will occur if an animal enters the 1000 m zone, and shut down will occur when an animal closes within 500 m of the sound source.

(4) In low visibility conditions (i.e., whenever the entire safety zone cannot be effectively monitored due to nighttime, high sea state, or other factors), the Navy will use additional detection measures, such as infrared (IR) or enhanced passive acoustic detection. If detection of marine mammals is not possible out to the prescribed safety

zone, the Navy will power down sonar as if marine mammals were present in the zones they cannot see (for example, at night, if night goggles allow detection out to 1000 m, power-down would not be necessary under normal conditions, however, in strong surface duct conditions, the Navy would need to power down 6 dB, as they could not effectively detect mammals out to 2000 m, the prescribed safety zone).

(5) With the exception of three specific choke-point exercises (special measures outlined in item 8), the Navy will not conduct sonar activities in constricted channels or canyon-like areas.

(6) With the exception of three specific choke-point exercises (special measures outlined below), the Navy will not operate mid-frequency sonar within 25 km of the 200 m isobath.

(7) Navy watchstanders, the individuals responsible for detecting marine mammals in the Navy's standard operating procedures, will participate in marine mammal observer training by a NMFS-approved instructor (NMFS will work with Navy to develop appropriate format, potentially to be presented to Navy personnel during the port phase of RIMPAC, June 26–30). Training will focus on identification cues and behaviors that will assist in the detection of marine mammals and the recognition of behaviors potentially indicative of injury or stranding. Training will also include information aiding in the avoidance of marine mammals and the safe navigation of the vessel, as well as species identification review (with a focus on beaked whales and other species likely to strand). At least one individual who has received this training will be present, and on watch, at all times during operation of tactical mid-frequency sonar, on each vessel operating mid-frequency sonar.

(8) The Navy will conduct no more than three choke-point exercises. These exercises will occur in the Kaulakahi Channel (between Kauai and Niihau) and the Alenuihaha Channel (between Maui and Hawaii). These exercises will not be conducted in a constricted channel like was present in the Bahamas, but will fall outside of the requirements listed above, i.e., to avoid canyon-like areas and to operate sonar farther than 25 km from the 200 m isobath. Therefore, NMFS has required additional mitigation and monitoring measures for these three exercises designed to avoid the possibility of mortality, or serious injury leading to mortality, of marine mammals. The additional measures for these three choke-point exercises below are as follows:

a. The Navy will provide NMFS (Stranding Coordinator and Protected Resources, Headquarters) and the Hawaii marine patrol with information regarding the time and place for the choke-point exercises in advance of the exercises.

b. The Navy will have at least one dedicated Navy observer that has received the training mentioned above, on board each ship and conducting observations during the operation of mid-frequency tactical sonar during the choke-point exercises. The Navy has also authorized the presence of two experienced marine mammal observers (non-Navy personnel) to embark on Navy ships for observation during the exercise.

c. The Navy will coordinate a focused monitoring effort around the choke-point exercises, to include pre-exercise monitoring (2 hours), during-exercise monitoring, and post-exercise monitoring (1–2 days). This monitoring effort will include at least one dedicated aircraft or one dedicated vessel for realtime monitoring from the pre-through post-monitoring time period, except at night. The vessel or airplane may be operated by either dedicated Navy personnel, or non-Navy scientists contracted by the Navy, who will be in regular communication with a Tactical Officer with the authority to shut-down, power-down, or delay the start-up of sonar operations. These monitors will communicate with this Officer to ensure the safety zones are clear prior to sonar start-up, to recommend power-down and shut-down during the exercise, and to extensively search for potentially injured or stranding animals in the area and down-current of the area post-exercise.

d. The Navy will further contract an experienced cetacean researchers to conduct systematic aerial reconnaissance surveys and observations before, during, and after the choke-point exercises with the intent of closely examining local populations of marine mammals during the RIMPAC exercise.

e. For the Kaulakahi Channel (between Kauai and Niihau), shoreline reconnaissance and nearshore observations will be undertaken by a team located at Kekaha (the approximate mid point of the Channel). One of these individuals was formerly employed by NOAA as a marine mammal observer and trained NOAA personnel in marine mammal observation techniques. Additional observations will be made on a daily basis by range vessels while enroute from Port Allen to the range at PMRF (a distance of approximately 16 nmi) and

upon their return at the end of each day's activities. Finally, surveillance of the beach shoreline and nearshore waters bounding PMRF will occur randomly around the clock a minimum four times in each 24 hour period.

f. For the Alenuihaha Channel (between Maui and Hawaii), in addition to aerial reconnaissance as described previously, the Navy will undertake shoreline reconnaissance and nearshore observations by a team rotating between Mahukona and Lapakahi before, during, and after the exercise.

(9) NMFS and the Navy will continue coordination on the "Communications and Response Protocol for Stranded Marine Mammal Events During Navy Operations in the Pacific Islands Region" that is currently under preparation by NMFS PIRO to facilitate communication during RIMPAC. The Navy will coordinate with the NMFS Stranding Coordinator for any unusual marine mammal behavior, including stranding, beached live or dead cetacean(s), floating marine mammals, or out-of-habitat/milling live cetaceans that may occur at any time during or shortly after RIMPAC activities. After RIMPAC, NMFS and the Navy (CPF) will prepare a coordinated report on the practicality and effectiveness of the protocol that will be provided to Navy/NMFS leadership.

(10) The Navy will provide a report to NMFS after the completion of RIMPAC that includes:

a. An estimate of the number of marine mammals harassed based on both modeled sound and sightings of marine mammals.

b. An assessment of the effectiveness of the mitigation and monitoring measures with recommendations of how to improve them.

c. Results of the marine species monitoring during the RIMPAC exercise.

d. As much unclassified information as the Navy can provide including, but not limited to, where and when sonar was used (including sources not considered in take estimates, such as submarine and aircraft sonars) in relation to any measured received levels (such as at sonobuoys or on PMRF range), source levels, numbers of sources, and frequencies, so it can be coordinated with observed cetacean behaviors.

The mitigation and monitoring proposed in this IHA are intended to function adaptively, and NMFS fully expects to refine them for future authorizations based on the reporting input from the Navy.

Negligible Impact Determination and Avoidance of Mortality of Marine Mammals

Negligible impact is defined as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." Because NMFS does not expect any mortality or injury to result from these activities, NMFS believes the authorized takings, by harassment, can be reasonably expected to not adversely affect the species or stock through effects on annual rates of survival. NMFS acknowledges that Level B Harassment to large enough portions of a species or stock or over a long enough time could potentially adversely affect survival rates, however, due to the required mitigation and monitoring during this proposed activity (which reduce the numbers of animals exposed and the levels they are exposed to), as well as the duration and nature of the activities, NMFS does not believe RIMPAC will adversely affect survival.

As discussed earlier (see Stress Responses), some portion of the animals exposed to SELs greater than 173 dB during the RIMPAC exercises will undergo a physiological stress response. Relationships between stress responses and inhibition of reproduction (by suppression of pre-ovulatory luteinizing hormones, for example) have been well-documented. However, NMFS believes the manner in which individual animals respond to different stressors varies across a continuum that is normally distributed with hyper-sensitive and hypo-sensitive animals being on the tails of the curve. Therefore, NMFS does not believe that much more than a small portion of animals exposed to sound levels above 173 dB would respond in a manner that physiologically inhibits reproduction. Additionally, suppression of pre-ovulatory luteinizing hormones would only be of a concern to species whose period of reproductive activity overlaps in time and space with RIMPAC. NMFS also believes that due to the enhanced nature of the monitoring required in this authorization, combined with the shutdown zones, the likelihood of seeing and avoiding mother/calf pairs or animals engaged in social reproductive behaviors is high. Consequently, NMFS believes it is unlikely the authorized takings will adversely affect the species stocks through effects on annual rates of recruitment.

Table 3 summarizes the reasoning behind NMFS' preliminary negligible

impact determination, in terms of how mitigation measures contribute towards it and what other factors were considered. Several of the measures addressed have a visual monitoring component, which NMFS recognizes is most effective in reducing impacts to

larger animals and species that travel in larger groups. However, NMFS has also included coastal and steep bathymetry restrictions, and extended power-down/shut-down zones, which will significantly reduce the numbers of animals taken, regardless of whether

they are cryptic or easily seen, and will effectively avoid the likelihood of mortality, or serious injury, of marine mammals.

BILLING CODE 3510-22-S

Qualitative Assessment of Negligible Impact and Avoidance of Mortality and Serious Injury Measures that make the chances of a stranding highly unlikely
Mechanisms

- | | |
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| <p>1) No sonar operation in areas of steep bathymetry or constricted channels (except for 3 chokepoint exercises)</p> <p>2) Expanded power-/shut-down zone in strong surface-ducting conditions (2 km power-down, 500m shutdown)</p> <p>3) No sonar operation within 25 km of 200 m isobath (except for three chokepoint exercises)</p> <p>4) During chokepoint exercises, real-time aerial monitoring linked to sonar operation (to advise shut-down, etc.)</p> | <p>Measures 1, 2, 3, and 4 all reduce the chances of a confluence of 3 or more of the five factors believed to have contributed to the Bahamas stranding</p> <p>Measure 3 also gives beaked whales (or other deep divers) that may potentially have been driven by sonar into a constricted channel or shallow disorienting circumstances, a wider berth around the sound source to escape to deeper water through</p> <p>Measure 4 (because of wider view and ability to cover larger area) specifically decreases the chances that animals will enter the safety zone without being seen and increases the chances that injured animals or animals exhibiting abnormal behaviors (indicative of a potential stranding) are sighted, and sonar shut down</p> |
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*All Measures in this section also reduce #s animals exposed and levels exposed to

Measures that further contribute to a negligible impact

- | | |
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| <p>5) Expanded (beyond approximate injury threshold isopleth) power-down zones during normal conditions</p> <p>6) NMFS-trained lookouts will visually monitor around all ships operating mid-frequency sonar</p> <p>7) Though most are not dedicated observers, all RIMPAC participants (many with good opportunity) are required to report marine mammal sightings to the Officer in Command (lookouts, pilots, passive acoustic monitors)</p> | <p>In Measure 5 (versus the power-/shutdown at injury threshold required in previous authorizations), power-down will occur if an animal gets within 1000 m (which NMFS believes will typically be at a distance ensomified to a lower level than that thought to induce injury) and again at 500 m, which will both reduce the numbers of animals exposed and the levels to which they are exposed.</p> <p>In Measures 4, 6, and 7, real-time monitoring, in combination with power- and shut-down zones, decreases both the number of animals potentially exposed to sound, and the sound level to which they are exposed</p> |
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Further considerations in the negligible impact determination for this specific activity

- | | |
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| <p>A) Because this proposed authorization does not anticipate mortality for any species and does not authorize Level A Harassment for the majority of the affected species, the chance of the authorized take adversely affecting the affected species through annual survival rates is low.</p> <p>B) The number of individuals harassed, in relation to the abundance of the species or stock, factors into the negligible impact determination. The numbers produced by the model do not take into account how any of the above measures reduce the number of exposures. Additionally, for both spinner dolphins and false killer whales (high estimates of exposure related to the estimated abundance), the stock assessment has underestimated the abundance.</p> <p>C) The Navy's model produced estimates of the number of exposures to sound levels > than 173 dB for each species. However, because of the nature, duration, and location of the exercise, NMFS does not believe that each exposure involves a different whale. To quantitatively address that, NMFS used a normal distribution (see text) to estimate that approximately 16% fewer animals are exposed than exposures were modeled.</p> | |
|---|--|

Table 3. A summary of the Measures that avoid strandings and contribute to the negligible impact determination.

As mentioned in Table 3, the number of individuals harassed, in relation to the abundance of the species or stock, factors into the negligible impact determination. The raw modeled exposure numbers produced by the model do not take into account how any of the mitigation or monitoring measures may reduce the number of exposures. Though no particular numeric reduction of the estimated take numbers as a result of the mitigation measures can be justified, they are qualitatively addressed in Table 3 and NMFS believes the numbers of animals that may be harassed are significantly lower than the number of modeled exposures.

Additionally, when further analyzing the effects of these takes on the affected species and stocks, NMFS believes it would be unrealistic, considering the fast-paced, multi-vessel nature of the exercise and the fact that the exercise continues over the course of a month in an area with resident populations of cetaceans, to assume that each exposure involves a different whale. Some whales are likely to be exposed once, while others are likely to be exposed more than once. One way to numerically address this concept is to assume that the exposure events would be distributed normally, with the exposures that each affect a different whale falling within one standard deviation (68.26 percent), the exposures assumed to affect different whales each twice within 2 standard deviations (27.18 percent), the exposures assumed to affect different whales each 3 times within 3 standard deviations (4.28 percent), and so on, if the populations are larger. If this relationship is applied to estimated numbers of exposures produced by the Navy's model, the calculated number of affected animals is approximately 16 percent less than the estimated number of exposures for any given species. NMFS acknowledges the lack of specific sonar/marine mammal data to support this approach, however, NMFS believes that this approach will help us more closely approximate the number of animals potentially taken than an assumption that each sonar ping affects a different cetacean.

To examine the number of individuals harassed in relation to the species or stock, NMFS divided the raw modeled exposures for each species by the estimated abundances to see which species may have relatively large numbers of individuals potentially taken, compared to the population size (Table 1). Per this calculation, all but two species may potentially sustain Level B Harassment of up to a maximum of 38 percent, or less, of the estimated

population. Spinner dolphins and false killer whales were calculated to potentially have Level B Harassment of up to 103 percent and 51 percent of the population, respectively. For the reasons stated above, NMFS believes all of the actual percentages will be significantly less. Also, for the spinner dolphins and false killer whales in particular, these percentages are incorrect (too high) because of the following:

Spinner dolphins – The estimated abundance of 2,805 animals was derived from one line-transect survey of the Hawaiian Islands EEZ conducted in 2002. The NMFS stock assessment states that the estimate may be negatively biased because relatively little survey effort occurred in the nearshore areas where these dolphins are abundant in the day light hours when the survey was conducted.

False killer whales – The estimated abundance of false killer whales is based on 12 aerial surveys conducted within 25 nm of the shore between 1993 and 1998. The NMFS stock assessment report states that the study underestimates the number of false killer whales within the Hawaiian EEZ because areas around the Northwestern Hawaiian Islands and areas beyond 25 nm were not surveyed, and because the data were uncorrected for the portion of diving animals missed from the survey aircraft.

To reiterate, NMFS believes that the actual percentages of the stocks affected by this activity are significantly lower than those suggested by the modeled exposures.

NMFS has preliminarily determined that with the full implementation of the all of the proposed mitigation and monitoring measures (especially the additional measures required by NMFS), the RIMPAC ASW exercises are highly unlikely to result in the serious injury or death of a marine mammal. In the unanticipated event that any cases of marine mammal injury or mortality are judged by NMFS or Navy to result from these activities, the Navy will cease operating sonar immediately.

NMFS has further preliminarily determined that, based on the nature and duration of the proposed activities, and dependent upon the full implementation of the proposed mitigation and monitoring measures, the RIMPAC ASW exercises will result in no more than the Level B Harassment of the species addressed here. The Level B Harassment will consist primarily of temporary behavioral modifications, in the form of temporary displacement from feeding or sheltering areas, low-level physiological stress responses,

and, to a lesser extent, TTS. NMFS has further determined that these takings, by harassment, will result in no more than a negligible impact to the affected species or stocks. To be conservative, NMFS and the Navy initially used the approach of treating beaked whales exposed to sound levels thought to induce Level B Harassment as if they would receive Level A Harassment. However, due to the extensive mitigation and monitoring levels, NMFS has preliminarily determined that beaked whales will not experience Level A Harassment as a result of these exercises.

Endangered Species Act (ESA)

There are seven marine mammal species and five sea turtle species that are listed as endangered under the ESA with confirmed or possible occurrence in the study area: humpback whale, North Pacific right whale, sei whale, fin whale, blue whale, sperm whale, and Hawaiian monk seal, loggerhead sea turtle, the green sea turtle, hawksbill sea turtle, leatherback sea turtle, and olive ridley sea turtle. Most of the cetacean species and the Hawaiian monk seal are expected to occur in the OpArea during the RIMPAC exercises. As mentioned previously, humpback whales are not believed to be present in the July timeframe. Because definitive information on sei and fin whales is lacking, their possible presence during the July timeframe was assumed, although it is unlikely.

Under section 7 of the ESA, the Navy has begun consultation with NMFS on the proposed RIMPAC ASW exercises. NMFS will also consult internally on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

National Environmental Policy Act (NEPA)

In April, 2006, the Navy prepared a revised 2006 Supplement on the 2002 Programmatic Environmental Assessment on RIMPAC. This revised EA has been posted on the Navy website (see **ADDRESSES**) concurrently with the publication of this proposed IHA and public comments have been solicited. Comments on the EA should be addressed to the Navy as outlined in their **Federal Register** notice announcing the EA's availability for comment. NMFS will review the revised EA and the public comments received and subsequently either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA.

Preliminary Conclusions

A determination of negligible impact is required for NMFS to authorize incidental take of marine mammals. By regulation, an activity has a "negligible impact" on a species or stock when it is determined that the total taking is not likely to reduce annual rates of adult survival or recruitment (i.e., offspring survival, birth rates). Based on each species' life history information, the expected behavioral patterns of the animals in the RIMPAC locations, the duration of the activity, the anticipated implementation of the required mitigation and monitoring measures, and an analysis of the behavioral disturbance levels in comparison to the overall populations, an analysis of the potential impacts of the Proposed Action on species recruitment or survival support the conclusion that proposed RIMPAC ASW training events would have no more than a negligible impact on the affected species or stocks. NMFS has also determined that the issuance of the IHA would not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence use. Additionally, NMFS has set forth in this proposed IHA the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings.

Proposed Authorization

NMFS proposes to issue an IHA to the Navy for conducting ASW exercises, using tactical mid-frequency sonar in the OpArea, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in only the harassment of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

Dated: April 18, 2006.

James H. Lecky,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 06-3831 Filed 4-21-06; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[I.D. 041806C]

**Pacific Fishery Management Council;
Public Meeting**

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Model Evaluation Workgroup (MEW) will hold a work session to develop and review documentation for the Chinook and Coho Fishery Regulation Assessment Models (FRAMs). The meeting is open to the public.

DATES: The work session will be held Wednesday, May 10, 2006, from 9 a.m. to 4 p.m.

ADDRESSES: The work session will be held at the Northwest Indian Fisheries Commission Conference Room, 6730 Martin Way East, Olympia, WA 98516; telephone: (360) 438-1180.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council, (503) 820-2280.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to further develop documentation for the Chinook and Coho FRAM.

Although non-emergency issues not contained in the meeting agendas may come before the MEW for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820-2280 at least 5 days prior to the meeting date.

Dated: April 19, 2006.

Tracey L. Thompson,

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

[FR Doc. E6-6046 Filed 4-21-06; 8:45 am]

BILLING CODE 3510-22-S

COMMODITY FUTURES TRADING COMMISSION**Corrections to the Notice of Revision of Commission Policy Regarding the Listing of New Futures and Option Contracts by Foreign Boards of Trade That Have Received Staff No-Action Relief To Provide Direct Access to Their Automated Trading Systems From Locations in the United States**

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission is making technical corrections to Footnotes 5 and 6 which were published in the **Federal Register** on April 18, 2006 (71 FR 19877). The footnotes are revised as follows:

Footnote 5: The Statement of Policy did not apply to broad-based stock index futures and option contracts that are now covered by Section 2(a)(1)(C) of the Commodity Exchange Act. Foreign boards of trade were (and presently are) required to seek and receive written supplemental no-action relief from Commission staff prior to offering or selling such contracts through U.S.-located trading systems.

Footnote 6: This notice of revision will not alter a foreign board of trade's obligation to seek and receive written supplemental no-action relief from Commission staff prior to offering or selling broad-based securities index futures and option contracts through U.S.-located trading systems.

Issued in Washington, DC on April 19, 2006.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. E6-6069 Filed 4-21-06; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF DEFENSE**Department of the Army****Notice of Availability of the Record of Decision for the Final Environmental Impact Statement for the Transformation of the Pennsylvania Army National Guard 56th Brigade Into a Stryker Brigade Combat Team at the National Guard Training Center-Fort Indiantown GAP, PA**

AGENCY: Department of the Army DoD.
ACTION: Notice of availability.

SUMMARY: The National Guard Bureau and the Department of the Army announce the availability of the Record of Decision (ROD), which explains the decision to proceed with the Transformation of the Pennsylvania Army National Guard (PAARNG) 56th Stryker Brigade Combat Team (SBCT). This action includes construction of new training and support facilities at the National Guard Training Center-Fort Indiantown Gap (NGTC-FTIG), Fort Pickett, VA, and local PAARNG facilities across the Commonwealth of Pennsylvania. The action also includes Annual Training (AT) at Fort A.P. Hill, VA in order to accomplish requisite training. The Final Environmental Impact Statement (FEIS) complies with all applicable requirements, and adequately addresses the biological, physical, socioeconomic, and cultural impacts from implementing the proposed action.

ADDRESSES: Written comments or materials should be forwarded to LTC Christopher Cleaver, NGTC-FTIG Public Affairs Officer, PADMVA Headquarters, Building 0-47, Annville, PA 17003-5002, or Ms. Patricia Rickard, NGTC-FTIG EIS Project Officer, NGTC-FTIG Environmental Section, 1119 Utility Road, Annville, PA 17003-5002.

FOR FURTHER INFORMATION CONTACT: LTC Christopher Cleaver at (717) 861-8468 or Ms. Patricia Rickard at (717) 861-2580.

SUPPLEMENTARY INFORMATION: The FEIS examined three alternatives: (1) Preferred Alternative—implement all construction actions identified in the FEIS; (2) Train Using Existing Facilities Alternative—using existing PAARNG training ranges and additional facilities at other regional Army installations (outside of Pennsylvania) to fulfill Inactive Duty Training and AT requirements on a temporary to permanent basis; (3) No-Action Alternative—do not implement the proposed action and continue current operations. Significant impacts are anticipated from both Action

Alternatives, although the Preferred Alternative would result in greater impacts. The Train Using Existing Army Facilities Alternative would result in fewer impacts, but would not achieve the purpose of and need for the proposed action as effectively as the Preferred Alternative. The FEIS identifies mitigation measures to minimize impacts from the proposed action. Unmitigable impacts are expected to occur to land use associated with establishment of the proposed “full” Combined Arms Collective Training Facility (CACTF) at NGTC-FTIG. The proposed CACTF would require the acquisition of up to eight private properties that are in-holdings totaling 18.1 acres. There would be a loss of approximately 224 acres of prime farmland due to construction of statewide facilities, and the permanent removal of up to 745 acres of continuous forest habitat at NGTC-FTIG and approximately 15 acres at Fort Pickett that would not be replaced by similar forest habitat. No Federally designated threatened or endangered species would be significantly affected under the Preferred Alternative. No significant air quality, cultural and water resources, noise, infrastructure, or environmental justice impacts would occur under the Preferred Alternative. In consultation with Federally-recognized Native American Tribes, no significant traditional cultural properties or Native American sacred sites have been identified within areas that would be impacted under the Preferred Alternatives. As such, no impacts to Federally-recognized Native American Tribes or their interests are anticipated. Beneficial socioeconomic impacts are expected as local construction will require local products and manpower.

Dated: April 13, 2006.
Clyde A. Vaughn,
Lieutenant General, U.S. Army, Director,
Army National Guard.
 [FR Doc. 06-3843 Filed 4-21-06; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE**Department of the Navy****Meeting of the Naval Research Advisory Committee**

AGENCY: Department of the Navy, DOD.
ACTION: Notice of open meeting.

SUMMARY: The Naval Research Advisory Committee (NRAC) will meet on May 5, 2006. The meeting will be an Executive

Session and will discuss a study undertaken by NRAC.

DATES: The meeting will be held on Friday, May 5, 2006, from 11 a.m. to 12 p.m. All sessions of the meeting will be open to the public.

ADDRESSES: The meeting will be held via telephone conference. Public access to the telephone conference will be available at the Office of Naval Research, 875 North Randolph Street, Arlington, VA 22203-1995.

FOR FURTHER INFORMATION CONTACT: Dr. Sujata Millick, Program Director, Naval Research Advisory Committee, 875 North Randolph Street, Arlington, VA 22203-1995, telephone 703-696-6769.

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). All sessions of the meeting will be devoted to executive sessions to include discussions of the NRAC study on Ocean Sciences Research Vessel Support.

Dated: April 13, 2006.

Eric McDonald,
Lieutenant Commander, Judge Advocate
General's Corps, U.S. Navy, Federal Register
Liaison Officer.

[FR Doc. E6-6059 Filed 4-21-06; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION**Submission for OMB Review; Comment Request**

AGENCY: Department of Education.

SUMMARY: The Director, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 24, 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 Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 18, 2006.

Jeanne Van Vlandren,
Director, Regulatory Information
Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: Revision.

Title: Adult Education Annual
Performance and Financial Reports.

Frequency: Annually.

Affected Public: State, Local, or Tribal
Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour
Burden:*

Responses: 57.

Burden Hours: 5,700.

Abstract: The information contained in the Annual Performance Reports for Adult Education is needed to monitor the performance of the activities and services funded under the Adult Education and Family Literacy Act of 1998, Report to Congress on the Levels of Performance Achieved on the core indicators of performance, provide necessary outcome information to meet OVAE's Government Performance and Results Act (GPRA) goals for adult education, and provide documentation for incentive awards under Title V of the Workforce Investment Act. The respondents include eligible agencies in 59 states and insular areas.

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 2971. When you access the information collection, click on "Download Attachments" to view. Written requests for information

should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-6061 Filed 4-21-06; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES06-31-000]

Detroit Edison Company; Notice of Filing

April 13, 2006.

Take the notice that March 31, 2006, Detroit Edison Company filed an application pursuant to section 204 of the Federal Power Act seeking authorization to issue from time to time long-term debt securities in an aggregate principal amount not to exceed \$1.0 billion.

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 April 19, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6-6035 Filed 4-21-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06-45-001]

Northwest Pipeline Corporation; Notice of Application

April 17, 2006.

Take notice that on April 5, 2006, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158 filed in Docket No. CP06-45-001, an amendment to the pending application, filed January 4, 2006, pursuant to section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations for its "Parachute Lateral Project" in Docket No. CP06-45, all as more fully set forth in the application which is on file with the Commission and open for public inspection. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at (866)208-3676, or for TTY, contact (202) 502-8659.

Any questions regarding this application may be directed to Steven W. Snarr, General Counsel, Northwest Pipeline Corporation, P.O. Box 58900, Salt Lake City, Utah 84158-0900 at (801) 584-7094 or by fax at (801) 584-7862 or Gary K. Kotter, Manager, Certificates and Tariffs, Northwest Pipeline Corporation, P.O. Box 58900, Salt Lake City, Utah 84158-0900, at

(801) 584-7117 or by fax at (801) 584-7764.

The proposed Parachute Lateral project, designed to move natural gas production from the Parachute area of the Piceance Basin to the Greasewood Hub, consists of approximately 37.6 miles of 30-inch pipeline and appurtenant facilities in Garfield and Rio Blanco counties, Colorado, one receipt meter station located in Garfield County and two delivery interconnects located in Rio Blanco County, Colorado. By this amendment to the pending application, Northwest now proposes to add an 8-inch tap and valve assembly at approximately milepost 27.41 in Section 9, Township 6S, Range 97W, Garfield County, Colorado, to the originally filed scope of work for the Parachute Lateral project.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the

Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: 5 p.m. Eastern Time on May 8, 2006.

Magalie R. Salas,
Secretary.

[FR Doc. E6-6048 Filed 4-21-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06-115-000]

Texas Eastern Transmission, LP; Notice of Application

April 17, 2006.

Take notice that on April 4, 2006, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310 filed in Docket No. CP06-115-000, an application pursuant to section 7 of the Natural Gas Act (NGA) for authorization to construct a new pipeline loop in Ohio, abandon and replace pipeline facilities in Ohio and Pennsylvania, and to install new compression facilities in Pennsylvania for incremental shippers (TIME II Project), all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208-3676 or TTY, (202) 502-8659.

Any questions concerning this application may be directed to Steven E. Tillman, General Manager, Regulatory Affairs, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251-1642; Phone: 713-627-5113; Fax: 713-627-5947.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 8, 2006.

Magalie R. Salas,
Secretary.

[FR Doc. E6-6051 Filed 4-21-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings #1**

April 17, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER03-1047-001.
Applicants: Mirant Las Vegas, LLC.
Description: Mirant's letter to the Commission concerning its compliance filing submitted July 9, 2003.

Filed Date: March 27, 2006.

Accession Number: 20060327-5032
Comment Date: 5 p.m. Eastern Time on Monday, April 24, 2006.

Docket Numbers: ER05-1497-002.

Applicants: Dearborn Industrial Generation, LLC.
Description: Dearborn Industrial Generation, LLC submits an Erratum to its February 21, 2006, Late Filed Compliance Filing.

Filed Date: April 7, 2006.

Accession Number: 20060411-0028.
Comment Date: 5 p.m. Eastern Time on Friday, April 21, 2006.

Docket Numbers: ER06-580-002.

Applicants: Midwest Independent Transmission System Operator, Inc.
Description: The Midwest Independent Transmission System Operator, Inc. submits an amended coversheet to its First Revised Network Integration Service Agreement filed February 22, 2006.

Filed Date: April 11, 2006.

Accession Number: 20060417-0182.
Comment Date: 5 p.m. Eastern Time on Monday, April 24, 2006.

Docket Numbers: ER06-650-001.

Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits a substitute interconnection service agreement with Calvert Cliffs Nuclear Power Plant, Inc and Baltimore Gas and Electric Company.

Filed Date: April 11, 2006.

Accession Number: 20060414-0117.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 2, 2006.

Docket Numbers: ER06-679-001.

Applicants: Louisville Gas & Electric Company.

Description: LG&E Energy submits a revised executed letter agreement with East Kentucky Power Cooperative which will be designated as Original Sheets 17 and 18 in 1st Revised Rate Schedule 25.

Filed Date: April 10, 2006.

Accession Number: 20060414-0120.
Comment Date: 5 p.m. Eastern Time on Monday, May 1, 2006.

Docket Numbers: ER06-746-001.

Applicants: Equilon Enterprises LLC.
Description: Equilon Enterprises, LLC dba Shell Oil Products U.S. submits an amendment to its March 16, 2006 filing, correcting typographical errors to its proposed tariff.

Filed Date: April 10, 2006.

Accession Number: 20060414-0116.
Comment Date: 5 p.m. Eastern Time on Monday, May 1, 2006.

Docket Numbers: ER06-747-001.

Applicants: Equilon Enterprises LLC.
Description: Equilon Enterprises, LLC dba Shell Oil Products U.S. submits an amendment to its March 16, 2006 filing, correcting typographical errors to its proposed tariff.

Filed Date: April 10, 2006.

Accession Number: 20060414-0114.
Comment Date: 5 p.m. Eastern Time on Monday, May 1, 2006.

Docket Numbers: ER06-748-001.

Applicants: Shell Chemical LP.
Description: Shell Chemical LP submits an amendment to its March 16, 2006 filing.

Filed Date: April 10, 2006.

Accession Number: 20060414-0122.
Comment Date: 5 p.m. Eastern Time on Monday, May 1, 2006.

Docket Numbers: ER06-763-001.

Applicants: Motiva Enterprises LLC.
Description: Motiva Enterprises, LLC submits an amendment to its March 16, 2006 proposed market-based rate tariff filing.

Filed Date: April 10, 2006.

Accession Number: 20060414-0115.
Comment Date: 5 p.m. Eastern Time on Monday, May 1, 2006.

Docket Numbers: ER06-770-001.

Applicants: PPM Energy, Inc.
Description: PPM Energy, Inc submits corrections to their proposed amended, respective, market-based rate schedules filed on March 20, 2006.

Filed Date: April 11, 2006.

Accession Number: 20060414-0118.
Comment Date: 5 p.m. Eastern Time on Friday, April 21, 2006.

Docket Numbers: ER06-841-000.

Applicants: Entergy Services Inc.
Description: Entergy Services Inc, agent and on behalf of the Entergy Operating Companies submits amendments to the Entergy System Agreement.

Filed Date: April 10, 2006.

Accession Number: 20060414-0314.
Comment Date: 5 p.m. Eastern Time on Monday, May 1, 2006.

Docket Numbers: ER06-842-000.

Applicants: Palomar Energy, LLC.
Description: Palomar Energy LLC submits a notice of termination of its FERC Electric Rate Schedule 1.

Filed Date: April 10, 2006.

Accession Number: 20060414-0308.

Comment Date: 5 p.m. Eastern Time on Monday, May 1, 2006.

Docket Numbers: ER06-844-000.

Applicants: LSF Limited.
Description: LSF Limited submits its Petition of Initial Rate Schedule, Waivers and Blanket Authority under ER06-844.

Filed Date: April 11, 2006.

Accession Number: 20060417-0186.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 2, 2006.

Docket Numbers: ER06-845-000.

Applicants: Northwestern Wisconsin Electric Company.

Description: Northwestern Wisconsin Electric Co submits a proposed rate change to its original FERC Rate Schedule No. 2, effective May 1, 2006.

Filed Date: April 11, 2006.

Accession Number: 20060417-0187.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 2, 2006.

Docket Numbers: ER06-846-000.

Applicants: Public Service Company of Colorado.

Description: Xcel Energy Services Inc on behalf of Public Service Co of Colorado submits an amended and restated version of its October 28, 1992 Contract for Transmission Service w/ Tri-State Generation and Transmission Association Inc, effective April 12, 2006.

Filed Date: April 11, 2006.

Accession Number: 20060417-0188.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 2, 2006.

Docket Numbers: ER96-795-013.

Applicants: Gateway Energy Marketing.

Description: Gateway Energy Marketing submits its amended and updated market power analysis and revised tariff sheets pursuant to the Commission's May 31, 2005 order.

Filed Date: April 10, 2006.

Accession Number: 20060414-0306.
Comment Date: 5 p.m. Eastern Time on Monday, May 1, 2006.

Docket Numbers: ER98-4333-002.

Applicants: Primary Power Marketing, L.L.C.

Description: Primary Power Marketing LLC submits a revised updated power market analysis out-of-time, pursuant to the Commission's May 31, 2005 order.

Filed Date: April 10, 2006.

Accession Number: 20060411-0147.
Comment Date: 5 p.m. Eastern Time on Monday, May 1, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211

and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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. E6-6052 Filed 4-21-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 18, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER03-478-011.

Applicants: PPM Energy, Inc.

Description: PPM Energy, Inc. submits its motion to terminate refund liability to reflect PPM's recent corporate disaffiliation with PacifiCorp.

Filed Date: April 10, 2006.

Accession Number: 20060417-0205.

Comment Date: 5 p.m. Eastern Time on Monday, May 1, 2006.

Docket Numbers: ER06-20-002.

Applicants: Louisville Gas & Electric Company.

Description: LG&E Energy, LLC submits revisions to its proposed open-access transmission tariff to implement the "hold harmless commitment" under the MISO Transmission Owner Agreement etc., pursuant to March 17, 2006 order.

Filed Date: April 11, 2006.

Accession Number: 20060417-0225.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 2, 2006.

Docket Numbers: ER06-278-003.

Applicants: The Nevada Hydro Company, Inc.

Description: Nevada Hydro Company, Inc. submits a supplemental response to FERC's February 17, 2006 request for additional information.

Filed Date: April 7, 2006.

Accession Number: 20060417-0190.

Comment Date: 5 p.m. Eastern Time on Friday, April 28, 2006.

Docket Numbers: ER06-313-000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits an informational filing regarding suspension of the monthly financial transmission rights auction for June 2006, *et al.*

Filed Date: April 11, 2006.

Accession Number: 20060413-0142.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 2, 2006.

Docket Numbers: ER06-561-001.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services Inc. agent for Alabama Power Co. *et al.* submits its response to FERC's March 8, 2006 deficiency letter.

Filed Date: April 7, 2006.

Accession Number: 20060417-0189.

Comment Date: 5 p.m. Eastern Time on Friday, April 28, 2006.

Docket Numbers: ER06-576-001.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services Inc. agent for Alabama Power Co. *et al.* submits its response to FERC's March 8, 2006 deficiency letter.

Filed Date: April 7, 2006.

Accession Number: 20060417-0191.

Comment Date: 5 p.m. Eastern Time on Friday, April 28, 2006.

Docket Numbers: ER06-843-000.

Applicants: Northeast Utilities Service Company.

Description: Northeast Utilities Service Company submits a notice of Cancellation of Service Agreement 8 for Firm Transmission Service with Unifit Power Corp.

Filed Date: April 11, 2006.

Accession Number: 20060417-0185.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 2, 2006.

Docket Numbers: ER06-847-000; ER05-1235-001.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Co submits First Revised Sheet 497 *et al.* to Electric Tariff, Second Revised Volume 8 to their OATT in compliance with FERC's December 16, 2005 order.

Filed Date: April 7, 2006.

Accession Number: 20060417-0216.

Comment Date: 5 p.m. Eastern Time on Friday, April 28, 2006.

Docket Numbers: ER06-848-000.

Applicants: Appalachian Power Company.

Description: AEP on behalf of Appalachian Power Co submits a cost-based formula rate agreement for full requirements electric service between AEP Service Corp and Black Diamond Power Co *et al.*

Filed Date: April 6, 2006.

Accession Number: 20060417-0183.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 25, 2006.

Docket Numbers: ER06-849-000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc. submits the proposed revisions to Attachment L (Credit Policy) of its Open Access Transmission and Energy Markets Tariff, *et al.*

Filed Date: April 7, 2006.

Accession Number: 20060417-0184.

Comment Date: 5 p.m. Eastern Time on Friday, April 28, 2006.

Docket Numbers: ER06-850-000.

Applicants: Northeast Utilities Service Company.

Description: Northeast Utilities Service Co. submits a Notice of Cancellation of NU Companies Service Agreement 16 under ISO New England's Electric Tariff 3 Attachment E, Schedule 21-NU.

Filed Date: April 6, 2006.

Accession Number: 20060417-0176.

Comment Date: 5 p.m. Eastern Time on Thursday, April 27, 2006.

Docket Numbers: ER06-851-000.

Applicants: Northeast Utilities Service Company.

Description: Northeast Utilities Service Co. submits a Notice of Cancellation of NU Companies Service Agreement 22 under ISO New England's Electric Tariff 3 Attachment E, Schedule 21-NU.

Filed Date: April 6, 2006.

Accession Number: 20060417-0177.

Comment Date: 5 p.m. Eastern Time on Thursday, April 27, 2006.

Docket Numbers: ER06-852-000.

Applicants: Northeast Utilities Service Company.

Description: Northeast Utilities Services Co. submits a notice of cancellation of NU Companies Services Agreement 17 under ISO New England's Electric Tariff 3 Attachment E, Schedule 21-NU.

Filed Date: April 6, 2006.

Accession Number: 20060417-0178.

Comment Date: 5 p.m. Eastern Time on Thursday, April 27, 2006.

Docket Numbers: ER06-853-000.

Applicants: Northeast Utilities Service Company.

Description: Northeast Utilities Services Co. submits a notice of cancellation of NU Companies Service Agreement 28, 29 & 30 under ISO New England's Electric Tariff 3 Attachment E, Schedule 21-NU.

Filed Date: April 6, 2006.

Accession Number: 20060417-0179.

Comment Date: 5 p.m. Eastern Time on Thursday, April 27, 2006.

Docket Numbers: ER06-854-000.

Applicants: Northeast Utilities Service Company.

Description: Northeast Utilities Service Co. submits a notice of cancellation of NU Companies Service Agreement 19 under ISO New England Inc. Electric Tariff No. 3 Attachment E, Schedule 21-NU.

Filed Date: April 6, 2006.

Accession Number: 20060417-0180.

Comment Date: 5 p.m. Eastern Time on Thursday, April 27, 2006.

Docket Numbers: ER06-855-000.

Applicants: Northeast Utilities Service Company.

Description: Northeast Utilities Service Co. submits a notice of cancellation of NU Companies Service

Agreements 24 & 25 under ISO New England's Electric Tariff No. 3 Attachment E. Schedule 21-NU.

Filed Date: April 6, 2006.

Accession Number: 20060417-0181.

Comment Date: 5 p.m. Eastern Time on Thursday, April 27, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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. E6-6053 Filed 4-21-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

April 13, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 349-106.

c. *Date filed:* March 22, 2006.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Martin Dam Project.

f. *Location:* The project is located on the Tallapoosa River in Coosa and Elmore Counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r) and 799 and 801.

h. *Applicant Contact:* Keith E. Bryant, 600 18th Street North, Birmingham, AL 35203, (205) 257-1403.

i. *FERC Contact:* Rebecca Martin at 202-502-6012, or e-mail Rebecca.martin@ferc.gov.

j. *Deadline for filing comments and or motions:* May 15, 2006.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P-349-106) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Application:* The licensee requests Commission approval of a permit application, filed by the North Lake Condo Club, to build three uncovered floating boat dock structures providing a total of 42 bays for boats. Each bay will measure approximately 10 feet wide by 23 feet long. There will be no dredging associated with this project.

l. *Location of Application:* The filing is available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online support at FERCOnlineSupport@ferc.gov or toll free (866) 208-3676 or TTY, contact (202) 502-8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web

site at <http://www.ferc.gov> under the "e-Filing" link.

Magalie R. Salas,
Secretary.

[FR Doc. E6-6036 Filed 4-21-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

April 17, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Increase its Authorized Generating Capacity.

b. *Project No.:* 5984-055.

c. *Date Filed:* March 15, 2006.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Oswego Falls Project.

f. *Location:* The project is located on the Oswego River in Oswego and Onondaga Counties in New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* David W. Culligan, P.E., Licensing Coordinator, Brookfield Power, New York Operations, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, Tel: (315) 413-2792, Fax: (315) 461-8577.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Jake Tung at (202) 502-8757, or e-mail address: hong.tung@ferc.gov.

j. *Deadline for filing comments and or motions:* May 1, 2006.

k. *Description of Request:* The licensee proposes to perform a maintenance upgrade to its existing 400 kW generating unit #3 at the West Side Development. The upgrade of unit #3 consists of: (1) Replacing the unit's horizontal quadruplex Francis turbine unit with two new, vertical propeller units, each rated 800 horsepower (600 kW) at 16.7 feet net head; (2) replacing the unit's horizontal generator with two new vertical generators, each rated 550 kW; (3) retiring the existing 400 kW generating unit #3 in place in the powerhouse; and (4) modifying the existing intake flume floor to accommodate the installation of the new units. When the unit upgrade is complete, the licensee states that the project's installed capacity would increase from 6,760 kW to 7,360 kW, or

8.8%, and turbine hydraulic discharge from 6,490 cfs to 6,922 cfs, or 6.6%.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the

Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E6-6047 Filed 4-21-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

April 17, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12656-000.

c. *Date filed:* February 22, 2006.

d. *Applicant:* Samaria Water and Irrigation Company.

e. *Name of Project:* Samaria Hydroelectric Project.

f. *Location:* Dry Pine Canyon, Rose Bud Canyon, Thomas Davis Canyon Tributary to Samaria Creek in Oneida County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. David Reel, Samaria Water and Irrigation Company, 5176 South 4400 West, Malad, ID 83252, (208) 766-2828, dr@drcnet.net.

i. *FERC Contact:* Patricia W. Gillis at (202) 502-8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) Replacing the existing drop, divert the flows from Dry Pine Canyon, Rose Bud Canyon and Thomas Davis Canyon through approximately 9,000 feet of 12-inch diameter pipe, into a common 15 to 18 inch diameter penstock approximately 13,300 feet in length, (2) one proposed generating unit with an installed capacity of 350 kilowatts, (3) proposed 0.1 mile tail race canal to Samaria Creek, (4) proposed 1000 feet of 12.5 kV transmission lines, and (5) appurtenant facilities. The proposed project would have an average annual generation of 1,200,000 kilowatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development

application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", "COMPETING APPLICATION", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies

provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,
Secretary.

[FR Doc. E6-6049 Filed 4-21-06; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

April 17, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12662-000.

c. *Date filed:* March 21, 2006.

d. *Applicant:* Renewable Resources, Inc.

e. *Name of Project:* Swift River Mill Project.

f. *Location:* The project would be located on the Pawcatuck River, in Washington County, Rhode Island. The project would not occupy Federal or Tribal lands. The existing dam is owned by the applicant.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(f).

h. *Applicant Contact:* Mr. John R. Lavigne, Renewable Resources, Inc., c/o The H.L. Turner Group, Inc., 27 Locke Road, Concord, NH 03301-5417, (603) 228-1122.

i. *FERC Contact:* Robert Bell, (202) 502-6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission

to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) The existing 112-foot-long, 10-foot-high concrete gravity dam, (2) an existing impoundment having a surface area of 36 acres, with a storage capacity 204 acre-feet and normal water surface elevation of 9,800 feet national geographic vertical datum, (3) two existing 10-foot-wide, 40-foot-long concrete flumes, which join to form a 16.5-foot wide, 100-foot-long concrete flume, (4) an existing powerhouse containing two new generating units having a total installed capacity of 339 kilowatts, (5) an existing granite tailrace, (6) a proposed underground transmission line 300 feet long, and (7) appurtenant facilities. The project would have an annual generation of 2.97 gigawatt hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing

preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under "e-

filing" link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title "COMMENTS", "COMPETING APPLICATION", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6-6050 Filed 4-21-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF06-23-000]

Gulf South Pipeline Company, LP; Notice of Site Visit for the Proposed Mississippi Expansion Project

April 13, 2006.

The Gulf South Pipeline Company (Gulf South) is proposing to construct approximately 88 miles of 42-inch-diameter pipeline and a new 39,990 horsepower compression station in Madison Parish, Louisiana, and Warren, Hinds, Copiah and Simpson Counties, Mississippi.

On April 25 and 26, 2006, staff from the Office of Energy Projects (OEP) as part of its Pre-Filing Review will visit the proposed pipeline route and potential compression station sites and will attend open house meetings sponsored by the applicant to answer questions about the Pre-Filing Review process. All interested parties are welcome to attend the site visits and

open houses. Those wishing to attend the site visits must provide their own transportation. The schedule for the site visits and open houses is as follows:

Tuesday, April 25th

Site Visit: Meet at 8 a.m. (CST). Eagle Ridge Conference Center Parking Lot, 1500 Raymond Lake Road, Raymond, MS 39154. 601-857-7100.

Open House: 5 p.m.-6:30 p.m. (CST). Eagle Ridge Conference Center, Talon Room, 1500 Raymond Lake Road, Raymond, MS 39154. 601-857-7100.

Wednesday, April 26th

Site Visit: Meet at 8 a.m. (CST). Tallulah Country Club Parking Lot, 762 Old Highway 65 South, Tallulah, LA 71282. 318-574-4173.

Open House: 5 p.m.-6:30 p.m. (CST). Tallulah Country Club, 762 Old Highway 65 South, Tallulah, LA 71282. 318-574-4173.

These events are posted on the Commission's calendar located on the internet at <http://www.ferc.gov/EventCalendar/EventsList.aspx>. For additional information regarding these events, please contact the Commission's Office of External Affairs at 202-502-8004.

Magalie R. Salas,

Secretary.

[FR Doc. E6-6034 Filed 4-21-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD06-4-000]

Resource Reports 11 and 13 Guidance; Notice of Technical Conference

April 13, 2006.

On Tuesday, May 9, 2006, the staff of the Office of Energy Projects of the Federal Energy Regulatory Commission (FERC or Commission) will convene a technical conference to discuss the engineering and safety information required in applications for liquefied natural gas (LNG) facilities. Filings that are complete expedite staff detailed review to ensure that all areas of the proposed design are safe and reliable. The technical conference will convene at 10 a.m. (EST) at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in Conference Room 3M-02.

On December 15, 2005, the Commission issued Draft Guidance for Filing Resource Reports 11 & 13 for LNG Facility Applications to assist

applicants by identifying the specific information and level of detail required for filing these resource reports as specified by Title 18 of the Code of Federal Regulations, Sections 380.12 (m) and (o). This document addresses recent initiatives, as well as several requests for specific guidance, including:

- The level of detail, including a requirement for a hazard design review, necessary for the front-end engineering design submitted to the FERC;
- Critical energy infrastructure information (CEII) classification;
- LNG spill containment sizing and design criteria for impoundments, sumps, sub-dikes, troughs or trenches;
- Design spills to be used in the calculation of thermal and flammable vapor exclusion zones;
- Waterway suitability assessments required by the U.S. Coast Guard's Navigation and Inspection Circular 05-05; and
- Compliance with the Energy Policy Act of 2005.

The technical conference will allow the public and the engineering community the opportunity to provide comments on the required information for Resource Report 11: Reliability and Safety, and Resource Report 13: Engineering and Design Material for LNG facility applications. In addition, the conference will solicit comments on our Draft Preferred Submittal Format Guidance for better organizing the engineering information in Resource Report 13. This document is available on the Commission Web site at <http://www.ferc.gov/docs-filing/elibrary.asp> under Docket No. AD06-4 or by accessing the following link: http://elibrary.ferc.gov/0/idmws/file_list.asp?document_id=4394249. Information related to specific projects before the Commission will not be discussed.

The conference is open to the public. Pre-registration is required and may be submitted either online at <http://www.ferc.gov/whats-new/registration/cryo-conf-form.asp> or by faxing a copy of the form (found at the referenced online link) to 202-208-0353.

FERC conference and meetings are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to accessibility@ferc.gov or call toll free (866) 20803372 (voice) or 202-502-8659 (TTY), or send a fax to 202-208-2106 with the required accommodations.

For information about this conference, please contact Chris Zerby 202-502-

6111, Kareem Monib 202-502-6265, or Ghanshyam Patel 202-502-6431.

Magalie R. Salas,
Secretary.

[FR Doc. E6-6037 Filed 4-21-06; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8160-7]

Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and the Stratospheric Ozone Protection Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS); the National Emission Standards for Hazardous Air Pollutants (NESHAP); and the Stratospheric Ozone Protection Program.

FOR FURTHER INFORMATION CONTACT: An electronic copy of each complete document posted on the Applicability Determination Index (ADI) database system is available on the Internet through the Office of Enforcement and Compliance Assurance (OECA) Web site at <http://www.epa.gov/compliance/monitoring/programs/caa/adi.html>. The document may be located by date, author, subpart, or subject search. For questions about the ADI or this notice, contact Maria Malave at EPA by phone

at: (202) 564-7027, or by e-mail at: malave.maria@epa.gov. For technical questions about the individual applicability determinations or monitoring decisions, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

SUPPLEMENTARY INFORMATION:

Background

The General Provisions to the NSPS in 40 CFR part 60 and the NESHAP in 40 CFR part 61 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are broadly termed applicability determinations. See 40 CFR 60.5 and 61.06. Although part 63 NESHAP and section 111(d) of the Clean Air Act regulations contain no specific regulatory provision that sources may request applicability determinations, EPA does respond to written inquiries regarding applicability for the part 63 and section 111(d) programs. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping which are different from the promulgated requirements. See 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA's written responses to these inquiries are broadly termed alternative monitoring decisions. Furthermore, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping or reporting requirements contained in the regulation. EPA's written responses to these inquiries are broadly termed regulatory interpretations.

EPA currently compiles EPA-issued NSPS and NESHAP applicability determinations, alternative monitoring decisions, and regulatory interpretations, and posts them on the Applicability Determination Index (ADI) on a quarterly basis. In addition, the ADI contains EPA-issued responses to requests pursuant to the stratospheric ozone regulations, contained in 40 CFR part 82. The ADI is an electronic index on the Internet with more than one thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS and NESHAP. The letters and memoranda may be searched by date, office of issuance, subpart, citation, and control number or by string word searches.

Today's notice comprises a summary of 95 such documents added to the ADI on February 28, 2006. The subject, author, recipient, date and header of each letter and memorandum are listed in this notice, as well as a brief abstract of the letter or memorandum. Complete copies of these documents may be obtained from the ADI through the OECA Web site at: <http://www.epa.gov/compliance/monitoring/programs/caa/adi.html>.

Summary of Headers and Abstracts

The following table identifies the database control number for each document posted on the ADI database system on February 28, 2006; the applicable category; the subpart(s) of 40 CFR part 60, 61, or 63 (as applicable) covered by the document; and the title of the document, which provides a brief description of the subject matter. We have also included an abstract of each document identified with its control number after the table. These abstracts are provided solely to alert the public to possible items of interest and are not intended as substitutes for the full text of the documents.

ADI DETERMINATIONS UPLOADED ON FEBRUARY 24, 2006

Control	Category	Subpart	Title
A050001	Asbestos	M	Demolition of Residential Trailer Homes.
M050030	MACT	A, EEE	Stack Test Waiver for a Portland Cement Plant Kiln.
M050036	MACT	G	Alternative Monitoring of Orthoxylene Unit.
M050037	MACT	G	Waiver of Additional Performance Testing.
M050038	MACT	U	Alternative Reporting Period.
M050039	MACT	A	Waiver of Flare Performance Testing.
M050040	MACT	CC, G	Alternative Reporting Period.
M050041	MACT	CC	Alternative Reporting Period.
M050042	MACT	S	Alternative Test Method for Pulp and Paper Mill.
M050043	MACT	S, VVV	Cluster Rule Compliance Plan.
M050044	MACT	PPP, FFFF	Primary Product Determination for Production Vessels.
M050045	MACT	S	Cluster Rule Compliance Plan.
M050046	MACT	KK, QQQQ	Finishing of Architectural Elements.

ADI DETERMINATIONS UPLOADED ON FEBRUARY 24, 2006—Continued

Control	Category	Subpart	Title
M050047	MACT	Hon R	C-12 Chemical Manufacturing Process Units.
Z050007	NESHAP	FF, V	Alternative Monitoring of Pressure/Vacuum Relief Valves.
0500048	NSPS	D	Alternative Opacity Monitoring.
0500060	NSPS	Db	Alternative Monitoring of Fluidized Catalytic Cracking Unit.
0500061	NSPS	GG	Alternative Monitoring of Gas Turbines.
0500062	NSPS	Db	Compliance Monitoring Plan for Gas-Fired Boiler.
0500063	NSPS	J, Dc	Alternative Monitoring of Gasoline Loading Rack.
0500064	NSPS	Dc	Alternative Recordkeeping of Fuel Usage.
0500065	NSPS	Da	Alternative Monitoring of Duct Burners.
0500066	NSPS	NNN	Alternative Monitoring of Catalytic Incinerators.
0500067	NSPS	J	Alternative Monitoring of Gasoline Loading Rack.
0500068	NSPS	J	Alternative Monitoring of Platformer Lock Hopper.
0500069	NSPS	J	Alternative Monitoring of Vacuum Charge Heater.
0500070	NSPS	J	Alternative Monitoring of Marine Dock Thermal Oxidizer.
0500071	NSPS	Dc	Alternative Recordkeeping of Fuel Usage.
0500072	NSPS	NNN	Alternative Monitoring of Distillation Units.
0500073	NSPS	J	Alternative Monitoring of Fluidized Catalytic Cracking Unit.
0500074	NSPS	J	Alternative Monitoring of Refinery Unit.
0500075	NSPS	GG	Alternative Monitoring of New Replacement Turbine.
0500076	NSPS	Db, GG, Dc	Custom Fuel Monitoring Schedule.
0500077	NSPS	UUU	Kyanite Processing.
0500078	NSPS	Db, GG	Alternative Monitoring of Gas Turbines.
0500079	NSPS	GG, Db	Custom Fuel Monitoring Schedule.
0500080	NSPS	GG, Db	Alternative Monitoring of Gas Turbines.
0500081	NSPS	Da, GG	Alternative Monitoring of Gas Turbines.
0500082	NSPS	Dc, GG	Alternative Monitoring of Gas Turbines.
0500083	NSPS	Db	Alternative Opacity Monitoring.
0500084	NSPS	UUU, WWW	Alternative Opacity Monitoring.
0500085	NSPS	Da	Stack Testing Waiver.
0500086	NSPS	WWW	Tier 2 Sampling.
0500087	NSPS	WWW	Alternative Monitoring Proposals for Landfill.
0500088	NSPS	CC	Alternative Opacity Monitoring.
0500089	NSPS	RRR, NNN	Alternative Monitoring of Distillation Operations.
0500090	NSPS	GG	Alternative Monitoring of Combustion Turbines.
0500091	NSPS	Dc	Alternative Recordkeeping of Fuel Usage.
0500092	NSPS	LL	Waiver of Visible Emission Test Requirements.
0500093	NSPS	D	Alternative Opacity, SO ₂ , and NO _x Monitoring.
0500094	NSPS	Db	Alternative Monitoring Plan Modification Request.
0500095	NSPS	WWW	Passive Flares and Waiver of Testing Requirements.
0500096	NSPS	GG	Alternative Monitoring Plan for Gas Turbines.
0500097	NSPS	WWW	Temporary Disconnection of Gas Collection Wells.
0500098	NSPS	Cc	Tier 2 Testing Deadline.
0500099	NSPS	Y, OOO	Initial Opacity Performance Testing.
0500100	NSPS	Dc	Opacity Monitor Certification.
0500101	NSPS	III, NNN	Waiver of Performance Test of Flare.
0500102	NSPS	WWW	Waiver of Installation of Gas Collection Wells.
0500103	NSPS	Db	Initial Performance Test Waiver and Recordkeeping Waiver.
0500104	NSPS	Dc	Initial Opacity Performance Testing.
0500105	NSPS	J	Alternative Monitoring of Refinery Fuel Gas Streams.
0500106	NSPS	D	Alternative Span Value.
0500107	NSPS	OOO	Waiver of Initial Performance Test for Baghouses.
0500108	NSPS	Db	Alternative Opacity Monitoring.
0500109	NSPS	H, T, U, V	Use of English Units for Monitoring and Recordkeeping.
0500110	NSPS	XX	VRU Bypass During Diesel Loading.
0500111	NSPS	UU	Alternative Opacity Monitoring and Performance Testing.
0500112	NSPS	A, D, Db, Dc, Kb, DDD, III, NNN, RRR.	Alternative Monitoring of Startups, Shutdowns, Malfunctions.
0500113	NSPS	VV, Y, OOO	Alternative Monitoring for Leak Detection.
0500114	NSPS	OOO, Y, Dc	Alternative Monitoring for Visible Emissions.
0500115	NSPS	WWW, III, NNN	Alternative Monitoring of Surface Methane.
0500116	NSPS	WWW	Landfill Testing and Emission Rate Calculation Issues.
0500117	NSPS	WWW	Alternative Monitoring Plan for Landfill Gas.
0500118	NSPS	CC	Alternative Opacity Monitoring.
0500119	NSPS	XX, J	Re-Test Requirements After Adding Equipment.
0500120	NSPS	TT	Alternative Test Method.
0500121	NSPS	VV	Alternative Monitoring Plan for Leak Detection.
0500122	NSPS	Db, Dc	Boiler Derate Proposal.
0500123	NSPS	UUU	Alternative Monitoring Plan for Fluidized Bed Dryer.
0500124	NSPS	GG	Modification of Initial Performance Testing.
0500125	NSPS	J, A, I	Performance Test Extension Request.
0500126	NSPS	J	Alternative Monitoring Plan for CEM Span Setting.

ADI DETERMINATIONS UPLOADED ON FEBRUARY 24, 2006—Continued

Control	Category	Subpart	Title
0500127	NSPS	J	Alternative Monitoring Plan for Refinery Unit.
0500128	NSPS	J	Alternative Monitoring Plan for Refinery Unit.
0500129	NSPS	J	Alternative Monitoring Plan for Refinery Combustion Unit.
0500130	NSPS	J	Alternative Monitoring Plan for Refinery Unit.
0500131	NSPS	J	Alternative Monitoring Plan for Vent Gas Stream.
0500132	NSPS	NNN, RRR	Alternative Opacity Monitoring.
0500133	NSPS	NNN, RRR	Alternative Monitoring Plan for Distillation Units.
0500134	NSPS	B	Alternative Performance Specification Procedure.
0500135	NSPS	Db	Alternative Monitoring Plan for Cogeneration Unit.
0500136	NSPS	NNN	SOCMI Distillation Operations.
0500137	NSPS	J	Fuel Gas Combustion Devices and Process Gas Exemption.
0500138	NSPS	J	Fuel Gases and Fuel Gas Combustion Devices.

Abstracts

Abstract for [A050001]

Q1: Are trailer homes with different owners located in the state of Delaware that are recycled using two different processes through the Delaware Solid Waste Authority subject to 40 CFR part 61, subpart M?

A1: No. 40 CFR part 61, subpart M, the asbestos NESHAP regulation, does not apply to demolition of single residential trailer homes because they are classified as single dwelling units and ownership remains with the trailer owner, not the state. A single dwelling unit that is being demolished is exempt from the NESHAP regulation throughout the entire recycling process. However, when two or more residential homes are located at the same demolition site and are under control of the same owner or operator, then the trailer homes become a residential installation subject to the NESHAP regulation.

Q2: Would 40 CFR part 61, subpart M, apply if the residential trailer home were purchased by a commercial entity rather than being sent to the Delaware Solid Waste Authority?

A2: No. A residential trailer home and its recycling process are exempt from the asbestos NESHAP regulation if at the time of demolition, it can be classified as single dwelling unit and does not meet the definition of a residential installation in 40 CFR 61.141.

Q3: Given the inapplicability of 40 CFR part 61, subpart M, what might the State of Delaware do to minimize public exposure to asbestos from the demolition of residential trailer homes?

A3: EPA suggests that the State of Delaware encourage inspection and removal of asbestos-containing material at the Delaware Solid Waste Authority compaction site. The state might also consider the addition of a permit condition in the Delaware landfills operating permits that would prohibit landfills from accepting asbestos-containing material as landfill cover.

Abstract for [0500060]

Q: Does EPA approve a request to discontinue calibrating a carbon monoxide continuous emission monitor (CEM) with a 1,000-ppmv span gas for a fluid catalytic cracking unit, under 40 CFR part 60, subpart Db, at Flint Hill Resources Pine Bend petroleum refinery in Rosemount, Minnesota?

A: Yes. EPA approves this request because, based on information submitted to EPA, Flint Hills Resources meets the criteria for the exemption set forth at 40 CFR 60.105(a)(2)(ii). However, a State permit requires the facility to calibrate its carbon monoxide continuous emission monitor with a 100 ppmv span gas.

Abstract for [0500061]

Q1: Does EPA waive the multi-load testing requirement, under 40 CFR part 60, subpart GG, for Tristate's Pyramid Generating Station near Lordsburg, New Mexico?

A1: Yes. EPA waives the multi-load testing requirement under NSPS subpart GG because the facility has a nitrogen oxides continuous emissions monitor (NO_x CEM).

Q2: Does EPA approve the use of monitoring conducted in accordance with Part 75 in lieu of certain monitoring requirements in 40 CFR part 60, subpart GG, at Tristate's Pyramid Generating Station near Lordsburg, New Mexico?

A2: Yes. EPA approves the use of certain monitoring of part 75 in lieu of certain monitoring requirements of NSPS subpart GG.

Abstract for [0500062]

Q: Does EPA approve a compliance monitoring plan, under 40 CFR part 60, subpart Db, for a 185-mmBTU/hr natural gas-fired boiler at Flint Hills Resources (FHR) petroleum refinery in Rosemount, Minnesota?

A: Yes. On April 12, 2000, the company supplemented its request in accordance with EPA's initial response.

The plan that Koch Fuels (FHR's former name) submitted included all of the information required by 40 CFR 60.49b(c)(1), (2) and (3). Based upon a review of the information that the company submitted, EPA approves the proposed compliance monitoring plan under NSPS subpart Db.

Abstract for [Z050007]

Q: Does EPA approve an alternative monitoring plan, under 40 CFR part 61, subparts V and FF, for pressure/vacuum relief valves in the wastewater treatment plant tanks and oil-water separator located at Flint Hills Resources (FHR) petroleum refinery in Rosemount, Minnesota?

A: Yes. EPA concludes that the pressure/vacuum relief valves function as both pressure relief devices and dilution air openings under NESHAP subparts V and FF. EPA did not promulgate a definition of "dilution air opening" in NESHAP subpart FF. NESHAP subpart V infers that a pressure relief device is designed to release pressure but is not designed to function as a dilution air opening. Since the pressure/vacuum relief valves relieve excess pressure in the closed vent system and allow dilution air to enter the closed vent system, the pressure/vacuum relief valves are both pressure relief devices and dilution air openings. EPA recognizes that the requirements of 40 CFR 61.343(a)(1)(i)(B) and (C) do not account for this dichotomy, and thus approves FHR's request for an alternative monitoring plan to resolve the ambiguity.

Abstract for [0500063]

Q: Does EPA approve an alternative monitoring plan, under 40 CFR part 60, subpart J, to address a new refinery fuel gas that Flint Hills Resources (FHR) loads at a gasoline loading rack at its Pine Bend Refinery in Rosemount, Minnesota?

A: Yes. EPA finds FHR has demonstrated that this refinery fuel gas meets the criteria in EPA's August 14, 1987 guidance for refinery fuel gas stream alternative monitoring plans, and thus it approves the alternative monitoring plan under NSPS subpart J.

Abstract for [0500064]

Q: Does EPA approve an alternative fuel usage recordkeeping method, under 40 CFR part 60, subpart Dc, for two heaters at Devon Energy's Bridgeport Gas Processing Plant near Bridgeport, Texas?

A: Yes. EPA approves the changes in the fuel usage recordkeeping frequency for NSPS subpart Dc boilers that are fired with only natural gas and/or low sulfur oil.

Abstract for [M050036]

Q: Does EPA approve an alternative control method, under 40 CFR part 63, subpart G, using dual carbon canisters to reduce HAP emissions at the Chalmette Refinery in Chalmette, Louisiana?

A: Yes. EPA approves the alternative method under MACT subpart G, conditioned on Chalmette's daily monitoring of the HAPs concentration after the primary canister until breakthrough has occurred three times.

Abstract for [0500065]

Q: Does EPA waive the monitoring requirement, under 40 CFR part 60, subpart Da, to use a sulfur dioxide continuous emission monitor (SO₂ CEM) for duct burners located at Calpine's Channel Energy Center facility in Houston, Texas?

A: No. EPA does not waive the requirement under NSPS subpart Da. However, EPA will consider the approval of an alternative monitoring plan in lieu of an SO₂ CEM.

Abstract for [0500066]

Q: Does EPA approve an alternative monitoring plan, under 40 CFR part 60, subpart NNN, for the catalytic incinerator at BASF's Freeport, Texas facility, which operates at varying flowrates and must add hydrocarbons to the stream to generate the required delta T established by the performance test?

A: Yes. EPA approves an alternative monitoring plan under NSPS subpart NNN for BASF's R-170 Catalytic Incinerator provided that: (1) The minimum outlet temperature will be 550 degrees C; (2) the minimum delta T across the bed will be 287 degrees C; (3) the minimum organic loading to the bed will be 89,380 lb/hr; and (4) the facility establishes alarms at a 15 degrees C differential to allow time for corrective

action. In addition, BASF will keep records of organic flow rate to R-170 in lb/hr. Any hourly flow rates that are below the approved minimum will be considered a violation of NSPS subpart NNN and must be reported as excess emissions.

Abstract for [M050037]

Q: Will EPA waive, under 40 CFR part 63, subpart G, additional performance testing if the scrubber/absorption system organic absorption medium is changed from utility water to recycle process wastewater at a BP Chemicals Green Lake facility in Port Lavaca, Texas?

A: Yes. EPA will waive additional testing under MACT subpart G because the change in medium at the scrubber/absorption system would lead to only a slight increase in emissions and the total emissions remain below the permitted emissions limit of 0.37 lb/hr.

Abstract for [0500067]

Q: Does EPA approve an alternative monitoring plan (AMP), under 40 CFR part 60, subpart J, for a flare used by Flint Hills Resources (FHR) during periods of maintenance or malfunction of a vapor recovery unit at a gasoline loading rack at its Pine Bend Refinery in Rosemount, Minnesota?

A: Yes. EPA finds that FHR has demonstrated that this refinery fuel gas meets the criteria in EPA's guidance, "Alternative Monitoring Plan for NSPS Subpart J Refinery Fuel Gas" for refinery fuel gas stream alternative monitoring plans (see AMP attached to ADI Control Number 0500138) and thus it approves the alternative monitoring plan under NSPS subpart J.

Abstract for [0500068]

Q: Does EPA approve an alternative monitoring plan (AMP), under 40 CFR part 60, subpart J, for the platformer lock hopper and switch valve vent refinery fuel gas stream at Flint Hills Resources (FHR) petroleum refinery in Rosemount, Minnesota?

A: Yes. EPA finds that FHR has demonstrated that this refinery fuel gas meets the criteria in EPA's guidance, "Alternative Monitoring Plan for NSPS Subpart J Refinery Fuel Gas" for refinery fuel gas stream alternative monitoring plans (see AMP attached to ADI Control No. 0500138), and thus it approves the alternative monitoring plan under NSPS subpart J.

Abstract for [0500069]

Q: Does EPA approve an alternative monitoring plan, under 40 CFR part 60, subpart J, in lieu of a hydrogen disulfide continuous emission monitor (H₂S CEM) for the disulfide separator off-gas

in Atofina's facility in Port Arthur, Texas?

A: Yes. EPA approves the alternative monitoring plan under NSPS subpart J based upon the data submitted, and provided that the proposed alternative monitoring plan correctly applies the stipulated guidance in EPA's letters to Koch Fuels on December 2, 1999 and February 13, 2001 (see ADI Control Numbers 0500137 and 0100037).

Abstract for [0500070]

Q1: Does EPA approve an alternative monitoring plan, under 40 CFR part 60, subpart J, in lieu of a hydrogen disulfide continuous emission monitor (H₂S CEM) for the dock thermal oxidizer vent gases in Atofina's facility in Port Arthur, Texas?

A1: Yes. EPA approves the alternative monitoring plan under NSPS subpart J based upon the data submitted, and provided that the proposed alternative monitoring plan correctly applies the stipulated guidance in EPA's letters to Koch Fuels on December 2, 1999 and February 13, 2001 (see ADI Control Numbers 0500137 and 0100037).

Q2: Does EPA approve alternative recordkeeping requirements for boilers, under 40 CFR part 60, subpart Dc, at the Frito-Lay facility in Mission, Texas?

A2: Yes. EPA approves the alternative recordkeeping requirements under subpart Dc based upon the information submitted by the facility.

Abstract for [M050038]

Q: Does EPA approve a request to align the periodic reporting requirements of non-leak detection and reduction (LDAR) and LDAR to a single semiannual report, under 40 CFR part 63, subpart U, for the hypalon elastomer unit at the DuPont Dow facility in Beaumont, Texas?

A: Yes. EPA approves the request to align the periodic reporting requirements of non-LDAR and LDAR to a single semiannual report under MACT subpart U as long as the reports are submitted in such a manner that there are no missing days of reporting.

Abstract for [M050039]

Q: Does EPA waive a performance test requirement for vent streams that contain hydrogen cyanide (HCN) and allow the use of an alternative method of demonstrating compliance, under 40 CFR part 63, subpart A, at DuPont Chemical Solutions Enterprise's facility in Beaumont, Texas?

A: Yes. EPA grants the waiver of performance testing under MACT subpart A for flow measurement and heat content because the facility has

demonstrated compliance using alternate means.

Abstract for [0500071]

Q: Does EPA approve alternative recordkeeping requirements, under 40 CFR part 60, subpart Dc, for natural gas burning boilers at the Frito-Lay facility in Mission, Texas?

A: Yes. EPA approves the alternative recordkeeping requirements under subpart Dc based upon the condition that it is not necessary to keep daily fuel usage records for units fired only with natural gas since the emission standards in subpart Dc are not applicable to these units.

Abstract for [0500072]

Q: Will EPA approve, under 40 CFR part 60, subpart NNN, an alternative plan to monitor the total flow to the combustion device instead of monitoring the flow of each vent stream from several distillation units to the combustion device at ExxonMobil's Baytown Chemical Plant in Baytown, Texas?

A: Yes. EPA approves this alternative monitoring request under NSPS subpart NNN with additional conditions to ensure which combustion devices are associated with which vent gas streams.

Abstract for [0500073]

Q: Does EPA approve an alternative monitoring plan for a refinery generated fuel gas stream, under 40 CFR part 60, subpart J, at Motiva Enterprises' Convent Refinery in Convent, Louisiana?

A: Yes. EPA approves an alternative monitoring plan under NSPS subpart J, provided the facility follows the stipulated guidance in EPA's letters to Koch Fuels on December 2, 1999 and February 13, 2001 (see ADI Control Numbers 0500137 and 0100037).

Abstract for [M050040]

Q: Does EPA align the 40 CFR part 63, subparts G and CC reporting periods for Motiva Enterprises' facility in Norco, Louisiana?

A: Yes. EPA aligns the reporting periods under MACT subparts G and CC, provided that the facility submits a shortened report such that no days of recordkeeping and reporting are missed.

Abstract for [0500074]

Q: Does EPA approve an alternative monitoring plan for the regenerative catalytic cracking unit (RCCU), under 40 CFR part 60, subpart J, at Motiva Enterprises' facility in Norco, Louisiana?

A: Yes. EPA approves an alternative monitoring plan under NSPS subpart J,

provided that the monitored parameters and ranges at the facility have supporting data.

Abstract for [M050041]

Q: Does EPA allow aligning the reporting period to a semi-annual calendar year, under 40 CFR part 63, subpart CC, for the Shell Norco Chemical Plant in Norco, Louisiana?

A: Yes. EPA allows the aligning of the reporting period under MACT subpart CC, provided that the facility submits a shortened report such that no days of recordkeeping and reporting are missed.

Abstract for [M050042]

Q: Does EPA approve the use of National Council for Air and Stream (NCASI) hazardous air pollutants (HAPS) Test Method 99.01, under 40 CFR part 63, subpart S, to analyze condensate samples collected at Appleton Papers' Spring Mill in Roaring Spring Borough, Pennsylvania?

A: Yes. EPA allows the alternative method under MACT subpart S, provided that the appropriate correction factors are used.

Abstract for [0500075]

Q1: Does EPA approve the continuation of the current custom fuel monitoring plan for the new replacement turbine, under 40 CFR part 60, subpart GG, at East Tennessee Natural Gas Company's Compressor Station 3313 in Rural Retreat, Virginia?

A1: Yes. EPA approves this request under NSPS subpart GG because it understands that there will be no change in fuel quality since there is no change in fuel source.

Q2: Does EPA approve a sampling location, under 40 CFR part 60, subpart GG, where the system's three major lines connect?

A2: Yes. Because the ownership of East Tennessee Natural Gas Company was transferred from El Paso Energy Corporation (EPE) to a subsidiary of Duke Energy Gas Transmission, EPA approves a new sampling location at Topside Junction Metering and Control Station in Knoxville County, where the system's three major lines connect.

Abstract for [M050043]

Q: Does EPA approve alternative monitoring parameters and parameter values for "closed" biological treatment systems, under 40 CFR part 63, subpart S, at the Smurfit (formerly Stone Container Corporation) pulp and paper mill in Hopewell, Virginia?

A: Yes. EPA approves the request because the facility has adequately demonstrated it meets the requirements of MACT subpart S through both

continuous monitoring of the proposed four parameters and continuous monitoring to ensure that UNOX oxygen purity is maintained at 96 percent maximum.

Abstract for [M050044]

Q1: Does EPA approve the primary product determination for specific production vessels and precompliance report for pilot vessels, under 40 CFR part 63, subpart PPP, for the CRODA Manufacturing facility in Mill Hall, Pennsylvania?

A1: Yes. EPA approves the request under MACT subpart PPP because it accepts CRODA's conclusion that specific production vessels that do not manufacture a polyether polyol as the primary product are not polyether polyol manufacturing units.

Q2: Does EPA agree that products manufactured with epoxides do not meet the definition of a polyether polyol in 40 CFR part 63, subpart PPP?

A2: Yes. EPA agrees that products that do not meet the definition of polyether polyol in MACT subpart PPP are not subject to the requirements of that subpart.

Abstract for [M050045]

Q: Does EPA approve the use of alternative monitoring parameters and parameter values to demonstrate compliance with 40 CFR part 63, subpart S for "closed" biological treatment systems at the St. Laurent Paperboard facility in West Point, Virginia?

A: Yes. EPA approves the request because the facility has adequately demonstrated that the alternative monitoring parameters meet the requirements of MACT subpart S.

Abstract for [0500076]

Q: Does EPA approve a custom fuel monitoring schedule, under 40 CFR part 60, subpart GG, for Millennium Inorganic Chemicals' Hawkins Point plant in Baltimore, Maryland?

A: Yes. EPA approves this request in accordance with its August 14, 1987 custom fuel monitoring schedule memorandum, and provided that pipeline quality natural gas is the only fuel being burned.

Abstract for [0500077]

Q: Does 40 CFR part 60, subpart UUU, apply to rotary calciners that are used in the production of mullite with kyanite as the raw material at Kyanite Mining Corporation (KMC) facilities?

A: No. NSPS subpart UUU applies to calciners and dryers at "mineral processing plants," i.e., a facility that processes or produces one or more of

the seventeen specifically named minerals listed in 40 CFR 60.731, their concentrates, or mixtures which contain greater than 50 percent of any of these listed minerals. EPA understands that silica is formed as a by-product during the kyanite calcining process at KMC in quantities that do not constitute the majority (greater than 50 percent) of any of the minerals processed or produced at KMC.

Abstract for [M050046]

Q: Is a facility which primarily applies finishing to architectural wood molding materials subject to the requirements of 40 CFR part 63, subpart KK?

A: No. While EPA believes that the definitions in 40 CFR 63.822 are intended to be broadly applied and inclusive, we have determined that rotogravure printing on wood molding was not intended to be regulated under this rule. The facility does not produce saleable paper products and does use a flexographic press in its finishing operations. It therefore does not qualify as "publication rotogravure printing" as that term is defined in 40 CFR 63.822. However, EPA has determined that the molding finishing operations at the facility would be regulated under 40 CFR 43 Subpart QQQQ, the Wood Building Products MACT, if the molding products "finished" at the facility are not included within the category of surface coating (or other operations specifically excluded under 40 CFR 63.4681(c)(1)-(5)) and are more than 50 percent by weight wood.

Abstract for [0500078]

Q: Does EPA approve an alternative monitoring plan, under 40 CFR part 60, subpart GG, for the Liberty Electric Power facility in Eddystone Borough, Pennsylvania?

A: Yes. EPA approves this alternative monitoring plan request under NSPS subpart GG, consistent with previous determinations that provide for the use of continuous emissions monitoring systems (CEMS) equipment to continuously monitor compliance with the standard for nitrogen oxides.

Abstract for [0500079]

Q: Does EPA approve a custom fuel monitoring schedule, under 40 CFR part 60, subpart GG, for the Liberty Electric Power facility in Eddystone Borough, Pennsylvania?

A: Yes. EPA approves this custom fuel monitoring schedule under NSPS subpart GG in accordance with its August 14, 1987 custom fuel monitoring schedule memorandum, and provided

that natural gas is the only fuel fired in the gas turbine.

Abstract for [0500080]

Q: Does EPA approve an alternative test method request for performance testing of (nitrogen oxides) NO_x emission limitations for two gas turbine/duct burner combined cycle units, under 40 CFR part 60, subpart GG, at the Liberty Electric Power facility in Eddystone Borough, Pennsylvania?

A: Yes. EPA approves this request under NSPS subpart GG based on a review by the Emission, Monitoring, and Analysis Division (EMAD) of the Office on Air Quality, Planning and Standards, and subject to the conditions specified in the EMAD memorandum (C304-02) dated April 5, 2002.

Abstract for [0500081]

Q1: Does EPA approve a custom fuel monitoring schedule, under 40 CFR part 60, subpart GG, for the Tenaska Virginia Generating Station in Fluvanna County, Virginia?

A1: Yes. EPA approves this custom fuel monitoring schedule under NSPS subpart GG in accordance with its August 14, 1987 custom fuel monitoring schedule memorandum, and provided that pipeline quality natural gas is the only fuel being burned (see ADI Control Number NS33).

Q2: Does EPA approve an alternative monitoring plan, under 40 CFR part 60, subpart GG, that provides for the use of CEMS equipment to continuously monitor compliance with the standards for nitrogen oxides for the Tenaska Virginia Generating Station in Fluvanna County, Virginia?

A2: Yes. EPA approves the alternative monitoring plan request under NSPS subpart GG, based upon its consistency with previous determinations made by the Agency and conditions necessitating specific additional requirements for recordkeeping and monitoring.

Abstract for [0500082]

Q: Does EPA approve a custom fuel monitoring schedule, under 40 CFR part 60 subpart GG, for Energy System North East's Cogeneration Plant in North East, Pennsylvania?

A: Yes. EPA approves this custom fuel monitoring schedule under NSPS subpart GG in accordance with its August 14, 1987 custom fuel monitoring schedule memorandum, and provided that pipeline quality natural gas is the only fuel being burned.

Abstract for [0500083]

Q: Does EPA waive the opacity monitoring requirement in 40 CFR part 60, subpart Db for a wood-fired boiler at

the Homanit USA plant in Montgomery County, North Carolina?

A: No. EPA finds that neither NSPS subpart Db nor the NSPS general provisions in subpart A provide the authority to completely waive the applicable opacity monitoring requirement of NSPS subpart Db. However, based upon the low probability that there will be any opacity in the regenerative thermal oxidizer stack downstream of the boiler, EPA would be willing to consider an opacity monitoring alternative.

Abstract for [0500084]

Q: Does EPA approve use of an alternative path length correction factor, under 40 CFR part 60, subpart UUU, based on width rather than equivalent diameter for the continuous opacity monitoring system on three rectangular exhaust stacks at the 3M facility in Moncure, North Carolina?

A: Yes. EPA approves this request. EPA finds the alternative path length correction factor is acceptable under NSPS subpart UUU because of the high bias in the opacity data created by using equivalent diameter.

Abstract for [0500085]

Q: Does EPA waive the 40 CFR part 60, subpart Da requirement to conduct a stack test in order to determine compliance with the applicable sulfur dioxide limit for a duct burner at Cogentrix Energy's Caledonia Power Station?

A: Yes. EPA waives the NSPS subpart Da requirement based upon the margin of compliance, provided that the unit is fired with only pipeline quality natural gas.

Abstract for [0500086]

Q: Does EPA allow collection of Tier 2 samples from the active gas collection systems, under 40 CFR part 60, subpart WWW, at the Prairie Bluff Landfill in Chickasaw County, Mississippi, and the Little Dixie Landfill in Madison County, Mississippi?

A: Yes. Based upon NSPS subpart WWW revisions promulgated on October 17, 2000, EPA finds the proposed Tier 2 sampling sites to be acceptable, provided that they are located prior to any gas moving or condensate removal equipment. In addition, at least three samples must be collected from the proposed sampling site at each of the landfills in question.

Abstract for [0500087]

Q1: Does EPA approve the proposed alternative oxygen concentration limit for 16 wells, under 40 CFR part 60, subpart WWW, at the Deans Bridge

Road Landfill operated by the Augusta, Georgia Public Works and Engineering Department?

A1: Yes. EPA approves the proposed alternative concentration limit under NSPS subpart WWW because the temperature monitoring data for the wells in question indicate that oxygen levels greater than five percent have not poisoned methane producing bacteria.

Q2: Does EPA waive the requirement under 40 CFR part 60, subpart WWW to conduct methane surface concentration monitoring in a closed 52-acre section of the landfill?

A2: No. Because NSPS subpart WWW requires that methane surface concentration monitoring in closed areas be conducted at least annually, EPA concludes that the requirement to conduct this monitoring cannot be waived. However, the monitoring frequency can be reduced from a quarterly to an annual basis if none of the methane concentration readings in the closed section of the landfill were 500 parts per million or more during the June 2003 monitoring period.

Abstract for [0500088]

Q: Does EPA approve an opacity monitoring alternative for two glass melting furnaces, under 40 CFR part 60, subpart CC, at the Anchor Glass Company's Warner Robbins, Georgia plant?

A: No. EPA does not approve this request under NSPS subpart CC. Based upon the results of testing conducted on both furnaces, there does not appear to be a consistent relationship between particulate emission rates and the operating parameter (bridgewall temperature) that Anchor Glass proposed to monitor in lieu of installing, certifying, and operating a continuous emission monitoring system.

Abstract for [0500089]

Q: Does EPA find that the 40 CFR part 60, subpart RRR monitoring procedures are an acceptable alternative to the 40 CFR part 60, subpart NNN requirements for volatile organic compound (VOC) excess emission monitoring at the distillation operation in Celanese Acetate's plant in Rock Hill, South Carolina?

A: Yes. EPA finds that the NSPS subpart RRR monitoring procedures are an acceptable alternative to the monitoring procedures required under NSPS subpart NNN in this case. The NSPS subpart RRR requirement to monitor diversions from the control device accomplishes the same end as the NSPS subpart NNN requirement to monitor the flow to the control device. In addition, based upon information in

the preamble to the final rule promulgating NSPS subpart RRR, monitoring the combustion temperature for boilers and process heaters, although required under NSPS subpart NNN, is not necessary when a VOC vent stream is introduced with the primary fuel for the boiler or heater.

Abstract for [0500090]

Q: Does EPA approve the use of Gas Producers Association (GPA) Method 2265, under 40 CFR part 60, subpart GG, to measure the sulfur content of natural gas burned in turbines at the Clarksdale Public Utilities Crossroads Power Plant?

A: Yes. EPA approves this request to use GPA Method 2265 for monitoring natural gas sulfur content under NSPS subpart GG because it is an acceptable alternative similar to American Society for Testing Materials (ASTM) methods for measuring sulfur content and consistent with several other past determinations.

Abstract for [0500091]

Q: Does EPA require requests for approval of an alternative fuel usage recordkeeping schedule to be submitted to EPA for review, under 40 CFR part 60, subpart Dc, especially routine requests for natural gas and distillate oil-fired boilers?

A: No. Requests of this type do not have to be submitted exclusively to EPA for review. Because of the routine nature of such requests, review on a case-by-case basis at the Regional level slows down the approval without providing any environmental benefit. The low fuel emissions from natural gas and distillate oil-fired boilers means that monthly fuel usage recordkeeping frequencies are typically appropriate to verify these sources' compliance. Additionally, proposals to apportion total fuel usage between multiple units with a common fuel flow meter do not have to be submitted to EPA for review if the apportionment approach is at least as accurate as one that EPA approved for several plants operated by Tyson Foods in Region 5 in a determination dated May 1, 2001 (ADI control number 010005), which was attached to EPA's response.

Abstract for [0500092]

Q: Does EPA waive the requirement, under 40 CFR part 60, subpart LL, to perform visible emissions tests on several affected facilities located inside a building at the Treibacher Schleifmittle grit plant in Andersonville, Georgia?

A: Yes. EPA waives the NSPS subpart LL requirement to conduct separate visible emission tests on each of the

fugitive emission sources inside the facility because the results of EPA Method 22 observations conducted on the exterior of the building provide adequate assurance of compliance for the facilities located inside.

Abstract for [0500093]

Q: Does EPA approve the opacity, sulfur dioxide (SO₂), and nitrogen oxides (NO_x) alternative monitoring proposals, under 40 CFR part 60, subpart D, for the Number 2 Bark Boiler at Riverwood International's kraft pulp mill in Macon, Georgia?

A: Yes. EPA approves the alternative monitoring proposals concerning opacity, sulfur dioxide, and nitrogen oxides under NSPS subpart D. EPA finds monitoring of the scrubber liquor flow rate and scrubber pressure drop to be an acceptable alternative to using continuous opacity monitors (COMS). Additionally, monitoring the pH of the scrubber liquor when coal is fired is an acceptable alternative to an SO₂ CEMS. Furthermore, performing annual boiler tune-ups and conducting annual NO_x performance tests is reasonable assurance of compliance with the applicable NO_x emission limits in subpart D in lieu of a NO_x CEMS.

Abstract for [0500094]

Q: Does EPA approve a request to modify the current opacity monitoring alternative, under 40 CFR part 60, subpart Db, for a boiler at Georgia Pacific's plywood plant in Monticello, Georgia, by deleting one of the three parameters currently monitored as an indicator of scrubber performance?

A: Yes. EPA approves the request under NSPS subpart Db to drop the water supply pressure monitoring requirement. Based on facts submitted to EPA, monitoring both water flow rate and supply pressure at this plant is unnecessary. In addition, several other NSPS subparts, including OOO and UUU, require only pressure drop and water flow rate monitoring.

Abstract for [0500095]

Q1: Does EPA approve a proposal to use passive flares on a temporary basis (not to exceed 18 months), under 40 CFR part 60, subpart WWW, at Waste Management's Live Oak Landfill in DeKalb County, Georgia?

A1: Yes. EPA approves the proposed flares under NSPS subpart WWW, provided that they are used only in areas where liners have been installed on the sides and bottom of the landfill in accordance with 40 CFR 258.40. This determination is based upon the design of the proposed flares, each of which must include a pilot flame,

thermocouple, a thermocouple to monitor the temperature at the flare tip, and a data logger to record the thermocouple data.

Q2: Does EPA waive the 40 CFR part 60, subpart WWW performance testing requirement for the passive flares at Waste Management's Live Oak Landfill in DeKalb County, Georgia?

A2: No. EPA does not waive the NSPS subpart WWW performance testing requirement for the passive flares because flare design flow rate data and information regarding typical landfill gas composition do not provide a sufficient basis for a waiver. To obtain such a waiver, the facility must test a portion of the flares that it installs and submit the results of the test to EPA for review.

Abstract for [0500096]

Q: Does EPA approve American Society for Testing Materials (ASTM) Method D 6667-01 as an alternative method, under 40 CFR part 60, subpart GG, for monitoring the sulfur content of natural gas burned in three gas turbines at the Williams Pipeline site in Coden, Alabama?

A: Yes. EPA has previously approved the proposed alternative method under NSPS subpart GG for measuring natural gas sulfur content at more than twenty separate turbine installations nationwide in lieu of the four ASTM methods for determining the sulfur content of gaseous fuels listed in 40 CFR 60.335(d).

Abstract for [0500097]

Q: Does EPA approve a proposal to temporarily abandon gas collection wells during vertical expansion in active areas that have held waste for five years or more, under 40 CFR part 60, subpart WWW, at Waste Management's Live Oak Landfill in DeKalb County, Georgia?

A: No. EPA does not approve under NSPS subpart WWW the proposal to disconnect the wells for a six to twelve month period while a vertical expansion is taking place because it would constitute a relaxation of the applicable emission standard.

Abstract for [0500098]

Q1: Does EPA allow Clayton County, Georgia, which missed the deadline for a Tier 2 retest at its SR3 Municipal Solid Waste Landfill, to have the option of conducting another Tier 2 test prior to the deadline for submittal of a gas collection and control (GCCS) system design plan under 40 CFR part 60, subpart Cc?

A1: Yes. EPA has determined that additional Tier 2 testing can be

conducted any time prior to the deadline for installation of a GCCS (30 months after the landfill's nonmethane organic compound emission rate exceeds 50 megagrams per year), provided that a design plan is submitted by the applicable deadline (12 months after the landfill's nonmethane organic compound emission rate exceeds 50 megagrams per year).

Q2: Could EPA clarify whether the results of initial Tier 2 testing in 1998 or of a Tier 2 retest in 2003 should be used for calculating the 2003 nonmethane organic compound (NMOC) emission rate, under 40 CFR part 60, subpart Cc, at the Clayton County, Georgia, Municipal Solid Waste Landfill?

A2: Once the deadline for Tier 2 retesting has passed, NMOC emission rates under NSPS subpart WWW must be calculated using the 4000 part per million default value, unless additional Tier 2 testing is done. If additional testing is done, the NMOC concentration results from this retest, rather than the default value, would apply for calculating the NMOC emission rate for year 2003.

Abstract for [0500099]

Q: Does EPA approve a proposal for shortening the visible emission (VE) observation from three hours to one hour for conveyor drop points, under 40 CFR part 60, subpart Y, at DTE Energy Services' coal preparation plant in Belews Creek, North Carolina?

A: Yes. EPA approves the request to shorten the VE observation time to one hour when no individual opacity readings exceed 15 percent during the first hour of readings. Demonstrating that opacity levels do not exceed 15 percent of the applicable limit for an entire hour will provide adequate assurance of compliance with the opacity limit in NSPS subpart Y.

Abstract for [0500100]

Q: Could EPA verify whether a continuous opacity monitoring system (COMS) located on a replacement stack for a boiler at Trigen Biopower in Caldwell, North Carolina, should be subject, under 40 CFR part 60, subpart Dc, to certification requirements in the latest version of Performance Specification 1 (PS-1)?

A: Yes. EPA finds that under NSPS subpart Dc, the COMS is subject to the latest PS-1 certification requirements. Installing the monitor on the replacement stack constitutes relocation because a replacement stack is likely to differ in some respects from the original stack, and there is no way to be absolutely sure two stacks are

completely identical. Relocating a COMS is one of the conditions requiring monitor certification in the August 10, 2000 version of PS-1.

Abstract for [0500101]

Q: Does EPA waive the requirement to conduct a performance test on a flare that controls volatile organic compound (VOC) emissions from air oxidation and distillation operations, under 40 CFR part, 60 subparts III and NNN, at Albemarle Corporation's chemical plant in Orangeburg, South Carolina?

A: Yes. EPA waives the performance requirement under NSPS subparts III and NNN. Information supplied by the company demonstrates that the flare tip velocity will be less than 50 percent of the applicable limit even if the total volume of reactants for the hydrogen cyanide production unit were vented through the control device. Hence, the velocity limit promulgated in 40 CFR 60.18(c)(3)(i)(A) will not be exceeded.

Abstract for [0500102]

Q: Does EPA waive the requirement to install gas collection wells in active landfill areas that have held waste for five years or more, under 40 CFR part 60, subpart WWW, at the Central Disposal Facility in Brevard County, Florida?

A: No. EPA does not waive this requirement. Such a waiver would constitute an unacceptable relaxation of the emission standards of NSPS subpart WWW because landfill gas that would be collected and routed to control equipment under the rule's provisions would instead be released to the atmosphere without controls.

Abstract for [0500103]

Q1: Does EPA waive the requirement to conduct an initial performance test, under 40 CFR part 60, subpart GG, on two of the three combustion turbines at Forsyth Energy Project's (FEP) plant in Forsyth County, North Carolina?

A1: Yes. EPA grants this waiver request. Under the conditions proposed by FEP, EPA finds the test results for one of the three identical turbines will provide adequate assurance that the other two units also comply with NSPS subpart GG. Additionally, the use of nitrogen oxides continuous emissions monitors (NO_x CEMS) at FEP provides a further source of credible evidence regarding the compliance for all three turbines following the initial testing.

Q2: Does EPA waive the requirement to keep records of the annual capacity factor, under 40 CFR part 60, subpart Db, for FEP's auxiliary boiler?

A2: Yes. EPA waives this requirement. EPA finds that since the

company is not seeking an exemption from the nitrogen oxides limit under NSPS subpart Db, there is no regulatory need for information regarding the auxiliary boiler's annual capacity factor.

Abstract for [0500104]

Q: Does EPA approve the shortening in duration of the initial opacity performance test, under 40 CFR part 60, subpart Dc, from three hours to one hour if there are no opacity readings greater than ten percent during the initial hour of observations on three oil-fired boilers at the RJ Reynolds plant in Tobaccoville, North Carolina?

A: Yes. EPA approves the request under NSPS subpart Dc based upon the expectation that there will be a low variability in opacity levels when oil is used to fire these boilers. The test duration can be shortened to one hour for any of the boilers that does not have individual opacity readings exceeding 10 percent for each of the 15-second visible emissions readings taken during the first hour of observations.

Abstract for [0500105]

Q: Does EPA approve an alternative hydrogen sulfide (H₂S) monitoring proposal, under 40 CFR part 60, subpart J, submitted for refinery fuel gas burned in a reformer furnace at the Air Products and Chemicals Catlettsburg, Kentucky hydrogen plant?

A: Yes. EPA approves under NSPS subpart J the proposed H₂S alternative monitoring plan. The hydrogen sulfide content of the reformer's fuel gas and fuel gas streams is inherently low, and Air Products has an economic incentive to keep these levels low in order to prevent poisoning the hydrogen reformer catalyst.

Abstract for [0500106]

Q: Does EPA approve an alternative span value of 70 percent, under 40 CFR part 60, subpart D, proposed for two hog fuel boilers at Weyerhaeuser's Kraft pulp mill in Plymouth, North Carolina?

A: Yes. EPA approves the proposed alternative span value under NSPS subpart J because it will not interfere with the facility's ability to identify and report emissions' exceedances for opacity as stated in 40 CFR 60.45(g)(1). In addition, the proposed alternative span value for the hog fuel boilers will improve the overall effectiveness of Weyerhaeuser's continuous opacity monitoring systems (COMS) quality assurance program by ensuring that all five units with COMS at the Plymouth mill have the same span value.

Abstract for [0500107]

Q: Does EPA waive the requirement to conduct an initial performance test on two existing baghouses used to control particulate emissions from materials handling equipment, under 40 CFR part 60, subpart OOO, at the Monarch Ceramic Tile plant in Florence, Alabama?

A: No. EPA does not approve this request under NSPS subpart OOO. Given the increase in particulate loading at the baghouse inlet and the amount of time elapsed since the last performance test, prior test results do not provide adequate assurance of compliance for new equipment being added to the plant.

Abstract for [0500108]

Q: Does EPA approve the alternative monitoring plan for opacity as proposed for a backup package boiler for additional steam generation, under 40 CFR part 60, subpart Db, at the Jefferson Smurfit linerboard mill in Fernadina Beach, Florida?

A: No. Although EPA has approved proposals for the monitoring of opacity using visible emissions data collection instead of using a continuous opacity monitoring system (COMS), the proposed alternative monitoring plan includes provisions which are not acceptable to ensure continuous compliance. The specific provisions that must be removed from this proposal before it can be approved by EPA include requests for making opacity readings only on days when the boiler operates for more than six hours, and those provisions that eliminate opacity readings on weekends and holidays. Also, if the company seeks an exemption from monitoring during periods when weather conditions make it impractical to collect opacity data, the proposal must be revised to identify the very specific conditions under which such an exemption could be justified.

Abstract for [0500109]

Q: Does EPA approve an alternative monitoring proposal, under 40 CFR part 60, subparts H, T, U and V, using English units of measure, rather than metric units of measure, for facilities at the U.S. Agri-Chemicals plant in Polk County, Florida?

A: Yes. With regard to NSPS subpart H; EPA approval for the use of English units is not required, as the applicable monitoring provisions in the rule do not specifically require the use of metric units. Although the monitoring provisions in NSPS subparts T, U, and V require that feed rate data be expressed in metric units (i.e.,

megagrams per hour), EPA approves using English units (tons per hour) to satisfy these requirements because the fluoride emission limits in these rules are expressed in both metric and English units, and this does not hinder a compliance determination.

Abstract for [0500110]

Q: Does EPA approve a proposal to use an automated system to distinguish between gasoline truck tanks and diesel truck tanks, under 40 CFR part 60, subpart XX, in order to bypass the vapor recovery unit (VRU) during diesel loading at the Marathon Ashland Petroleum (MAP) bulk gasoline terminal in Knoxville, Tennessee?

A: Based on the information submitted, EPA cannot approve the proposed alternative monitoring plan at this time. However, the concept behind the proposal has merits. For further consideration of the alternative monitoring plan, MAP must submit to EPA additional information including: A demonstration that volatile organic compound (VOC) concentrations differ enough between different loading scenarios for a continuous monitor to tell when diesel trucks are being loaded; data regarding VOC monitor response time; and details regarding the quality assurance/quality control procedures for the continuous monitor.

Abstract for [0500111]

Q1: Does EPA approve the use of EPA Method 22, under 40 CFR part 60, subpart UU, as an alternative to EPA Method 9 for determining compliance with the opacity standard for mineral handling and storage facilities at the TAMKO Roofing Products plant in Clay County, Florida?

A1: No. EPA Method 22 is not an acceptable alternative to EPA Method 9 because it determines the total duration of visible emissions during the test period but does not record opacity levels when visible emissions are present. Therefore, the use of EPA Method 22 makes it impossible to determine the magnitude of any violations under NSPS subpart UU.

Q2: Does EPA waive the requirement to conduct opacity performance testing, under 40 CFR part 60, subpart UU, on mineral surge tanks and limestone surge tanks located inside a building at the TAMKO Roofing Products plant in Clay County, Florida?

A2: No. EPA denies this waiver request. The applicable opacity standard in NSPS subpart UU applies to tanks located inside a building. EPA Method 9 can be performed inside buildings. Furthermore, in order to obtain approval for an opacity performance test waiver,

the facility must supply information that could be used to demonstrate compliance through other means. No such information was provided in this request.

Abstract for [0500112]

Q: Does EPA approve an alternative monitoring proposal, under 40 CFR part 60, subpart A, for maintaining records of startups, shutdowns, and malfunctions periods only when there are occurrences of excess emissions at the Eastman Chemical plant in Kingsport, Tennessee?

A: Yes. EPA approves this alternative recordkeeping proposal under NSPS general provisions, subpart A, because the primary use for these records is to determine the applicability of the provisions in 40 CFR 60.8(c). Thus, limiting recording of emissions data at this type of facility during periods of startup, shutdown, and malfunction only when there are occurrences of excess emissions is acceptable and should not affect identifying compliance violations.

Abstract for [0500113]

Q: Does EPA approve the use of sensory means (i.e., sight, sound, and smell) as an acceptable alternative, under 40 CFR part 60, subpart VV, to using EPA Method 21 for detecting leaks from equipment in acetic acid service at the Eastman Chemical plant in Kingsport, Tennessee?

A: Yes. EPA approves this alternative under NSPS subpart VV because prior monitoring results submitted by the facility show that the number of leaks identified using sensory methods for equipment in acetic acid service has been significantly higher than the number detected using solely EPA Method 21. Also, all of the previous leaks found using EPA Method 21 would have been detected if only sensory methods had been used.

Abstract for [0500114]

Q1: Does EPA approve a reduction in the duration of visible emission testing, under 40 CFR part 60, subpart Y, for conveyor belt transfer points at Eastman Chemical Company's (Eastman) plant in Kingsport, Tennessee?

A1: Yes. EPA approves the request under NSPS subpart Y to shorten the test duration from three hours to one hour if no individual readings exceed 20 percent and no more than three individual readings equal 20 percent during the first hour of observations.

Q2: Does EPA waive the requirement to enter a building and conduct separate visible emission tests, under 40 CFR part 60, subparts Y and OOO, on several

conveyor belt transfer points if 75 minutes of EPA Method 22 observations indicate that there are no fugitive emissions from the building?

A2: Yes. EPA waives the requirement under NSPS subparts Y and OOO to conduct separate visible emission tests for the conveyor belt transfer points because the use of Method 22 to verify that there are no fugitive emissions from the building offers adequate assurance of compliance for the facilities inside.

Abstract for [0500115]

Q: Does EPA approve a proposed alternative surface methane concentration monitoring frequency, under 40 CFR part 60, subpart WWW, for a Class III area at the North County Resource Recovery Facility operated by the Solid Waste Authority of Palm Beach County, Florida?

A: Yes. EPA approves this alternative under NSPS subpart WWW because methane generation rates in the Class III area are expected to be low given the types of waste (construction demolition debris, trash, paper, and glass) placed there, and because no methane was detected during five successive quarterly monitoring periods. However, as this landfill is still active, the condition for this approval is that a methane concentration of 250 ppm, rather than 500 ppm, will be used as a trigger for reverting back to a quarterly methane surface monitoring frequency.

Abstract for [0500116]

Q1: Does EPA approve the option for landfill facilities to conduct additional Tier 2 testing, under 40 CFR part 60, subpart WWW, if an annual report indicates that the nonmethane organic compound (NMOC) emission rate calculated with previous Tier 2 results exceeds 50 megagrams/year?

A1: Yes. EPA approves this request because, as Tier 2 testing is conducted every five years and NSPS subpart WWW requires periodic retesting, it would be inconsistent and unreasonable to deny facilities the option of conducting additional testing that might improve the accuracy of test data. With additional testing, NMOC emission rates calculated with new Tier 2 data will be more representative of current conditions than results calculated using older data.

Q2: Does the presence of an existing gas collection and control system (GCCS) affect NMOC emission rate calculations under 40 CFR part 60, subpart WWW?

A2: No. The presence of an existing GCCS does not affect the NMOC emission rate calculations under NSPS subpart WWW. The variables specified

in 40 CFR 60.754(a)(1) for calculating NMOC emission rates are not associated with GCCS operation. Depending on the calculated NMOC emissions rate, the facility may be required to submit a design plan for existing or planned control systems for gas emission within a specified timeframe.

Abstract for [0500117]

Q: Does EPA approve a proposal to conduct monthly oxygen concentration monitoring at the inlet to the flare, rather than at each individual well, under 40 CFR part 60, subpart CC, at Onyx Waste Services' Pecan Road Landfill in Valdosta, Georgia.

A: No. EPA does not approve the proposed alternative monitoring location under NSPS subpart CC because it is downstream of the point where the gas from all the wells in the collection system combines. No conclusions regarding the performance of individual wells can be drawn from the results at this monitoring location. In addition, maintaining an oxygen concentration of 5 percent or less at the flare inlet will not provide assurance that all wells comply with subpart CC.

Abstract for [0500118]

Q: Does EPA approve the alternative opacity monitoring proposed, under 40 CFR part 60, subpart CC, for two glass melting furnaces at the Anchor Glass Company plant in Warner Robbins, Georgia?

A: EPA may approve the proposal if remaining issues can be resolved. Although the proposal to monitor furnace bridgeway temperature as an alternative to installing a continuous opacity monitoring system (COMS) under NSPS subpart CC appears reasonable, there are several issues that need to be resolved before the proposal can be approved. These issues include: the appropriate margin of compliance with the applicable particulate emission standard if a COMS is not used; the possibility that natural gas usage rates will need to be monitored in addition to bridgeway temperatures, and what constitute excess emissions.

Abstract for [0500119]

Q: Could EPA clarify whether the addition of in-line blending equipment to a loading rack at the Magellan Midstream Partners (Magellan) bulk gasoline terminal in Greensboro, North Carolina, would trigger the requirement for a retest, under 40 CFR part 60, subpart XX, on the vapor recovery unit (VRU) that controls emissions during loading?

A: No. EPA has determined that adding the in-line blending equipment

does not automatically trigger VRU retest. The initial VRU test that the company conducted in February 2000 is the only test specifically required for sources subject to NSPS subpart XX. Although the Administrator can ask for a retest at anytime, EPA does not find it necessary to require a new test following the installation of the in-line blending equipment at Magellan's Greensboro terminal. Adding the in-line blending equipment did not increase the number of trucks that can be loaded simultaneously at the terminal. Also, there was a significant margin of compliance during the initial test.

Abstract for [0500120]

Q: Does EPA approve EPA Method 25A as an alternative to EPA Method 25, under 40 CFR part 60, subpart TT, for carbon absorber efficiency testing on a metal coil coating line at the Thermalex plant in Montgomery, Alabama?

A: Yes. EPA approves EPA Method 25A as an acceptable alternative to EPA Method 25 for control device efficiency testing where VOC concentrations in the control system exhaust are expected to be 50 ppm or less. In this case, the VOC concentration is expected to be approximately 10 ppm at the carbon absorber outlet which is acceptable.

Abstract for [0500121]

Q: Does EPA approve as an alternative to EPA Method 21, under 40 CFR part 60, subpart VV, sensory means (i.e., sight, sound, smell) to identify leaks from equipment in acetic acid and/or acetic anhydride service at the Eastman Chemical Company facility in Kingsport, Tennessee?

A: Yes. EPA approves the proposed alternative monitoring under NSPS subpart VV because monitoring results provided indicate that leaks from equipment are more easily identified through sensory methods than through EPA Method 21. The physical properties (i.e., high boiling points, high corrosivity, and low odor threshold) of acetic acid and acetic anhydride and the process conditions at the facility in question make sensory means preferable.

Abstract for [0500122]

Q: Does EPA approve a boiler derate proposal, under 40 CFR part 60, subpart Db, based on changes made to the natural gas burner at North Carolina Baptist Hospital in Winston-Salem, North Carolina?

A: Yes. EPA approves this proposal under NSPS subpart Db because it has determined that the proposed derate method, which includes installing new boiler tips limiting the heat input

capacity to 100 mmBtu/hr and eliminating the burning of fuel oil, will reduce the capacity of the boiler and will comply with EPA's policy on derates.

Abstract for [0500123]

Q1: Does EPA approve an alternative monitoring procedure, under 40 CFR part 60, subpart UUU, for a spray tower scrubber at the Short Mountain Silica Company in Mooresburg, Tennessee?

A1: Yes. EPA approves the proposed alternative under NSPS subpart UUU to monitor the scrubbing liquid supply pressure and scrubbing liquid flow rate rather than measuring the pressure loss of the gas stream through the scrubber and the scrubbing liquid flow rate. Because there is little pressure drop of the gas stream as it passes through the spray tower, pressure drop is not a good indicator of spray tower efficiency.

Q2: Does EPA waive the requirement, under 40 CFR part 60, subpart UUU, to conduct a performance test for a rotary dryer which serves as a backup for the fluidized bed dryer at the Short Mountain Silica Company in Mooresburg, Tennessee?

A2: Yes. EPA approves the performance test waiver under NSPS subpart UUU because demonstration of compliance for the fluidized bed dryer also shows an acceptable level of compliance assurance for the rotary dryer.

Abstract for [0500124]

Q: Does EPA approve the use of nitrogen oxides continuous emission monitors (NO_x CEMs), under 40 CFR part 60, subpart GG, as an alternative to the four-point load test for gas turbines at Cinergy's South Houston Green Power Site facility in Houston, Texas?

A: Yes. EPA approves the alternative monitoring proposal under NSPS subpart GG, provided that the CEMs for NO_x is capable of calculating a one-hour average NO_x emissions concentrations corrected to 15 percent oxygen, and the facility submits reports of excess emissions and summary reports.

Abstract for [0500125]

Q: Does EPA approve a 90-day extension of the performance testing deadline, under 40 CFR part 60, subparts A and I, in light of weather conditions and material shortages that made it impossible for the Pavers Supply facility in Conroe, Texas, to run at full rates?

A: No. EPA denies the request for a 90-day extension under NSPS subpart I. Concurring with the Texas Commission on Environmental Quality (TCEQ), EPA

grants a 60-day extension pursuant to 40 CFR 60.8(d).

Abstract for [0500126]

Q: Does EPA approve a span setting of 100 ppmv on an outlet continuous emission monitor (CEM), under 40 CFR part 60, subpart J, for the sulfur dioxide (SO₂), CEMs for the fluid catalytic cracking unit wet gas scrubber (WGS) at the Shell Oil Products refining facility in Deer Park, Texas?

A: Yes. EPA approves under NSPS subpart JJ the span setting of 100 ppmv for the WGS outlet SO₂ CEMs, as it will be acceptable with respect to the 50 ppmv rolling seven day average.

Abstract for [0500127]

Q: Does EPA waive continuous emission monitor for the hydrogen sulfide (CEM H₂S) stream monitoring, under 40 CFR part 60, subpart J, for the steam methane reformer unit pressure swing adsorption (PSA) at Valero's Corpus Christi-West Plant, in Corpus Christi, Texas?

A: Yes. EPA grants this waiver request under NSPS subpart J because it has determined that no CEM H₂S needs to be installed for the purpose of monitoring the H₂S in the off-gas vent streams in the PSA routed to the reformer heater. Instead, the alternative parameter will be the total sulfur content of the combined feed to the sulfur vapor recovery (SVR) unit.

Abstract for [0500128]

Q: Does EPA waive continuous emission monitor for the hydrogen sulfide (CEM H₂S) stream monitoring, under 40 CFR part 60, subpart J, for the catalytic reformer unit heater fuel gas from fuel gas drums numbers 1 and 2 (which is a refinery and generates gas stream) at Valero's Corpus Christi-West Plant, in Corpus Christi, Texas?

A: Yes. EPA grants this waiver request under NSPS subpart J because it has determined that no CEM H₂S needs to be installed for the purpose of monitoring the H₂S in the off-gas vent streams from fuel gas mixing drum #1 or #2 routed to the reformer heater. Instead, the alternative parameter will be the total sulfur content of the combined feed to the CRU unit.

Abstract for [0500129]

Q: Does EPA approve the use of an alternative monitoring plan, under 40 CFR part 60, subpart J, for the soil vapor extraction system (SVE) at Western Refining's facility in El Paso, Texas?

A: Yes. EPA approves the alternative monitoring proposal under NSPS subpart J to measure H₂S content directly at the inlet to the internal

combustion engine (ICE), which are components of the SVE system.

Abstract for [0500130]

Q: Does EPA approve an alternative monitoring plan, under 40 CFR part 60, subpart J, for the catalytic reformer 1 unit (CR-1) at Motiva Enterprises' facility in Norco, Louisiana? The company proposes waiving the continuous monitoring system (CMS) requirement for hydrogen sulfide (H₂S) steam monitoring and instead monitoring the gas stream using EPA guidance on alternative monitoring plans for low sulfur refinery fuel gas streams.

A: Yes. EPA approves this alternative monitoring under NSPS subpart J. No CMS needs to be installed for the purpose of monitoring the H₂S in the make gas stream to the unit's heaters. Instead, H₂S concentrations will be monitored using detection tubes. This determination is subject to the conditions set forth in the stipulated guidance in EPA's letters to Koch Fuels on December 2, 1999 and February 13, 2001 (see ADI Control Numbers 0500137 and 0100037).

Abstract for [0500131]

Q: Does EPA approve an alternative monitoring for the hydrogen generation unit (HGU) torvex catalytic converter, under 40 CFR part 60, subpart J, at Motiva Enterprises' facility in Convent, Louisiana?

A: Yes. EPA approves this alternative monitoring under NSPS subpart J. No CEM needs to be installed for the purpose of monitoring the H₂S in the H₂S Concentration Column overhead vent stream. Instead, the H₂S concentration will be measured daily using detection tubes, with ranges and frequency as set forth in the stipulated guidance in EPA's letters to Koch Fuels on December 2, 1999 and February 13, 2001 (see ADI Control Numbers 0500137 and 0100037).

Abstract for [0500132]

Q: Does EPA approve certain monitoring, recordkeeping, and reporting provisions of 40 CFR part 60, subpart RRR, as alternative monitoring requirements, under 40 CFR part 60, subpart NNN, for DuPont's Sabine River Works facility in Orange County, Texas?

A: Yes. EPA conditionally approves use of the proposed provisions in NSPS subpart RRR as an alternative means of demonstrating compliance under NSPS subpart NNN for the specified distillation unit. As conditions of approval, the facility must comply with the recordkeeping and reporting requirements for flow indicators in

NSPS subpart RRR, and must maintain a schematic diagram for all related affected vent streams, collection system(s), fuel systems, control devices, and bypass systems as stated in 60.705(s).

Abstract for [0500133]

Q: Does EPA approve certain monitoring, recordkeeping, and reporting provisions of 40 CFR part 60, subpart RRR, as alternative monitoring requirements, under 40 CFR part 60, subpart NNN, for DuPont's facility in La Porta, Texas?

A: Yes. EPA conditionally approves use of the proposed provisions in NSPS subpart RRR as an alternative means of demonstrating compliance under NSPS subpart NNN. As conditions of approval, the facility must comply with the recordkeeping and reporting requirements for flow indicators in NSPS subpart RRR, and must maintain a schematic diagram for all related affected vent streams, collection systems, fuel systems, control devices, and bypass systems as stated in 40 CFR 60.705(s).

Abstract for [0500134]

Q: Does EPA approve an alternative performance specification procedure, under 40 CFR part 60, subpart B, allowing the use of seven consecutive unit operating days instead of seven consecutive calendar days for the calibration drift test period at Cottonwood Energy's facility in Deweyville, Texas?

A: Yes. EPA conditionally approves the use under NSPS subpart B of seven consecutive operating days for the calibration drift test period, based on previous EPA determinations and guidance that a seven consecutive operating day test is more stringent than a seven consecutive calendar day test. As a condition of this approval, if the continuous monitoring system CMS fails the seventh day test, the facility will repeat the entire test.

Abstract for [0500135]

Q1: Does EPA approve alternative monitoring, recordkeeping, and reporting requirements, under 40 CFR part 60, subpart Db, for a cogeneration unit at Shell Chemical Company's facility in Geismar, Louisiana commensurate with past determinations?

A1: No. EPA does not approve the alternative monitoring plan under NSPS subpart Db because the determination letter (ADI Control Number PS15), referenced in Shell's proposal, does not apply to the fuel records required by 40 CFR 60.49b.

Q2: Does EPA approve an alternative reporting of nitrogen oxides (NO_x) emissions requirements, under 40 CFR part 60, subpart Db, where the NO_x emission limit and excess emissions are reported on an average "steam generating unit operating day" basis, instead of a 30-day average for Shell Chemical Company's facility in Geismar, Louisiana?

A2: Yes. EPA approves the alternative reporting plan under NSPS subpart Db, provided that the records for the units specified in 40 CFR 60.49(b) are maintained on-site and are available at the request of any state or Federal agency inspector.

Abstract for [M050047]

Q: Does EPA consider the C-12 process area of INVISTA's Victoria Plant and its component chemical manufacturing process units (CMPUs) subject to 40 CFR part 63, subpart H, the HON rule?

A: No. As none of these units qualify for regulation under both 40 CFR 63.100(b) and 40 CFR 63.100(b)(1)-(2), the only way likely for the C-12 process area to qualify for regulation under 40 CFR 63.100 would be to conflate all CMPUs into a single CMPD. Since these units are not conflated into a single CMPD unit, these units are not subject to the HON Rule. This finding is consistent with a previous determination, ADI Control Number M960028.

Abstract for [0500136]

Q1: Does 40 CFR part 60, subpart NNN, apply to the SP-1 and SP-2 distillation units at INVISTA's Victoria Plant?

A1: No. Since the SP-1 and SP-2 units produce no products, by-products, or co-products, or intermediates listed in 40 CFR 60.667, NSPS subpart NNN does not apply to these two units.

Q2: Does 40 CFR part 60, subpart NNN, apply to a concentrated water wash (CWW) system at INVISTA's Victoria Plant?

A2: Yes. Since the CWW vents into the atmosphere, it is subject to NSPS subpart NNN.

Abstract for [0500137]

Q1: How does 40 CFR part 60, subpart J, apply to the fuel gas combustion devices (FGCDs) and fuel gases involved with operations at Koch Refining's Rosemount, Minnesota, refinery?

A1: NSPS subpart J apply to an affected FGCD if the device combusts a "fuel gas," that is, any gas that is generated at a petroleum refinery. To control sulfur oxide (SO_x) emissions into the atmosphere from affected

FGCDs, NSPS subpart J limits the amount of hydrogen sulfide (H₂S) allowed in the fuel gas burned in these devices. Except for fuel gas released to a flare as a result of relief valve leakage or other emergency malfunctions, a facility may not burn fuel gas containing greater than 230 mg/dscm of H₂S in any affected FGCD.

Q2: How does the process upset gas exemption of 40 CFR part 60, subpart J, apply to the flare gas recovery system in operation at Koch Refining's Rosemount, Minnesota, refinery?

A2: The process upset gas exemption under NSPS subpart J applies only to extraordinary, infrequent, and not reasonably preventable upsets. Any gases released as a result of normal operations are not considered upset gases. The routine combustion of refinery gases in a FGCD, including flares and other waste gas disposal devices, do not qualify for the process upset gas exemption of the rule. Based on the background information of the rule, the term upset does not apply to normal operations. Therefore, the rule exempts the combustion of process upset gases in a FGCD, including the combustion in a flare of fuel gas that is released to the flare as a result of relief valve leakage or other emergency malfunction. However, the combustion/flaring of those exempted gases in an NSPS affected FGCD is still required to comply with the good air pollution control practices of 40 CFR 60.11(d), even when such FGCDs are exempt from the sulfur dioxide limit.

Q3: How does NSPS subpart J apply to the various gas streams Koch Refining's Rosemount, Minnesota, refinery?

A3: EPA has analyzed the 26 gas streams identified at the Koch Refining facility and has provided a finding for each of these streams based on the Agency's responses in A1 and A2, above.

Abstract for [0500138]

Q: Does EPA approve an alternative monitoring plan, under 40 CFR, part 60, subpart J, for fuel gases and fuel gas combustion devices (FGCDs) at Koch Refining's Rosemount, Minnesota, refinery?

A: No. Based on the information submitted, EPA does not approve the proposed alternative monitoring plan for fuel gases and FGCDs since it needs to provide for good air pollution control practices to minimize flaring events.

Dated: April 10, 2006.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 06-3808 Filed 4-21-06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-8161-3]

Science Advisory Board Staff Office; Clean Air Scientific Advisory Committee (CASAC); Notification of a Public Advisory Committee Meeting (Teleconference) of the CASAC Ozone Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Clean Air Scientific Advisory Committee (CASAC) Ozone Review Panel (Ozone Panel) to provide additional advice to the Agency concerning Chapter 8 (Integrative Synthesis) of the *Final Air Quality Criteria for Ozone and Related Photochemical Oxidants* (EPA/600/R-05/004aF-cF, February 2006).

DATES: The teleconference will be held on May 12, 2006, from 1 to 4 p.m. (Eastern Time).

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to obtain the teleconference call-in number and access code; would like to submit written or brief (less than five minutes) oral comments; or wants further information concerning this teleconference, must contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343-9994; fax: (202) 233-0643; or e-mail at: butterfield.fred@epa.gov. General information concerning the CASAC or the EPA SAB can be found on the EPA Web site at URL: <http://www.epa.gov/sab>.

SUPPLEMENTARY INFORMATION:

Background: The CASAC, which is comprised of seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee, in part to provide advice, information and recommendations on the scientific and

technical aspects of issues related to air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The CASAC Ozone Review Panel, which consists of the members of the chartered CASAC supplemented by subject-matter-experts, complies with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Under section 108 of the CAA, the Agency is required to establish National Ambient Air Quality Standards (NAAQS) for each of six pollutants for which EPA has issued criteria, including ambient ozone (O₃). Section 109(d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria and NAAQS to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. The Ozone Panel met in a public meeting in Durham, North Carolina on December 6-7, 2005, to conduct a peer review on EPA's 2nd draft *Air Quality Criteria for Ozone and Related Photochemical Oxidants* (August 2005). In a February 10, 2006, letter to the Administrator (EPA-CASAC-06-003), the CASAC indicated that it may need to provide additional advice related to chapter 8 of the AQCD which integrates human health effects and exposure. The CASAC's review of the 2nd draft is available on the SAB Web site at: http://www.epa.gov/sab/pdf/oasac_ozone_casac-06-003.pdf.

On March 21, 2006, EPA's National Center for Environmental Assessment, Research Triangle Park (NCEA–RTP), released the Final O₃ AQCD. Concomitantly, EPA's Office of Air Quality Planning and Standards (OAQPS) is completing work on a 2nd draft of *A Review of the National Ambient Air Quality Standards for Ozone: Policy Assessment of Scientific and Technical Information*. The latter document evaluates the policy implications of the scientific information in the Final O₃ AQCD, and the results of the quantitative risk/exposure analysis. CASAC will hold a conference call to provide additional advice to the Agency as it works to complete the 2nd Draft NAAQS for O₃.

Availability of Meeting Materials: The Final O₃ AQCD can be accessed via the Agency's NCEA Web site at: <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=149923>. Any questions concerning the Final O₃ AQCD should be directed to Dr. Mary Ross, NCEA-RTP, at phone: (919) 541-

5170, or e-mail: ross.mary@epa.gov. In addition, a copy of the draft agenda for this teleconference meeting will be posted on the SAB Web site at: <http://www.epa.gov/sab> (under the "Agendas" subheading) in advance of this Ozone Panel meeting. Other meeting materials, including the discussion questions for the Ozone Panel, will be posted on the SAB Web site at: <http://www.epa.gov/sab/panels/casacorpanel.html> prior to this teleconference.

Procedures for Providing Public Input:

Interested members of the public may submit relevant written or oral information for the CASAC Ozone Review Panel to consider during the advisory process. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a teleconference meeting will be limited to five minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact Mr. Butterfield, DFO (preferably via e-mail) at the contact information noted above, no later than May 5, 2006, to be placed on the public speaker list for this meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by May 5, 2006, so that the information may be made available to the Ozone Panel for their consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Butterfield at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: April 18, 2006.

Anthony Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. E6-6103 Filed 4-21-06; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

April 14, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 24, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., DC 20554 or an e-mail to PRA@fcc.gov. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: <http://www.fcc.gov/omd/pra>.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202-418-0214 or via the Internet at Judith-B.Herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-0718.

Title: Part 101, Governing the Terrestrial Microwave Fixed Radio Service.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 10,000 respondents; 6,364 responses.

Estimated Time per Response: .25-3 hours.

Frequency of Response: On occasion and every 10 year reporting requirements, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 36,585 hours.

Total Annual Cost: \$474,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission is submitting this information collection to OMB as a revision in order to obtain the full three-year clearance from them. Part 101 requires various information to be filed and maintained by the respondent to determine the technical, legal and other qualifications of applications to operate a station in the public and private operational fixed services. The information is also used to determine whether the public interest, convenience, and necessity are being served as required by 47 U.S.C. 309. The Commission staff also uses this information to ensure that applicants and licensee comply with ownership and transfer restrictions imposed by 47 U.S.C. 310. The Appendix attached to the OMB submission lists the rules in Part 101 that impose reporting, recordkeeping and third party disclosure requirements. The Commission revised this information collection to remove Part 101 rule sections that have no PRA implications. The total annual burden hours and costs have been modified accordingly.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6-6082 Filed 4-21-06; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Refugee Unaccompanied Minor Placement Report (ORR-3); Refugee

Unaccompanied Minor Progress Report (ORR-4).

OMB No.: 0970-0034.

Description: The two reports will collect information necessary to administer the refugee unaccompanied

minor program. The ORR-3 (Placement Report) is submitted to the Office of Refugee Resettlement (ORR) by the service provider agency at initial placement and whenever there is a change in the child's status, including

termination from the program. The ORR-4 (Progress Report) is submitted annually and records the child's progress toward the goals listed in the child's case plan.

Respondents: State governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR-3	12	15	.417	75
ORR-4	12	60	.250	180

Estimated Total Annual Burden Hours: 255

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer, E-mail address: infocollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 17, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06-3821 Filed 4-21-06; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Follow-Up Study of Issues Affecting the Duration of Child Care Subsidy Use.

OMB No.: New Collection.

Description: Child care subsidies provide an important benefit to low-income working families, offering them increased access to forms of child care that would otherwise be beyond their means. However, recent research suggests that, for many families, this benefit may be short-lived or unstable. There are many possible explanations for these patterns, and the explanations may be different for different types of families. Recognizing that information about the reasons for short subsidy duration would be helpful to States, the Child Care Bureau has funded Abt Associates Inc. to conduct a two-State investigative study on the duration and use of child care subsidies. This study will, in the short term, provide States with information to shape or modify their child care subsidy procedures. In addition, the study will generate hypotheses that could be systematically tested in later research.

The study will examine the use of child care subsidies by 840 families in Illinois and 840 in Oregon. In each State, the sample will be a representative sample of current Temporary Assistance for Needy Families (TANF) families and non-TANF families—all of whom apply and are approved for subsidies and who use them for at least one month. Families will be contacted by telephone approximately nine months after they

began using subsidies and will be asked to participate in the study. If they agree, a 45-minute telephone interview will ensue immediately or will be scheduled. It is expected that, after the nine months, over half of the families will no longer be using subsidies. Patterns of subsidy use prior to and during the study period will be tracked through State administrative data.

The parent telephone interview will include questions about parents' employment, subsidy status and experience, child care usage, and changes in household composition over the nine-month period. Although the analyses will rely heavily on identification of trigger events, the survey will include questions about other less tangible considerations that may have influenced the duration of parents subsidy use. Telephone interviews will be conducted using Computer-Assisted-Telephone Interviewing (CATI). Responses are voluntary and confidential.

The study will also analyze State administrative data on all families who are approved for subsidies during the recruitment period for the study. This will allow researchers to assess the generalizability of the sub-sample of families who are recruited for the in-depth telephone interview; this sub-sample consists of approximately 840 families in each State.

No existing data sources can provide all the information needed to complete the Follow-Up Study of Issues Affecting the Duration of Child Care Subsidy Use. These data will help the Child Care Bureau and States to better understand reasons for short child care subsidy duration.

Respondents: The sample includes 840 families in Illinois and 840 in Oregon.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Illinois parent survey	840	1	.75	630
Oregon parent survey	840	1	.75	630

Estimated Total Annual Burden Hours: 1,260

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should

be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF. E-mail address: Katherine_T._Astrich@omb.eop.gov.

Dated: April 17, 2006.

Robert Sargis,
Reports Clearance Officer.
[FR Doc. 06-3822 Filed 4-21-06; 8:45 am]
BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Grants to States for Access and Visitation: State Child Access Program Survey.

OMB No.: 0970-0204.

Description: On an annual basis, States must provide OCSE with data on programs that the Grants to States for Access and Visitation Program has funded. These program reporting requirements include, but are not limited to, the collection of data on the number of parents served, types of services delivered, program outcomes, client socio-economic data, referral sources, and other relevant data.

Respondents: State Child Access and Visitation Programs and State and/or local service providers.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Child Access Program Survey	324	1	15	4,860

Estimated Total Annual Burden Hours: 4,860.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for

ACF, E-mail address: Katherine_T._Astrich@omb.eop.gov.

Dated: April 17, 2006.

Robert Sargis,
Reports Clearance Officer.
[FR Doc. 06-3823 Filed 4-21-06; 8:45 am]
BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E-0030]

Determination of Regulatory Review Period for Purposes of Patent Extension; FASLODEX; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal**

Register of April 17, 2003 (68 FR 18992). The document announced that FDA had determined the regulatory review period for FASLODEX. A request for revision of regulatory review period was filed for the product on June 16, 2003. FDA reviewed its records and found that the effective date of the investigational new drug application (IND) was incorrect due to a clerical error. Therefore, FDA is revising the determination of the regulatory review period to reflect the correct effective date for the IND.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD-13), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240-453-6681.

SUPPLEMENTARY INFORMATION: In FR Doc. 03-9536, appearing on page 18992 in the **Federal Register** of April 17, 2003, the following corrections are made:

1. On page 18992, in the second column, in the second complete

paragraph, in the third line, "1,935" is corrected to read "1,938"; in the fourth line, "1,541" is corrected to read "1,544".

2. On page 18992, in the second column, in the third complete paragraph, beginning in the fourth line, "January 8, 1997" is corrected to read "January 5, 1997"; and the last two sentences are corrected to read: "FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 5, 1997."

Dated: March 22, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6-6083 Filed 4-21-06; 8:45 am]

BILLING CODE 4160-01-S

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: The National Executive Training Institutes To Reduce the Use of Seclusion and Restraint—NEW

The Center for Mental Health Services within the Substance Abuse and Mental Health Services Administration proposes to survey the recipients of the training and technical assistance provided through the National Technical Assistance Center's (NTAC) National Executive Training Institutes (NETI). The NETI was established to assist states in the reduction and elimination of seclusion and restraint (S&R). Six Regional NETI training events took place in 2003 and 2005. A total of 47 states and staff of 80 facilities were involved in the trainings. A NETI Survey was developed to identify the impact of the training on the implementation of strategies for the reduction of seclusion and restraint and adoption of alternative practices.

The NETI Survey is broken into 9 sections: Section I collects general

information about the facility (name and state) and the person completing the questionnaire (name, title, phone number, if participated in NETI training and what NETI training participated in); Section II collects information about the type of facility or program that received the NETI training; Section III collects information about the types of persons served by the facility or program; and Sections IV through IX collect information about the strategies taught in the NETI training (Leadership, S/R Prevention and Reduction Tools, Use of S/R Data and Statistics, Staffing/ Workforce Development, Consumer/ Stakeholder Involvement, Barriers and Facilitators and other comments), specifically what strategies or changes were implemented before the NETI training, which were implemented after the NETI training, and which have not been implemented.

Among the data to be collected through the NETI Survey is information about the strategies taught in the NETI training for reducing the use of seclusion and restraint and adopting alternative practices. The NETI training has been accepted as a promising and best practice for reducing the use of seclusion and restraint, and as being on the evidence-based practices ladder. Current efforts are underway to move the NETI training up the evidence-based ladder to an effective practice. The use of evidence-based practices is one of the domains in the SAMHSA National Outcome Measures (NOMs).

Respondents will have the option of completing a paper or on-line version of the survey. The estimated annual response burden to collect this information is as follows:

Number of facilities	Responses per facility	Burden/response (hours)	Annual burden (hours)
80	1	1.50	120

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7-1044, One Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 13, 2006.

Anna Marsh,

Director, Office of Program Services.

[FR Doc. E6-6056 Filed 4-21-06; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses are cancelled without prejudice.

Name	License No.	Issuing port
M.G. Otero Co., Inc	12722	Los Angeles.
Bernard M. Vas	4463	San Francisco.

Name	License No.	Issuing port
Dan Lofgren	22176	San Francisco.
CCF International, Inc	20340	Dallas.
Alexander H. Foster	13498	Los Angeles.
Exim Solutions, Inc	21876	Los Angeles.
Jose Astengo, Jr	3954	San Francisco.
Dominion International, Inc	14096	Norfolk.
Duty Refund Services	14364	Detroit.
Pro-Log Services, Inc	21068	Houston.

Dated: April 13, 2006.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. E6-6111 Filed 4-21-06; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5043-N-03]

Notice of Proposed Information Collection for Public Comment: The Survey of Manufactured Housing Regulations

AGENCY: Office of the Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 23, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410-6000.

FOR FURTHER INFORMATION CONTACT: Mr. Edwin Stromberg, (202) 708-4370, extension 5727, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of

information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

This Notice also lists the following information:

Title of Proposal: Survey of Manufactured Housing Regulations.

Description of the need for the information and proposed use: This request is for the clearance of a survey instrument designed to measure the degree to which local and state regulations affect the placement of manufactured housing (HUD-code homes) in Community Development Block Grant (CDBG) eligible communities. The survey instrument or questionnaire will be mailed to local planning directors or building officials and is designed to be self-administered. The universe will consist of a random sample of CDBG eligible communities across the nation that are in the mid categories of the regulatory severity score (communities that can be considered in a grey-zone where there is greater latitude for interpretation of regulations). The questionnaire is designed to provide qualitative information on the implementation and interpretation of local manufactured housing regulations. The purpose of the survey is to: (1) Gauge an understanding of what extent and what metropolitan jurisdictions allowed manufactured homes in their communities; (2) ascertain how regulations and specific barriers affect the placement of manufactured housing; (3) identify the extent to which various regulations allow interpretation by the planning commission or the local board

approving conditional use permits; and (4) determine what restrictions and/or design standards communities place on manufactured housing.

OMB Approval Number: Pending.

Agency form numbers: None.

Members of the Affected Public: Planning directors or building officials.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 250 planning directors or building officials will be surveyed through a mailed survey. Average time to complete the mailed survey will be 10 minutes. Respondents will be contacted a maximum of three times (an initial mailing, a follow up postcard reminder two weeks following the initial mailing, and a second mailing two weeks following the postcard reminder if no response has been received). Total burden hours are 42 for the initial mailed survey (no additional time will be required as a result of follow up measures).

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 12, 2006.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 06-3837 Filed 4-21-06; 8:45 am]

BILLING CODE 4210-67-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5038-N-02]

Notice of Proposed Information Collection: Comment Request Annual Progress Report (APR) for Competitive Homeless Assistance Programs

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of

Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 23, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia Jones, Reports Liaison Officer, Department of Housing Urban and Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Robyn Raysor (202) 708-2140, Ext. 4891 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork

Reduction Act of 1995 (44 U.S.C. Chapter 35 as Amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Annual Progress Report (APR) for Competitive Homeless Assistance Programs.

OMB Control Number, if applicable: 2506-0145.

Description of the need for the Information and proposed use: The Annual Progress Report (APR) tracks competitive homeless assistance program progress and is used to provide grant recipients and HUD with information necessary to assess program and grantee performance.

Agency form numbers, if applicable: HUD-40118.

Members of affected public: Grantees that have received HUD funding from 1987 to the present.

Estimation of the total numbers of hours needed to prepare the Information collection including number of respondents, frequency Of response, and hours of response:

Activity	Number of respondents	Frequency of response (annually)	Response hours	Burden hours
Record-keeping	6,000	1	33	198,000
Report preparation	6,000	1	8	48,000
Total	246,000

Status of the proposed information collection: Information is currently being collected.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Pamela H. Patenaude,
Assistant Secretary for Community Planning and Development.

[FR Doc. E6-6090 Filed 4-21-06; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Two Applications for Incidental Take Permits for Two Beachfront Developments in Escambia County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Acropolis II Development Enterprises, L.L.C. (Applicants) request incidental take permits (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The Applicants anticipate taking Perdido Key beach mice (*Peromyscus polionotus trissyllepsis*) incidental to

developing, constructing, and human occupancy of a two-condominium beachfront complex on Perdido Key in Escambia County, Florida (Projects). The Applicants' Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of both Projects to the Perdido Key beach mouse.

DATES: Written comments on the ITP application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before June 23, 2006.

ADDRESSES: Persons wishing to review the application, EA, and HCP may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Please reference permit number TE122397-0 and TE122398-0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (Attn: Endangered Species Permits); or Field Supervisor, U.S. Fish and Wildlife Service, 1601 Balboa Avenue, Panama City, FL 32405.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Valenta, Regional HCP Coordinator, at the Atlanta address in **ADDRESSES**, telephone 404/679-4144, or

facsimile: 404/679-7081; or Sandra Sneckenberger, Field Office Project Manager, at the Panama City address in **ADDRESSES**, or at 850/769-0552, ext. 239.

SUPPLEMENTARY INFORMATION: We announce applications for ITPs and the availability of the HCP and EA. The EA is an assessment of the likely environmental impacts associated with these Projects. Copies of these documents may be obtained by making a request, in writing, to the Regional Office (see **ADDRESSES**). This notice is provided pursuant to section 10 of the Act (16 U.S.C. 1531 *et seq.*) and National Environmental Policy Act regulations at 40 CFR 1506.6.

We specifically request information, views, and opinions from the public via this notice on the Federal action, including the identification of any other aspects of the human environment not already identified in the EA. Further, we specifically solicit information regarding the adequacy of the HCP as measures against our ITP issuance criteria found in 50 CFR parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE122397-0 and TE122398-0

in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the Internet to aaron_valenta@fws.gov. Please also include your name and return address in your Internet message. If you do not receive a confirmation from us that we have received your Internet message, contact us directly at either telephone number listed below (see **FOR FURTHER INFORMATION CONTACT**).

Finally, you may hand-deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The area encompassed under the incidental take permits includes two individual parcels, Palazzo I and II, consisting of a total of 2.6 acres, along the beachfront of the Gulf of Mexico. The projects are located on the western portion of Perdido Key, a 16.9-mile barrier island. Perdido Key constitutes the entire historic range of the Perdido Key beach mouse.

The Perdido Key beach mouse was listed as an endangered species under the Act in 1985 (June 6, 1985, 50 FR 23872). The mouse is also listed as an endangered species by the State of Florida. Critical habitat was designated for the Perdido Key beach mouse at the time of listing (50 FR 23872). On December 15, 2005, we published a proposed revision of critical habitat for the Perdido Key beach mouse and Choctawhatchee beach mouse, and a proposed critical habitat designation for the St. Andrew beach mouse (70 FR 74426).

The Perdido Key beach mouse is one of eight species of the old-field mouse that occupy coastal rather than inland areas and are referred to as beach mice. It is one of five subspecies of beach mice endemic to the Gulf coast of Alabama

and northwestern Florida. Two other extant subspecies of beach mouse and one extinct subspecies are known from the Atlantic coast of Florida. As do other beach mouse subspecies, Perdido Key beach mice spend their entire lives within the coastal beach and dune ecosystem.

Beach mouse habitat consists of a mix of interconnected habitats, including primary, secondary, and scrub dunes, including interdunal areas. Beach mice are nocturnal and dig burrows within the dune system where vegetation provides cover. They forage for food throughout the dune system, feeding primarily on seeds and fruits of dune plants including bluestem (*Schizachyrium maritimum*), sea oats (*Uniola paniculata*), and evening primrose (*Oenothera humifusa*). Insects are also an important component of their diet.

Beach mice along the Gulf Coasts of Florida and Alabama generally live about nine months and become mature between 25 and 35 days. Beach mice are monogamous, pairing for life. Gestation averages 24 days and the average litter size is three to four pups. Peak breeding season for beach mice is in autumn and winter, declining in spring, and falling to low levels in summer. In essence, mature female beach mice can produce a litter every month and live about eight months.

The EA considers the environmental consequences of two alternatives and the proposed action. The proposed action alternative is issuance of the incidental take permit and implementation of the HCP as submitted by the Applicants. The HCP provides for: (1) Minimizing the footprint of both developments; (2) restoring, preserving, and maintaining onsite beach mouse habitat at both projects; (3) incorporating requirements in the operation of both condominium facilities that provide for the conservation of the beach mouse; (4) monitoring the status of the beach mouse at both projects post-construction; (5) donating funds initially and on an annual basis to Perdido Key beach mouse conservation efforts; (6) including conservation measures to protect nesting sea turtles and non-breeding piping plover; and (7) funding the mitigation measures.

Several subspecies of beach mice have been listed as endangered species primarily because of the fragmentation, adverse alteration and loss of habitat due to coastal development. The threat of development related habitat loss continues to increase. Other contributing factors include low population numbers, habitat loss from a

variety of reasons (including hurricanes), predation or competition by animals related to human development (cats and house mice), and the existing strength or lack of regulations regarding coastal development.

We will evaluate the HCP and comments submitted to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, the ITP will be issued for the incidental take of the Perdido Key beach mouse. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Endangered Species Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITPs.

Dated: April 6, 2006.

Bud Oliveira,

Acting Regional Director, Southeast Region.

[FR Doc. E6-6057 Filed 4-21-06; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Renewal of Agency Information Collection for Indian Self-Determination and Education Assistance Contracts

AGENCIES: Bureau of Indian Affairs, Department of the Interior, and Indian Health Service, Department of Health and Human Services.

ACTION: Notice of request for comments.

SUMMARY: The Department of the Interior and the Department of Health and Human Services announce a request for comments concerning renewal of OMB Control Number 1076-0136, the Information Collection Request used for Indian Self-Determination and Education Assistance actions. The information collection will be used to process contracts, grants or cooperative agreements for award by the Bureau of Indian Affairs and the Indian Health Service as authorized by the Indian Self-Determination and Education Assistance Act, as amended, and as set forth in 25 CFR part 900. The Department of the Interior and the Department of Health and Human

Services invite comment on the information collection described below.

DATES: Interested persons are invited to submit comments on or before June 23, 2006.

ADDRESSES: If you wish to comment, you may submit your comments to Terry Parks, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 1951 Constitution Avenue, NW., Mail Stop 320-SIB, Washington, DC 20240. You may telefax comments on this information collection to (202) 208-5113. You may also hand deliver written comments or view comments at the same address.

FOR FURTHER INFORMATION CONTACT: Terry Parks, (202) 513-7625. You may obtain a copy of this information collection document at no charge by a written request to the same address, by telefaxing a request to the above number, or by calling (202) 513-7625. Please identify the information collection by the number 1076-0136.

SUPPLEMENTARY INFORMATION: The Department of the Interior and the Department of Health and Human Services developed a joint rule, 25 CFR part 900, to implement section 107 of the Indian Self-Determination and Education Assistance Act, as amended, and Title I, Public Law 103-413, the Indian Self-Determination Contract Reform Act of 1994. Section 107(a)(2)(A)(ii) of the Indian Self-Determination Contract Reform Act requires the joint rule to permit contracts and grants to be awarded to Indian tribes without the unnecessary burden or confusion associated with two sets of rules and information collection requirements when there is a single program legislation involved.

The information requirements for this joint rule differ from those of other agencies. Both the Bureau of Indian Affairs and the Indian Health Service let contracts for multiple programs, whereas other agencies usually award single grants to tribes. Under the Indian Self-Determination and Education Assistance Act, as amended, and the Indian Self-Determination Contract Reform Act of 1994, tribes are entitled to contract and may renew contracts annually with the Bureau of Indian Affairs and the Indian Health Service, whereas other agencies provide grants on a discretionary or competitive basis.

The proposal and other supporting documentation identified in this information collection are used by the Department of the Interior and the Department of Health and Human Services to determine applicant eligibility, evaluate applicant capabilities, protect the service

population, safeguard Federal funds and other resources, and permit the Federal agencies to administer and evaluate contract programs. Tribal governments or tribal organizations provide the information by submitting Public Law 93-638 contract or grant proposals to the appropriate Federal agency. No third-party notification or public disclosure burden is associated with this collection.

Request for Comments

The Department of the Interior and the Department of Health and Human Services request comments on this information collection concerning:

(1) The necessity of the information collection for the proper performance of the agencies' functions;

(2) Whether this information collection duplicates a collection elsewhere by the Federal Government;

(3) Whether the burden estimate is accurate or could be reduced using technology available to all respondents;

(4) If the quality of the information requested ensures its usefulness to the agencies; and

(5) If the instructions are clear and easily understood, leading to the least burden on the respondents.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 320-SIB, during the hours of 8 a.m. to 4:30 p.m., EST Monday through Friday except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

Information Collection Abstract

OMB control number: 1076-0136.

Type of review: Renewal.

Title: Indian Self-Determination and Education Assistance Act Programs, 25 CFR 900.

Brief Description: Each respondent is required to respond from 1 to 12 times per year, depending upon the number of programs it contracts from the Bureau of Indian Affairs and Indian Health Service. In addition, each subpart concerns information collection for different parts of the contracting process. For example, subpart C relates to initial contract proposal contents.

Information collection for subpart C would be unnecessary when contracts are renewed. Subpart F describes minimum standards for the management systems used by Indian tribes or tribal organizations under these contracts. Subpart G addresses the negotiability of all reporting and data requirements in the contract.

Respondents: Tribes or tribal organizations.

Total number of respondents: 550.

Estimated number of responses: 5507.

Estimated annual burden: 191,174 hours.

Dated: April 14, 2006.

Debbie L. Clark,

Acting Principal Deputy Assistant Secretary—Indian Affairs, Department of the Interior.

Dated: February 17, 2006.

Mary Lou Stanton,

Deputy Director, Indian Health Policy, Department of Health and Human Services.

[FR Doc. 06-3829 Filed 4-21-06; 8:45 am]

BILLING CODE 4310-4J-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Community Development on the Las Vegas Paiute Indian Tribe Reservation, Clark County, NV

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), in cooperation with the Las Vegas Paiute Indian Tribe (Tribe), the Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers (USACE), and the Bureau of Land Management (BLM), intends to gather information necessary for preparing an Environmental Impact Statement (EIS). The proposed Federal actions by the BIA and cooperating agencies include approval of a lease, issuance of rights-of-way grants, permits, and/or other agreements between Federal agencies, the Tribe and the LasCal Development Group, LLC (LasCal Development) for the construction, operation and maintenance of residential and commercial development, as well as the necessary infrastructure, on the Las Vegas Paiute Indian Reservation (Reservation) in Clark County, Nevada. The purpose of this project is to provide an expanded economic base for the Tribe while simultaneously providing needed housing for tribal and non-tribal

members in the greater Las Vegas area. This notice also announces two public scoping meetings to identify potential issues and alternatives for inclusion in the EIS.

DATES: Written comments on the scope and implementation of this proposal must arrive by May 30, 2006. The public scoping meetings will be held on Monday, May 15, 2006, and Tuesday, May 16, 2006. Both meetings will begin at 6:30 p.m. and continue until 8:30 p.m. (local time), or until the last public comments are received.

ADDRESSES: You may mail, hand carry, or telefax written comments to either (1) Amy L. Heuslein, Regional Environmental Protection Officer, BIA, Western Regional Office, P.O. Box 10, located at 400 North Fifth Street, 14th Floor, Phoenix, Arizona 85001, Telefax (602) 379-3833; or (2) Paul Schlafly, Natural Resource Specialist, BIA, Southern Paiute Agency, 180 North 200 East Suite #111, St. George, Utah 84771, Telefax (435) 674-9714. Comments may also be submitted via e-mail to the following address:
comments@lvpaiuteeis.com.

The May 15, 2006, public scoping meeting will be held at the BLM Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada. The May 16, 2006, public scoping meeting will be held at the Las Vegas Paiute Community Center, 1 Paiute Drive, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Amy Heuslein, (602) 379-6750, or Paul Schlafly, (435) 674-9720.

SUPPLEMENTARY INFORMATION: The EIS will assess the environmental consequences of proposed federal actions encompassing the proposed project components described below. The federal actions that may be required are as follows: (1) BIA approval of a 99-year lease between LasCal Development and the Tribe, and of rights-of-way grants, permits and/or other agreements, as appropriate; (2) BLM issuance of leases and rights-of-way grants for infrastructure components adjacent to the project area; (3) USACE issuance of Clean Water Act permits; and (4) EPA issuance of Clean Water Act permits. The proposed project area is located in the central portion of the Reservation in Sections 25, 26, 27, 34, 35, and 36 of Township 19 South, Range 59 East, Mount Diablo Meridian, in Clark County, approximately 15 miles northwest of Las Vegas, Nevada. The Las Vegas Paiute Golf Resort currently occupies approximately 700 acres in the eastern portion of the Reservation.

The proposed lease property consists of approximately 2,000 acres of the total of 3,200 developable acres on either side

of U.S. Highway 95 (US95), which diagonally bisects the property. LasCal Development would construct a mixed residential and commercial development on this property. The development would potentially serve an estimated population of 12,500 to 25,000 people. Operation and maintenance of the proposed project facilities would be managed by the following entities: Nevada Power, Las Vegas Valley Water District, Southwest Gas, Sprint Communications, Cox Cable, the City of Las Vegas, and the Las Vegas Paiute Snow Mountain Recreation Group. LasCal Development would provide construction and reclamation bonds suitable to both the BIA and the Tribe.

The proposed project includes residential housing, commercial retail and office space, a casino with 75,000-square feet of gaming space, tribal and non-tribal housing, two elementary schools, one middle school, maintenance facilities, parks, recreational trails, roadways, utility rights-of-way and open space corridors. The proposed project would be developed in at least two phases. Phase I would include the project area located to the east of US95. Phase II would include the project area to the west of US95.

Infrastructure development would include the construction of a new highway interchange, storm water conveyance system, internal roadways, as well as connections to existing electrical, natural gas, water, and sewage facilities. The new highway interchange on US95 would be located in the southeast portion of the project area. Internal roadways in the project area would consist of six-lane collector roads, four-lane residential roads, and two-lane residential roads connected to surrounding existing roadways.

Utilities, including natural gas, water and sewage facilities, would be developed in coordination with roadway infrastructure development to the extent possible and would be connected to existing utilities located adjacent to the proposed project area. Water for construction and operation of the development would be obtained from three separate water pressure zones extending from the existing Las Vegas Valley Water District infrastructure. Electricity for Phase I of development would be supplied by the Nevada Power Company Northwest Substation. Electricity for Phase II of development would be supplied by the Nevada Power Company Snow Mountain Substation. Relocation of an existing power line easement would occur as a separate action. The storm

water conveyance system would be constructed along the entire length of the proposed project area's western and southern boundaries, which is located up gradient from the entire project area. Within the project area, onsite storm drainage would be constructed in coordination with roadway infrastructure development.

Alternatives to the proposed action, including the no action alternative, will be analyzed in the EIS. Possible action alternatives could include plans with differing building densities and layouts, a no casino alternative, and an alternative that maximizes environmental protection using the following principles: Mixed land uses; compact building designs; a range of housing opportunities and choices; walkable neighborhoods with a variety of transportation options; distinctive, attractive communities with a strong sense of place; and preservation of open space, natural beauty and critical environmental areas.

Resource concerns to be addressed in this EIS would include, but not be limited to, air quality, geology and soils, surface and groundwater resources, biological resources including threatened and endangered species, noxious weeds, migratory birds, cultural resources, socioeconomic conditions, land use, aesthetics or visual resources, environmental justice and Indian trust resources. The range of issues and alternatives to be addressed in the EIS may be expanded or reduced, based on written comments received in response to this notice and at the public scoping meetings.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing addresses shown in the **ADDRESSES** section during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish BIA to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. BIA will not, however, consider anonymous comments. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with § 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: April 3, 2006.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–6105 Filed 4–21–06; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****Grant Availability to Federally-Recognized Indian Tribes for Projects Implementing Traffic Safety on Indian Reservations**

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as authorized by the Secretary of Transportation, the Bureau of Indian Affairs intends to make funds available to federally-recognized Indian tribes on an annual basis for implementing traffic safety projects, which are designed to reduce the number of traffic crashes, death, injuries and property damage within Indian country. Because of the limited funding available for this project, all projects will be reviewed and selected on a competitive basis. This notice informs Indian tribes that grant funds are available and that information packets are being mailed to all tribes. Information packets will be distributed to all Tribal Leaders on the latest Tribal Leaders list that is compiled by the Bureau of Indian Affairs.

DATES: Request for funds must be received by May 1 of each program year. Requests not in the office of the Indian Highway Safety Program by close of business on May 1st will not be considered and will be returned unopened. The information packets will be distributed by the end of January of each program year.

ADDRESSES: Each tribe must submit their request to the Bureau of Indian Affairs, Division of Safety and Risk Management, Attention: Indian Highway Safety Program Coordinator, 1011 Indian School, NE, Suite 331, Albuquerque, NM 87104.

FOR FURTHER INFORMATION CONTACT:

Tribes should direct questions to: Patricia Abeyta, Coordinator, Indian Highway Safety Program or Charles L. Jaynes, Program Administrator, Bureau of Indian Affairs, 1011 Indian School, NE, Suite 331, Albuquerque, New Mexico 87104; Telephone (505) 563–5371 or 245–2104.

SUPPLEMENTARY INFORMATION:**Background**

The Federal-Aid Highway Act of 1973 (Pub. L. 93–87) provides for U.S. Department of Transportation (DOT) funding to assist Indian tribes in implementing Highway Safety projects. The projects must be designed to reduce the number of motor vehicle traffic crashes and their resulting fatalities, injuries, and property damage within Indian reservations. All federally-recognized Indian tribes on Indian reservations are eligible to receive this assistance. All tribes receiving awards of program funds are reimbursed for eligible costs incurred under the terms of 23 U.S.C. 402 and subsequent amendments.

Responsibilities

For the purposes of application of the Act, Indian reservations are collectively considered a “State” and the Secretary of the Interior is considered the “Governor of a State.” The Secretary of the Interior delegated the authority to administer the programs for all the Indian Nations in the United States to the Assistant Secretary—Indian Affairs. The Assistant Secretary—Indian Affairs further delegated the responsibility for administration of the Indian Highway Safety Program to the Central Office, Division of Safety and Risk Management (DSRM), located in Albuquerque, New Mexico. The Chief, DSRM, as Program Administrator of the Indian Highway Safety Program, has staff members available to provide program and technical assistance to the Indian tribes. The Indian Highway Safety Program maintains contacts with the DOT with respect to program approval, funding and receiving technical assistance. The National Highway Traffic Safety Administration (NHTSA) is responsible for ensuring that the Indian Highway Safety Program is carried out in accordance with 23 CFR part 1200 and

other applicable Federal statutes and regulations.

National Priority Program Areas

The following highway safety program areas have been identified as priority program areas eligible for funding under 23 CFR 1205.3 on tribal lands:

- (a) Impaired driving.
- (b) Occupant protection.
- (c) Traffic records.

Other fundable program areas may be considered based upon well documented problem identification from the tribes.

Highway Safety Program Funding Areas

Proposals are being solicited for the following program areas:

(1) *Impaired Driving.* Programs directed at reducing injuries and death attributed to impaired driving on the reservations such as Selective Traffic Enforcement Programs to apprehend impaired drivers, specialized law enforcement training (*i.e.* Standardized Field Sobriety Testing), public information programs on alcohol/other drug use and driving, education programs for convicted DWI/DUI offenders, various youth alcohol education programs promoting traffic safety, and programs or projects directed toward judicial training. Proposals for projects that enhance the development and implementation of innovative programs to combat impaired driving are also solicited.

(2) *Occupant Protection.* Programs directed at decreasing injuries and deaths attributed to the lack of safety belt and child restraint usage such as surveys to determine usage rates and to identify high-risk non-users, comprehensive programs to promote correct usage of child safety seats and other occupant restraints, enforcement of safety belt ordinances or laws, specialized training (*i.e.* Operation Kids, Traffic Occupant Protection Strategies, and Standardized Child Passenger Safety Technician), and evaluations.

(3) *Traffic Records.* Programs to help tribes develop or update electronic traffic records systems which will assist with analysis of crash information, causal factors, and support joint efforts with other agencies to improve the tribe’s traffic records system.

Project Guidelines

BIA will send information packets to the Tribal Leader of each federally-recognized Indian tribe by the end of January of each program year. Upon receiving the information packet, each tribe, to be eligible, must prepare a

proposed project based on the following guidelines:

(1) *Program Planning.* Program will be based upon the highway safety problems identified and the goals/objectives measures selected by the tribe.

(2) *Problem Identification.* Highway traffic safety problems will be based upon accurate tribal data. This data should show problems and/or trend analysis and should be available in tribal enforcement and traffic crash records. The data must accompany the proposal.

(3) *Countermeasures Selection.* Once tribal traffic safety problems are identified, appropriate countermeasures to solve or reduce the problem(s) must be identified.

(4) *Objectives/Performance Measures.* List of objectives and measurable goals, within the National Priority Program Areas, based on highway safety problems identified by the tribe, must be included in each proposal, expressed in clearly defined, time-framed, and measurable terms. Performance indicators that enable the Indian Highway Safety Program (IHSP) to track progress, from a specific baseline, must accompany each goal. Performance measures should be aggressive but attainable.

(5) *Line Item Budget.* The activities to be funded must be outlined in detail according to the following object groups: personnel services; travel and training, operating costs and equipment. Because of limited funding, this office will limit indirect costs to a maximum of 15 percent; however, all tribes applying for grants must attach a copy of the tribe's indirect cost rate to the application.

(6) *Evaluation Plan.* Evaluation is the process of determining whether a highway safety activity has accomplished its objectives. The tribe must include in the funding request a plan explaining how the evaluation will be accomplished and identifying the criteria to be used in measuring performance.

(7) *Technical Assistance.* In order to provide technical assistance and ensure that NHTSA regulations are met, the BIA Indian Highway Safety Program requests that each tribe applying for a grant, attach a letter on tribal stationery, requesting that the program use a small portion of the grant funds for program oversight. [Note: Signing a letter authorizing the BIA Indian Highway Safety Program to use a small amount of funds for program oversight will not decrease the amount of funds that will be authorized for any tribal program.]

(8) *Project Length.* The traffic safety program is designed primarily as the source of invention and motivation. This program is not intended for financially supporting continuing operations.

(9) *Certification Regarding Drug-Free Workplace Requirement.* Indian tribes receiving highway safety grants through the Indian Highway Safety Program must certify that they will maintain a drug-free workplace.

(10) *Certification Regarding Lobbying.* Indian tribes receiving highway safety grants through the Indian Highway Safety Program must certify that they will not use any of the direct funds to pay for, by or on behalf of the tribe, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement. [Note: None of the funds under this program can be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body.]

Submission Deadline

Each tribe must send its funding request to the BIA IHSP offices in Albuquerque, New Mexico. The Indian Highway Safety Program must receive the request by close of business May 1 of each program year.

Selection Criteria

Each funding request will be reviewed and evaluated by the BIA Indian Highway Safety Program staff and a designated selection committee. Each member, by assigning points to the following five criteria, will rank each of the proposals based on the following criteria:

Criteria (1), the strength of the *Problem Identification* based on verifiable, current and applicable documentation of the traffic safety problem (40 points maximum).

Criteria (2), the quality of the proposed solution plan based on aggressive but attainable *Performance Measures*, time-framed action plan, cost eligibility, amount, if any, of in-kind funding/support provided by the tribe,

and necessity and reasonableness of the budget (30 points maximum).

Criteria (3), details on how the tribe will evaluate and show progress on its performance measures regarding the *Evaluation* component (20 points maximum).

Criteria (4), documentation in support of the submitting tribe's qualification, commitment and community involvement in traffic safety should be included (10 points maximum).

Criteria (5), tribes are eligible for bonus points (up to 10 extra points) if all reporting requirements have been met in previous years.

Notification of the Selection

Those tribes selected to participate will be notified by letter. Upon notification, each tribe selected must provide a duly authorized tribal resolution. The certification and resolution must be on file before grants funds can be expended or reimbursed by the tribe.

Notification of Non-Selection

The Program Administrator will notify each tribe of non-selection.

Uniform Administrative Requirements for Grant-in-Aid

Uniform grant administration procedures have been established on a national basis of all grant-in-aid programs by DOT. NHTSA under 49 CFR part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government." NHTSA and FHWA have codified uniform procedures for State Highway Safety Programs in 23 CFR parts 1200, 1205 and 1251. OMB Circular A-87 and the "Highway Safety Grant Funding Policy for NHTSA/FHWA Field Administered Grants" are the established cost principles applicable to grants and contracts through BIA and with tribal governments. It is the responsibility of the BIA Indian Highway Safety Program office to establish operating procedures consistent with the applicable provisions of these rules.

Standards for Financial Management System

Tribal financial systems must provide:

- (1) Current and complete disclosure of project actions;

- (2) Accurate and timely record keeping;

- (3) Accountability and control of all grant funds and equipment;

- (4) Comparison of actual expenditures with budgeted amounts; and

- (5) Documentation of accounting records.

Auditing of Highway Safety Projects will be included in the Tribal A-133 single audit requirement. Tribes will provide monthly program status reports and a corresponding reimbursement claim to the Coordinator, BIA Indian Highway Safety Program, 1011 Indian School, Suite 331, Albuquerque, New Mexico 87104. These documents will be submitted no later than 10 working days beyond the reporting month.

Project Monitoring

During the program year, it is the responsibility of the BIA IHSP office to review the implementation of tribal traffic safety plans and programs, monitor the progress of their activities and expenditures and provide technical assistance as needed. This assistance may be on-site, by telephone and/or a review of monthly progress claims.

Project Evaluation

BIA will conduct an annual performance evaluation for each Highway Safety Project. The evaluation will measure the actual accomplishments to the planned activity. BIA IHSP staff will evaluate the project on-site at the discretion of the Indian Highway Safety Program Administrator.

Dated: April 7, 2006.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6-6026 Filed 4-21-06; 8:45 am]

BILLING CODE 4310-5h-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-964-1410-HY-P; AA-8103-5]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited, for lands located within Secs. 3 and 10, T. 30 N., R. 54 W., Seward Meridian, Alaska, in the vicinity of Shageluk, Alaska. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by

the decision shall have until May 24, 2006 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907-271-5960, or by e-mail at ak.blm.conveyance@ak.blm.gov. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Barbara Opp Waldal,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E6-6063 Filed 4-21-06; 8:45 am]

BILLING CODE 4310-5S-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK 964-1410-HY-P; F-14889-A]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to MTNT, Ltd., Successor in Interest to Chamai, Incorporated, for lands in the vicinity of McGrath, Alaska, and located in:

Seward Meridian, Alaska

T. 31 N., R. 34 W.,
Secs. 4, 5, 7, and 8;
Secs. 16 to 21, inclusive;
Secs. 28 to 31, inclusive.

Containing 7,143.14 acres.

T. 32 N., R. 34 W.,
Secs. 21 and 22;
Secs. 26, 33, and 34.
Containing 1,684.13 acres.

T. 31 N., R. 35 W.,
Secs. 12, 13, and 14;
Secs. 23, 24, and 25;
Secs. 35 and 36.
Containing 1,835.93 acres.

Aggregating 10,663.20 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until May 24, 2006 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907-271-5960, or by e-mail at ak.blm.conveyance@ak.blm.gov. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Eileen Ford,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E6-6065 Filed 4-21-06; 8:45 am]

BILLING CODE 4310-5S-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-921-06-1320-EL; COC 69822]

Notice of Invitation for Coal Exploration License Application, Western Fuels-Colorado, LLC. COC 69822; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, subpart 3410, members of the public are hereby invited to participate with Western Fuels-Colorado, LLC, in a program for the exploration of unleased coal deposits owned by the United States of America containing approximately 10,810.40 acres in Montrose County, Colorado.

DATES: Written Notice of Intent to Participate should be addressed to the

attention of the following persons and must be received by them by May 24, 2006.

ADDRESSES: Karen Zurek, CO-921, Solid Minerals Staff, Division of Energy, Lands and Minerals, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215; and, Murari Threstha, Western Fuels-Colorado, LLC, P.O. Box 33424, Denver, Colorado 80233-3424.

FOR FURTHER INFORMATION, CONTACT: Karen Zurek at (303) 239-3795.

SUPPLEMENTARY INFORMATION: The application for coal exploration license is available for public inspection during normal business hours under serial number COC 69822 at the Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Uncompahgre Field Office, 2505 South Townsend Avenue, Montrose, Colorado 81401. Any party electing to participate in this program must share all costs on a pro rata basis with Western Fuels-Colorado, LLC, and with any other party or parties who elect to participate.

Dated: March 17, 2006.

Karen Zurek,

Solid Minerals Staff, Division of Energy, Lands and Minerals.

[FR Doc. E6-6062 Filed 4-21-06; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA 668 -05-1783-PG_083A]

Notice of Call for Nominations for Appointment, Santa Rosa and San Jacinto Mountains National Monument Advisory Committee

AGENCIES: Bureau of Land Management, Interior; Forest Service, Agriculture.

ACTION: Notice of call for nominations for appointment or re-appointment of representatives, and an equal number of alternates, to occupy five positions on the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee.

SUMMARY: This notice constitutes an open call to the public to submit nomination applications for each of the following positions on the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee:

- Representative for the City of Palm Springs;

- Representative for a local developer or builder organization;
- Representative for the City of La Quinta;
- Representative for a local conservation organization; and
- Representative for the California Department of Fish and Game or the California Department of Parks and Recreation.

DATES: Nomination applications must be submitted to the address listed below no later than 90 days after the date of publication of this notice in the **Federal Register**.

ADDRESSES: Santa Rosa and San Jacinto Mountains National Monument, c/o Bureau of Land Management, Palm Springs-South Coast Field Office, Attn: National Monument Manager, Advisory Committee Nomination Application, P.O. Box 581260, North Palm Springs, California 92258-1260.

FOR FURTHER INFORMATION CONTACT: Frank Mowry, Writer-Editor, Santa Rosa and San Jacinto Mountains National Monument, telephone (760) 251-4822; facsimile message (760) 251-4899; e-mail ca_srsj_nm@ca.blm.gov.

SUPPLEMENTARY INFORMATION: In accordance with the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (Pub. L. 106-351), the Secretary of the Interior and the Secretary of Agriculture have jointly established an advisory committee for the Santa Rosa and San Jacinto Mountains National Monument under the provisions of the Federal Advisory Committee Act. The purpose of the National Monument Advisory Committee (MAC) is to advise the Secretaries with respect to implementation of the National Monument Management Plan.

The MAC holds public meetings several times throughout the year. The Designated Federal Officer (DFO), or his/her designee, may convene additional meetings as necessary. All MAC members are volunteers serving without pay, but will be reimbursed for travel and per diem expenses at the current rates for government employees in accordance with 5 U.S.C. 5703, when appropriate.

Appointments for individuals currently serving in the aforementioned positions will expire March 16, 2007. Members will be appointed to serve a 3-year term.

All applicants must be citizens of the United States. Members are appointed by the Secretary of the Interior with concurrence by the Secretary of Agriculture. Applicants must be qualified through education, training, knowledge, or experience to give

informed advice regarding an industry, discipline, or interest specified in the Committee's charter; they must have demonstrated experience or knowledge of the geographical area in which the National Monument is located; and must have demonstrated a commitment to collaborate in seeking solutions to a wide spectrum of resource management issues.

There is no limit to the number of nomination applications which may be submitted for each open appointment. Current MAC appointees may submit an updated nomination application for re-appointment. Any individual may nominate himself or herself for appointment. Completed nomination applications should include letters of reference and/or recommendations from the represented interests or organizations, and any other information explaining the nominee's qualifications (e.g., resume, curriculum vitae).

Nomination application packages are available at the Bureau of Land Management Palm Springs-South Coast Field Office, 690 West Garnet Avenue, North Palm Springs, California; through the Santa Rosa and San Jacinto Mountains National Monument Web pages at <http://www.blm.gov/ca/palmsprings/santarosa/mac-nominations.html>; via telephone request at (760) 251-4800, or facsimile message at (760) 251-4899; by written request from the Santa Rosa and San Jacinto Mountains National Monument Manager at the following address: Santa Rosa and San Jacinto Mountains National Monument, c/o Bureau of Land Management, Palm Springs-South Coast Field Office, Attn: National Monument Manager, Advisory Committee Nomination Application Request, P.O. Box 581260, North Palm Springs, California 92258-1260; or through an e-mail request at ca_srsj_nm@ca.blm.gov.

Each application package includes forms from the U.S. Department of Agriculture and U.S. Department of the Interior. All submitted nomination applications become the property of the Department of the Interior, Bureau of Land Management, Santa Rosa and San Jacinto Mountains National Monument, and will not be returned. Nomination applications are good only for the current open public call for nominations.

Dated: March 3, 2006.

Gail Acheson,

Field Manager, Palm Springs-South Coast Field Office, Bureau of Land Management.

Dated: March 3, 2006.

Laurie Rosenthal,

District Ranger, San Jacinto Ranger District, San Bernardino National Forest, USDA Forest Service.

Dated: March 3, 2006.

James Foote,

Acting Monument Manager, Santa Rosa and San Jacinto Mountains, National Monument.

[FR Doc. 06-3844 Filed 4-21-06; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 110 5882 PH MJ99; HAG06-0104]

Notice of Meetings

AGENCY: Medford District, Bureau of Land Management, Department of the Interior.

ACTION: Notice of Bureau of Land Management, Medford District Resource. Advisory Committee meeting as identified in section 205(f)(2) of the Secure Rural Schools and Community Self-Determination Act of 2000, Public Law 106-393.

SUMMARY: The Bureau of Land Management Medford District Resource Advisory Committee will meet in Medford, Oregon to tour project sites and to discuss proposed 2007 projects, pursuant to Public Law 106-393. Agenda topics include on-site inspections of previous projects and proposed 2007 projects, review of last meeting minutes, presentations on proposed fiscal year 2007 Title II projects, and discussion regarding proposed projects.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: The field trips will start from, and the meetings will be held at, the Bureau of Land Management Medford District Office, located at 3040 Biddle Road, Medford, Oregon.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Medford District, Patty Burel at (541-618-2424), e-mail: patricia_burel@blm.gov.

SUPPLEMENTARY INFORMATION:

The field trip dates are:

1. June 15, 2006, 7 a.m. to 4 p.m.
2. June 22, 2006, 7 a.m. to 4 p.m.

The meeting dates are:

1. July 13, 2006, 9 a.m. to 4 p.m.
2. July 20, 2006, 9 a.m. to 4 p.m.

A public comment period will be held from 2:00 p.m. to 2:30 p.m. on July 13 and July 20, 2006.

Authority: 43 CFR subpart 1784/Advisory Committees.

Timothy R. Reuwsaat,

District Manager, Medford.

[FR Doc. E6-6060 Filed 4-21-06; 8:45 am]

BILLING CODE 4310-33-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-559]

In the Matter of Certain Digital Processors and Digital Processing Systems, Components Thereof, and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") issued by the presiding administrative law judge ("ALJ") granting complainant's motion to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Michelle Walters, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on January 9, 2006, based on a complaint filed by Biac Corporation ("Biac") of Boulder, Colorado. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of

certain digital processors or digital processing systems, components thereof, or products containing the same by reason of infringement of various claims of United States Patent Nos. 5,021,945, 5,517,628, and 6,253,313. The complaint originally named four respondents: Philips Semiconductors B.V. of the Netherlands; Philips Consumer Electronics Services B.V. of the Netherlands; Philips Consumer Electronics North America Corp. of Atlanta, Georgia; and 2Wire, Inc. of San Jose, California. Biac previously amended the complaint and notice of investigation in order to remove respondent Philips Consumer Electronics North America Corp. and to add Philips Electronics North America Corp. 71 FR 17136 (April 5, 2006).

On March 9, 2006, Biac moved to amend the complaint and notice of investigation in order to remove respondent Philips Consumer Electronics Services B.V. and to add Philips Semiconductors, Inc. of San Jose, California, and Philips Consumer Electronics B.V. of the Netherlands. Biac stated that it had recently learned that Philips Consumer Electronics Services B.V. is a dormant entity that has not imported into the United States, sold, or offered for sale any of the accused products. In addition, Biac stated that it had recently learned that Philips Semiconductors, Inc. imports and sells the accused products in the United States and that Philips Consumer Electronics B.V. manufactures consumer products that contain the accused products and sells them in the United States. None of the current respondents nor the Commission investigative attorney opposed Biac's motion.

On March 27, 2006, the ALJ issued an ID granting Biac's motion to amend the complaint and notice of investigation. The ALJ found that, pursuant to Commission Rule 210.14(b)(1) (19 CFR 210.14(b)(1)), there was good cause to amend the complaint and notice of investigation in order to remove respondent Philips Consumer Electronics Services B.V. and to add Philips Semiconductors, Inc. and Philips Consumer Electronics B.V. No petitions for review of the ID were filed. Having examined the record of this investigation, the Commission has determined not to review the ALJ's ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: April 18, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6-6079 Filed 4-21-06; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-860 (Review)]

Tin- and Chromium-Coated Steel Sheet from Japan

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject review.

DATES: Effective Date: April 17, 2006.

FOR FURTHER INFORMATION CONTACT:

Olympia Hand (202-205-3182) or Douglas Corkran (202-205-3057), 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 this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: Effective December 2, 2005, the Commission established a schedule for the conduct of the subject full review (70 FR 73027, December 8, 2005). Subsequently, counsel on behalf of the Japanese respondents requested that the Commission postpone its deadline for the filing of posthearing briefs by two days, citing communication difficulties arising from multiple national holidays in Japan during the period between the Commission's hearing and the due date for posthearing briefs.¹ No party to the review objected to the requested postponement. The Commission, therefore, is revising its schedule to incorporate this and related changes to the schedule of the review.

The Commission's new schedule for the review is as follows: the deadline for filing posthearing briefs is May 10, 2006; the Commission will make its

final release of information on June 6, 2006; and final party comments are due on June 8, 2006.

For further information concerning this review see the Commission's notice cited above and 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).

Authority: This review is 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.

Issued: April 17, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6-6028 Filed 4-21-06; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-06-027]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: April 26, 2006 at 3 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. No. 731-TA-1091 (Final) (Artists' Canvas from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before May 8, 2006.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: April 19, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06-3904 Filed 4-21-06; 9:12 am]

BILLING CODE 7020-02-U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-58,663]

Classic Print Products, Inc., Burlington, NC; Notice of Revised Determination on Reconsideration

By letter dated March 15, 2006, a company official requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm. On April 12, 2006, a Notice of Dismissal of Application for Reconsideration was issued, stating that the application did not contain new information supporting a conclusion that the determination was erroneous and did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law.

The petition, filed on behalf of workers at the subject firm producing sublimated printed paper, asserted that production of sublimated printed paper had shifted abroad. The denial, issued on March 1, 2006, was based on the findings that neither the subject firm nor surveyed customers imported sublimation printed paper during the relevant period and that the subject firm did not shift production abroad during the investigation period. The Department's Notice of determination was published in the **Federal Register** on March 24, 2006 (70 FR 14954).

Upon receipt of new information by the company official regarding the article produced at the subject firm, the Department conducted an investigation to determine whether the subject worker group is eligible to apply for worker adjustment assistance as provided by the Trade Act of 1974, as amended.

The new information indicated that the subject firm used sublimated printed paper as a medium to transfer ink graphics onto substrates. The substrates were then incorporated into the customer's final products (water boards and snow boards).

The investigation revealed that the subject firm supplied component parts (substrates) and a loss of business with a manufacturer of water boards and snow boards whose workers were certified eligible to apply for adjustment assistance contributed importantly to the separation or threat of separation of workers at Classic Print Products, Inc., Burlington, North Carolina.

¹ Correspondence of April 7, 2006, from Willkie Farr & Gallagher LLP.

In accordance with section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the information obtained in the reconsideration investigation, I determine that workers of Classic Print Products, Inc., Burlington, North Carolina qualify as adversely affected secondary workers under section 222 of the Trade Act of 1974, as amended. In accordance with the provisions of the Act, I make the following certification:

All workers of Classic Print Products, Inc., Burlington, North Carolina, who became totally or partially separated from employment on or after January 17, 2005 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC this 17th day of April 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-6093 Filed 4-21-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-59,153]

IBM Corporation; Somers, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 22, 2003, in response to a petition filed on behalf of workers at IBM Corporation, Somers, New York.

The petition regarding the investigation has been deemed invalid.

In order to establish a valid petition, there must be at least three workers to sign the petition. The petition in this case did not meet this threshold number. Consequently, the investigation has been terminated.

Signed at Washington, DC this 7th day of April 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-6098 Filed 4-21-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-59,163]

Lending Textile Company Inc., Williamsport, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 5, 2006 in response to a petition filed by a company official on behalf of workers at Lending Textile Company Inc., Williamsport, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 10th day of April, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-6100 Filed 4-21-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-58,808]

Lexmark International, Inc, Supply Chain Workforce, Printing Solutions & Services Division, Lexington, KY; Notice of Affirmative Determination Regarding Application for Reconsideration

By application of March 25, 2006, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Department's notice of determination was signed on February 24, 2006, and published in the **Federal Register** on March 22, 2006 (71 FR 14550).

The petitioner stated in the request for reconsideration that the worker group supported the production of components (ink and printer cartridges) of articles produced by the subject firm (printers). The petitioner also inferred that support activities were shifted overseas when production shifted abroad.

The Department has carefully reviewed the request for reconsideration and has determined that the Department will conduct further investigation based on new information provided by the petitioner and the company official.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 13th day of April 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-6094 Filed 4-21-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-59,019]

McCormick International USA, Inc., Pella, IA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 14, 2006 in response to a petition filed by a Texas Workforce Commission representative on behalf of workers of McCormick International USA, Inc., Pella, Iowa.

The petition has been deemed invalid. A state agency representative cannot file a TAA petition on behalf of workers of a firm located in another state.

Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 11th day of April 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-6097 Filed 4-21-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-54,254]

**Newstech NY Inc, Deferiet, NY;
Amended Certification Regarding
Eligibility To Apply for Worker
Adjustment Assistance and Alternative
Trade Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 27, 2004, applicable to workers of Newstech NY Inc, Deferiet, New York. The workers are engaged in employment related to the production of upholstery fabrics.

New information provided by the petitioners indicates their intention was to apply for all available Trade Act benefits at the time of the filing. Therefore, the Department has made a decision to investigate further to determine if the workers are eligible to apply for Alternative Trade Adjustment Assistance.

The investigation revealed that a significant number of workers of the subject firm are age 50 or over, workers have skills that are not easily transferable, and conditions in the industry are adverse.

Review of this information shows that all eligibility criteria under Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended have been met for workers at the subject firm. Accordingly, the Department is amending the certification to reflect its finding.

The amended notice applicable to TA-W-54,254 is hereby issued as follows:

"All workers of Newstech NY Inc, Deferiet, New York, who became totally or partially separated from employment on or after February 11, 2003 through April 27, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for Alternative Trade Adjustment Assistance under Section 246 of the Trade Act of 1974."

Signed at Washington, DC this 12th day of April 2006.

Elliott S. Kushner,*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E6-6091 Filed 4-21-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-58,569]

**OBG Distribution Company, Ltd.,
Celina, Tennessee; Notice of
Affirmative Determination Regarding
Application for Reconsideration**

By letter dated February 21, 2006, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on February 7, 2006, and published in the **Federal Register** on March 2, 2006 (71 FR 10716).

The investigation revealed that the petitioning workers of this firm or subdivision do not produce an article within the meaning of section 222 of the Act.

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 14th of April, 2006.

Elliott S. Kushner,*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E6-6092 Filed 4-21-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training
Administration****Notice of Determinations Regarding
Eligibility To Apply for Worker
Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) number and alternative trade adjustment assistance (ATAA) by

(TA-W) number issued during the periods of April 2006.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met, and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-58,881; *Paris Accessories, New Smithville, PA: February 21, 2005.*
 TA-W-58,881A; *Paris Accessories, Allentown, PA: February 21, 2005.*
 TA-W-59,041; *Kidde Fire Fighting, Division of UTC Fire and Security, Leased Wkrs of Augmentation, Manpower, Ranson, WV: March 14, 2005.*
 TA-W-59,103; *Ceramo Company, Inc., Jackson, MO: March 27, 2005.*
 TA-W-59,106; *Barcoviev, Printed Circuit Boards and Video Displays, Duluth, GA: March 23, 2005.*
 TA-W-59,140; *MRC Industrial Group, Warren, MI: March 30, 2005.*
 TA-W-59,148; *Valkyrie Co. (The), Worcester, MA: March 29, 2005.*
 TA-W-58,924; *Miller Desk, Inc., High Point, NC: February 3, 2005.*
 TA-W-58,833; *Greenpak, Inc., Florence South Carolina Div., Leased Wkrs of CMS, Olsten, Mega Force and Kel, Florence, SC: February 9, 2005.*
 TA-W-58,833A; *Greenpak, Inc., Parkersburg, WV: February 9, 2005.*

TA-W-58,949; *WWG Company, LLC, Leased Wkrs of Sizemore Staffing Services, Warrenton, GA: March 2, 2005.*

TA-W-58,950; *Atlantic Luggage Company, Ellwood City, PA: March 2, 2005.*

TA-W-58,973; *Arcona Leather Technologies, LLC, also known as JP Leather/Arcona Division, Hudson, NC: February 24, 2005.*

TA-W-58,976; *Berkshire Weaving Corp., Lancaster, SC: March 1, 2005.*

TA-W-58,980; *Stora Enso North America, Stevens Point Paper Mill, Stevens Point, WI: March 7, 2005.*

TA-W-58,998; *Action Apparel, Inc., On-Site Leased Workers of Enterprise, Ramer, TN: March 10, 2005.*

TA-W-59,002; *Visa Jewelry Corporation, On-Site Leased Workers of Temp Depot, Central Falls, RI: March 1, 2005.*

TA-W-59,008; *Mr. LongArm, Inc., Greenwood, MO: March 10, 2005.*

TA-W-59,048; *National Bedding Co., A Division of Serta Mattress, Linden, NJ: March 1, 2005.*

TA-W-59,058; *Jeffco Enterprises, Hildebran, NC: March 17, 2005.*

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-58,960; *Lesaffre Yeast Corp., Red Star Yeast Facility, A Division of Lesaffre International Corp., Milwaukee, WI: February 28, 2005.*

TA-W-59,093; *Dana Corporation, Fluid Routing Products, On-Site Leased Workers of Manpower, Paris, TN: March 27, 2005.*

TA-W-59,028; *General Electric Newark Quartz, A Division of General Electric, Hebron, OH: February 28, 2005.*

TA-W-59,169; *Moore Wallace, An RR Donnelley Co., Pre-Press Department, Nacogdoches, TX: March 30, 2005.*

The following certification has been issued. The requirement of supplier to a trade certified firm and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-59,120; *Rabun Apparel, Inc., Division of Fruit of the Loom, Rabun Gap, GA: March 25, 2005.*

TA-W-59,187; *Terrell Brothers Manufacturing Co., Denton, NC: March 12, 2005.*

The following certification has been issued. The requirement of downstream producer to a trade certified firm and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-59,156; *Clover Yarn, Inc., Leased Workers of Debbie's Staffing Services, Clover, VA: April 3, 2005.*

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA-W-58,846; *Alrs, Inc., dba Guilcraft of California, Rancho Dominguez, CA.*

TA-W-59,126; *OTR Wheel Engineering, Inc., Quincy, IL.*

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (shift in production to a foreign country) have not been met.

None

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA-W-58,651; *Sheppard Frames, Inc., Thomasville, NC.*

TA-W-58,827; *Stucki Embroidery Works, Inc., Fairview, NJ.*

TA-W-58,919; *Western Textile Products Company, Piedmont, SC.*

TA-W-58,923; *Kadant Black Clawson, Inc., A Subsidiary of Kadant, Inc., Rayville, LA.*

TA-W-58,943; *Rexnord Industries, Inc., Coupling Group, Warren, PA.*

TA-W-58,958; *Alcan Global Pharmaceutical Packaging, Plastic Americas Division, Centralia, IL.*

TA-W-59,005; *Leggett and Platt, Eastern Division, York, PA.*

The investigation revealed that criteria (a)(2)(A)(I.C.) (Increased imports) and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

TA-W-58,926; *Triangle Suspension Systems, Steel Leaf Springs, Dubois, PA.*

TA-W-58,955; *Sony Magnetic Products, Inc. of America, Recorded Media Division, Dothan, AL.*

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-58,926A; *Triangle Suspension Systems, Packaging Division, Dubois, PA.*

TA-W-59,007; *Professional Distribution Services, Inc., A Division of the Lester Group, Martinsville, VA.*

TA-W-59,046; GE Aviation Engine Services, West Coast Operations, Ontario Plant #1, Ontario, CA.
 TA-W-59,066; Maine Neurology, Scarborough, ME.
 TA-W-59,099; Delta Airlines, Inc, Delta Technical Operations Group, Atlanta, GA.
 TA-W-59,141; AT & T Consumer Services, Subdivision of AT&T Corporation, Fairhaven, MA.

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.
 None.

Affirmative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have not been met for the reasons specified.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.
 TA-W-58,846; Alrs, Inc., dba Guilcraft of California, Rancho Dominguez, CA.

TA-W-59,126; OTR Wheel Engineering, Inc., Quincy, IL.
 TA-W-58,651; Sheppard Frames, Inc., Thomasville, NC.
 TA-W-58,827; Stucki Embroidery Works, Inc., Fairview, NJ.
 TA-W-58,919; Western Textile Products Company, Piedmont, SC.
 TA-W-58,923; Kadant Black Clawson, Inc., A Subsidiary of Kadant, Inc., Rayville, LA.
 TA-W-58,943; Rexnord Industries, Inc., Coupling Group, Warren, PA.
 TA-W-58,958; Alcan Global Pharmaceutical Packaging, Plastic Americas Division, Centralia, IL.
 TA-W-59,005; Leggett and Platt, Eastern Division, York, PA.
 TA-W-58,926; Triangle Suspension Systems, Steel Leaf Springs, Dubois, PA.
 TA-W-58,955; Sony Magnetic Products, Inc. of America, Recorded Media Division, Dothan, AL.
 TA-W-58,926A; Triangle Suspension Systems, Packaging Division, Dubois, PA.
 TA-W-59,007; Professional Distribution Services, Inc., A Division of the Lester Group, Martinsville, VA.
 TA-W-59,046; GE Aviation Engine Services, West Coast Operations, Ontario Plant #1, Ontario, CA.
 TA-W-59,066; Maine Neurology, Scarborough, ME.
 TA-W-59,099; Delta Airlines, Inc, Delta Technical Operations Group, Atlanta, GA.
 TA-W-59,141; AT& T Consumer Services, subdivision of AT&T Corporation, Fairhaven, MA.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA-W-58,973; Arcona Leather Technologies, LLC, also known as JP Leather/Arcona Division, Hudson, NC.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA-W-59,103; Ceramo Company, Inc., Jackson, MO.
 TA-W-58,924; Miller Desk, Inc., High Point, NC.
 TA-W-59,093; Dana Corporation, Fluid Routing Products, On-Site Leased Workers of Manpower, Paris, TN.
 TA-W-59,156; Clover Yarn, Inc., Leased Workers of Debbie's Staffing Services, Clover, VA.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.
 None

I hereby certify that the aforementioned determinations were issued during the month of April 2006. Copies of These determinations are available for inspection in Room C-5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 17, 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6-6095 Filed 4-21-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-58,921]

Tawas Resources; Tawas City, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 1, 2006 in response to a petition filed by a company official on behalf of workers at Tawas Resources, Tawas City, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 10th of April, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-6096 Filed 4-21-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-59,154]

TRW Automotive, Sterling Plant, Sterling Heights, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 5, 2006 in response to a worker petition filed by a company official on behalf of workers at TRW Automotive, Sterling Plant, Sterling Heights, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 12th day of April, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-6099 Filed 4-21-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection for the ETA 191, Statement of Expenditures and Financial Adjustments of Federal Funds for Unemployment Compensation for Federal Employees and Ex-Servicemembers; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration, Office of Workforce Security is soliciting comments concerning the proposed extension of the collection for the ETA 191, Statement of Expenditures and Financial Adjustments of Federal Funds for Unemployment Compensation for Federal Employees and Ex-Servicemembers. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: <http://www.doleta.gov/Performance/guidance/OMBControlNumber.cfm>.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before June 23, 2006.

ADDRESSES: Thomas Stengle, U.S. Department of Labor, Employment and Training Administration, Room S4231, 200 Constitution Avenue, NW., Washington, DC 20210, Phone:(202)693-2991 (This is not a toll-

free number), Fax: (202) 693-2874, e-mail: stengle.thomas@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 97-362, Miscellaneous Revenue Act of 1982, amended the Unemployment Compensation for Ex-Servicemembers (UCX) law (5 U.S.C. 8509), and Public Law 96-499, Omnibus Budget Reconciliation Act, amended the Unemployment Compensation for Federal Employees (UCFE) law (5 U.S.C. 8501, et. seq.) requiring each Federal employing agency to pay the costs of regular and extended UCX/UCX benefits paid to its employees by the State Workforce Agencies (SWAs). The ETA 191 report submitted quarterly by each SWA shows the amount of benefits that should be charged to each Federal employing agency. The Office of Workforce Security uses this information to aggregate the SWA quarterly charges and submit one official bill to each Federal agency being charged. Federal agencies then reimburse the Federal Employees Compensation (FEC) Account maintained by the U.S. Treasury.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are 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 submissions of responses.

III. Current Actions

Type of Review: Regular.

Agency: Employment and Training Administration

Title: Statement of Expenditures and Financial Adjustments of Federal Funds for Unemployment Compensation for Federal Employees and Ex-Servicemembers (UCFE/UCX)

OMB Number: 1205-0162.

Agency Form Number: ETA 191.

Affected Public: State Government.

Total Responses: 53.

Estimated Total Burden Hours: 212.

Total Burden Cost (capital/startup):

\$0.

Total Burden Cost (operating/maintaining): \$0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 11, 2006.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. E6-6080 Filed 4-21-06; 8:45 am]

BILLING CODE 4510-30-P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings of the Board of Directors and Four of the Board's Committees

TIMES AND DATES: The Legal Services Corporation Board of Directors and four of its Committees will meet April 28 and 29, 2006 in the order set forth in the following schedule, with each subsequent meeting commencing shortly after adjournment of the prior meeting.

MEETING SCHEDULE

	Time
Friday, April 28, 2006:	
1. Provision for the Delivery of Legal Services Committee ("Provisions Committee").	1:30 p.m.
2. Operations & Regulations Committee.	
Saturday, April 29, 2006:	
1. Performance Reviews Committee.	8:30 a.m.
2. Finance Committee.	
3. Board of Directors.	

LOCATION: The Chase Park Plaza Hotel, 212-232 N. Kingshighway Boulevard, St. Louis, Missouri.

STATUS OF MEETINGS: Open, except as noted below.

- *Status:* April 29, 2006 Performance Reviews Committee Meeting—Closed. The meeting of the Performance Reviews Committee may be closed to the public pursuant to a vote of the Board of Directors authorizing the Committee to meet in executive session to consider and act on the annual performance review of the Inspector General. The closing will be authorized by the relevant provision(s) of the

Government in the Sunshine Act [5 U.S.C. 552b(c)(6)] and the Legal Services Corporation's corresponding regulation, 45 CFR 1622.5(e). A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

• *Status:* April 29, 2006 Board of Directors Meeting—Open, except that a portion of the meeting of the Board of Directors may be closed to the public pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Board will consider and may act on the General Counsel's report on litigation to which the Corporation is or may become a party, discuss internal procedures with and receive briefings on investigations from the IG,¹ and consider and may act on the report of the Annual Performance Reviews Committee on the performance review of the Corporation's President and IG. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(10), 552b(c)(2) and 552b(c)(6)] and LSC's implementing regulation 45 CFR 1622.5(h), 1622.5(a) and 1622.5(e). A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Friday, April 28, 2006.

Provisions Committee

Agenda

Open Session

1. Approval of agenda
2. Approval of the Committee's meeting minutes of January 27, 2006
3. Staff report on LSC's PAI strategy development
4. Panel discussion on Private Attorney Involvement in LSC-funded programs Moderator: Karen Sarjeant, LSC Vice President for Programs and Compliance

• The panel will continue the discussion of private attorney involvement efforts and the opportunities and challenges encountered by legal services offices in effectively utilizing private attorneys in their legal services delivery to eligible clients. Panelists will share their experiences in using Judicare and pro bono models with smaller firms and solo practitioners to deliver legal

¹ Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR 1622.2 & 1622.3.

services in urban and rural service areas. There will be a discussion about the various approaches and models used, and identification of some of the issues, challenges and opportunities of participating in various private attorney involvement models. Panelists will share their thoughts on what can be done to better facilitate and encourage private attorney involvement in LSC-funded programs.

- Panel Members:
 - Daniel K. Glazier—Executive Director, Legal Services of Eastern Missouri, St. Louis, Missouri
 - Sara E. Strattan—Executive Director, Community Legal Aid Services, Akron, Ohio
 - Adam Burkemper—Burkemper Law Firm LLC, St. Louis, Missouri
 - Thomas Glick—Glick Finley LLC, St. Louis, Missouri
- 5. Status report by Sarah Singleton, Chairman of the ABA Task Force revising the ABA Standards for Providers of Civil Legal Services to the Poor, on the current status of the revisions
- 6. Staff update on revision of LSC Performance Criteria
- 7. Staff update on LSC Leadership Mentoring Pilot Project
- 8. Public comment
- 9. Consider and act on other business
- 10. Consider and act on adjournment of meeting

Operations & Regulations Committee

Agenda

Open Session

1. Approval of agenda
2. Approval of the Open Session minutes of the Committee's January 27, 2006 meeting
3. Approval of the Closed Session minutes of the Committee's January 28, 2006 meeting
4. Consider and act on Draft Notice of Proposed Rulemaking to revise 45 CFR Part 1624, Prohibition Against Discrimination on the Basis of Handicap
 - a. Staff report
 - b. Public comment
5. Consider and act on rulemaking to revise 45 CFR part 1621, Client Grievance Procedure
 - a. Staff report
 - b. Public comment
6. Consideration of other regulations to review
7. Staff report on dormant class action cases
8. Consider and act on other business
9. Other public comment
10. Consider and act on adjournment of meeting

Saturday, April 29, 2006.

Performance Reviews Committee

Agenda

Closed Session

1. Approval of agenda
2. Consider and act on annual performance review of LSC Inspector General
 - Meet with Kirt West
3. Consider and act on other business
4. Consider and act on adjournment of meeting

Finance Committee

Agenda

Open Session

1. Approval of agenda
2. Approval of the minutes of the Committee's meeting of January 27, 2006
3. Presentation by the Inspector General of the Fiscal Year 2005 Annual Financial Audit
4. Presentation on LSC's Financial Reports for the first six months of FY 2006
5. Consider and act on revisions to the Consolidated Operating Budget for FY 2006 and recommend Resolution 2006–006 to the full Board
6. Report on FY 2007 appropriations process
7. Consider and act on change of address notification to Diversified Investment Advisers and recommend Resolution 2006–007 to the full Board
8. Consider and act on other business
9. Public comment
10. Consider and act on adjournment of meeting

Board of Directors

Agenda

Open Session

1. Approval of agenda
2. Approval of minutes of the Board's meeting of January 28, 2006
3. Approval of minutes of the Executive Session of the Board's meeting of January 28, 2006
4. Chairman's Report
5. Consider and act on Resolution 2006–004 recognizing Board service of Florentino "Lico" Subia
6. Consider and act on Resolution 2006–005 recognizing Board service of Ernestine Watlington
7. Members' Reports
8. President's Report
9. Inspector General's Report
10. Consider and act on the report of the Committee on Provision for the Delivery of Legal Services
11. Consider and act on the report of the Finance Committee

12. Consider and act on the report of the Operations & Regulations Committee
13. Consider and act on Board's meeting schedule for calendar year 2007
14. Consider and act on other business
15. Public comment
16. Consider and act on whether to authorize an executive session of the Board to address items listed below under Closed Session

Closed Session

17. Consider and act on the report of the Performance Reviews Committee
18. Consider and act on General Counsel's report on potential and pending litigation involving LSC
19. IG briefing on improvements in corporate governance
20. IG briefing on congressional investigation
21. IG briefing on other investigations
22. Discussion of internal procedures with OIG
23. Consider and act on motion to adjourn meeting

CONTACT PERSON FOR INFORMATION:

Patricia D. Batie, Manager of Board Operations, at (202) 295-1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295-1500.

Dated: April 19, 2006.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 06-3888 Filed 4-20-06; 9:04 am]

BILLING CODE 7050-01-P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 30-2

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 30-2, Annuitant's Report of Earned Income, is used annually to determine if disability retirees under age 60 have earned

income which will result in the termination of their annuity benefits.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

We estimate 21,000 RI 30-2 forms are completed annually. The RI 30-2 takes approximately 35 minutes to complete for an estimated annual burden of 12,250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or via E-mail to MaryBeth.Smith-Toomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415-3540.

For Information Regarding Administrative Coordination Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606-0623.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. 06-3824 Filed 4-21-06; 8:45 am]

BILLING CODE 6325-38-P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Existing Information Collection: SF 2803 and SF 3108

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to

the Office of Management and Budget (OMB) a request for review of an existing information collection. SF 2803, Application to Make Deposit or Redeposit (CSRS), and SF 3108, Application to Make Service Credit Payment for Civilian Service (FERS), are applications to make payment used by persons who are eligible to pay for Federal service which was not subject to retirement deductions and/or for Federal service which was subject to retirement deductions which were subsequently refunded to the applicant.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

In addition to the current Federal employees who will use these forms, we expect to receive approximately 75 filings of each form from former Federal employees per year. This gives us a total of 150 filings. Each form takes approximately 30 minutes to complete. The annual burden is 75 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or via E-mail to MaryBeth.Smith-Toomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415-3540.

For Information Regarding Administrative Coordination Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606-0623.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. 06-3825 Filed 4-21-06; 8:45 am]

BILLING CODE 6325-38-P

**OFFICE OF PERSONNEL
MANAGEMENT****Proposed Collection; Comment
Request for Review of a Revised
Information Collection: RI 30-9****AGENCY:** Office of Personnel
Management.**ACTION:** Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 30-9, Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, informs former disability annuitants of their right to request restoration under title 5, U.S.C. 8337. It also specifies the conditions to be met and the documentation required for a person to request reinstatement.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 200 forms are completed annually. The form takes approximately 60 minutes to respond, including a medical examination. The annual estimated burden is 200 hours. Burden may vary depending on the time required for a medical examination. For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or via E-mail to MaryBeth.Smith-Toomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415-3540.

*For Information Regarding
Administrative Coordination Contact:*
Cyrus S. Benson, Team Leader,

Publications Team, RIS Support Services/Support Group, (202) 606-0623.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. 06-3826 Filed 4-21-06; 8:45 am]

BILLING CODE 6325-38-P

**OFFICE OF PERSONNEL
MANAGEMENT****Proposed Collection; Comment
Request for Review of an Existing
Information Collection: RI 25-15****AGENCY:** Office of Personnel
Management.**ACTION:** Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995 and 5 CFR 1320), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of an existing information collection. RI 25-15, Notice of Change in Student's Status, is used to collect sufficient information from adult children of deceased Federal employees or annuitants to assure that the child continues to be eligible for payments from OPM.

Comments are particularly invited on:

- Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;
- Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and
- Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

Approximately 2,500 certifications are processed annually. We estimate that each form takes approximately 20 minutes to complete. The annual estimated burden is 835 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or E-mail to MaryBeth.Smith-Toomey@opm.gov. Please include your mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to Pamela S. Israel, Chief, Operations

Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415-3540.

*For Information Regarding
Administrative Coordination Contact:*

Cyrus S. Benson, Team Leader,
Publications Team, RIS Support
Services/Support Group, (202) 606-0623.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. 06-3827 Filed 4-21-06; 8:45 am]

BILLING CODE 6325-38-P

**SECURITIES AND EXCHANGE
COMMISSION**

[Release No. IC-27290; 812-13012]

**Bridgeway Funds, Inc., et al.; Notice of
Application**

April 18, 2006.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under (i) section 6(c) of the Investment Company Act of 1940 (the "Act") granting an exemption from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

Summary of Application: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

Applicants: Bridgeway Funds Inc. ("Bridgeway") and Bridgeway Capital Management, Inc. (the "Adviser").

Filing Dates: The application was filed on August 28, 2003, and amended on April 12, 2006.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 15, 2006 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the

reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicants, 5615 Kirby Drive, Ste 518, Houston, TX 77005-2448.

FOR FURTHER INFORMATION CONTACT: John Yoder, Senior Counsel, at (202) 551-6878, or Mary Kay Frech, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549-0102 (telephone (202) 551-5850).

Applicants' Representations

Bridgeway is organized as a Maryland corporation and is registered under the Act as an open-end management investment company.¹ Bridgeway is comprised of multiple series (each a "Fund", and together the "Funds"). The Adviser is registered under the Investment Advisers Act of 1940 and serves as investment adviser to the Funds.

2. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments. Other Funds may need to borrow money from the same or similar banks or other entities for temporary purposes to satisfy redemption requests, to cover unanticipated cash shortfalls such as a trade "fail" in which cash payment for a security sold by a Fund has been delayed, or for other temporary purposes.

3. If the Funds were to borrow money from banks, the Funds would pay interest on the borrowed cash at a rate that would be higher than the rate that would be earned by them on repurchase agreements and other short-term

instruments of the same maturity as the bank loan. Applicants state that this differential represents the profit the banks would earn for serving as a middleman between a borrower and lender.

4. Applicants request an order that would permit the Funds to enter into interfund lending agreements ("Interfund Lending Agreements") under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility ("Interfund Loan"). Applicants believe that the credit facility would reduce the Funds' borrowing costs and enhance their ability to earn higher interest rates on short-term investments. Although the credit facility would reduce the Funds' need to borrow from banks, the Funds would be free to establish new lines of credit or other borrowing arrangements with banks.

5. Applicants anticipate that the credit facility would provide a borrowing Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed expected volumes and certain Funds have insufficient cash to satisfy such redemptions. When a Fund liquidates portfolio securities to meet redemption requests, it often does not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities fails due to circumstances beyond a Fund's control, such as a delay in the delivery of cash to a Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if a Fund has undertaken to purchase securities using the proceeds from the securities sold. Under such circumstances, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

7. While bank borrowings could supply needed cash to cover unanticipated redemptions and sales fails, under the proposed credit facility

a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to the Funds on any Interfund Loan ("Interfund Loan Rate") would be the average of the "Repo Rate" and the "Bank Loan Rate," both as defined below. The Repo Rate for any day would be the highest rate available to the Funds from investing in overnight repurchase agreements. The Bank Loan Rate for any day would be calculated by the Credit Facility Team (as defined below) each day an Interfund Loan is made according to a formula established by a Fund's board of directors ("Board") designed to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (e.g., Federal funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. The Board of each Fund would periodically review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of the Board.

9. The credit facility would be administered by a representative of Bridgeway's accounting department, an investment professional within the Adviser ("Portfolio Manager"), and the compliance officer for Bridgeway (collectively, the "Credit Facility Team"). Under the proposed credit facility, the portfolio managers for each participating Fund could provide standing instructions to participate daily as a borrower or lender. On each business day, the Credit Facility Team would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodian. Once it determined the aggregate amount of cash available for loans and borrowing demand, the Credit Facility Team would allocate loans among borrowing Funds without any further communication from portfolio managers (other than the Portfolio Manager as a member of the Credit Facility Team). Applicants expect far more available uninvested cash each day than borrowing demand. All

¹ Applicants request that the relief apply to any other existing or future registered open-end management investment company or series thereof that is advised by the Adviser or any person controlling, controlled by, or under common control with the Adviser or its successors (included in the term "Funds"). The term "successor" is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization. All existing Funds that currently intend to rely on the requested order have been named as applicants. Any other existing or future Fund that relies on the order in the future will comply with the terms and conditions of the application.

allocations would require approval of at least one member of the Credit Facility Team who is not the Portfolio Manager. After the Credit Facility Team has allocated cash for Interfund Loans, the Credit Facility Team would invest any remaining cash in accordance with the standing instructions of portfolio managers or return remaining amounts to the Funds.

10. The Credit Facility Team would allocate borrowing demand and cash available for lending among the Funds on what the Credit Facility Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund's Board, including a majority of trustees who are not "interested persons" of the Fund, as defined in section 2(a)(19) of the Act ("Independent Directors"), to ensure that both borrowing and lending Funds participate on an equitable basis.

11. The Credit Facility Team would (a) monitor the interest rates charged and other terms and conditions of the Interfund Loans; (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations; (c) ensure equitable treatment of each Fund; and (d) make quarterly reports to the Board concerning any transactions by the Funds under the credit facility and the Interfund Loan Rate charged.

12. The Adviser, through the Credit Facility Team, would administer the credit facility as a disinterested fiduciary, and would receive no additional fee for its services. The Adviser may collect standard recordkeeping, bookkeeping and accounting fees associated with the transfer of cash and/or securities in connection with repurchase and lending transactions generally, including transactions effected through the credit facility. Fees for these services would be no higher than those applicable for comparable bank loan transactions.

13. No Fund may participate in the credit facility unless: (a) The Fund has obtained shareholder approval for its participation, if such approval is required by law; (b) the Fund has fully disclosed all material information

concerning the credit facility in its prospectus and/or statement of additional information ("SAI"); and (c) the Fund's participation in the credit facility is consistent with its investment policies, limitations, and organizational documents.

14. In connection with the credit facility, applicants request an order under (a) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(f) of the Act granting relief from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (d) under section 17(d) and rule 17d-1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having the Adviser as their common investment advisor and/or by reason of having common officers and/or directors.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a party with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company

from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such party and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because: (a) The Adviser through the Credit Facility Team would administer the program as a disinterested fiduciary; (b) all Interfund Loans would consist only of uninvested cash reserves that the Funds otherwise would invest in short-term repurchase agreements or other short-term instruments; (c) the Interfund Loans would not involve a greater risk than such other investments; (d) the lending Fund would receive interest at a rate higher than it could obtain through such other investments; and (e) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(f) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1)(f) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid imposing on investors additional and duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses.

Applicants note that there will be no duplicative costs or fees to the Funds or shareholders, and that the Adviser will receive no additional compensation for its services in administering the credit facility through the Credit Facility Team. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all of the participating Funds and their shareholders.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" includes any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d-1 generally prohibit any affiliated person of a registered investment company, or affiliated persons of an affiliated person, when acting as principal, from effecting any joint transactions in which the company participates unless the transaction is approved by the Commission. Rule 17d-1 provides that in passing upon applications filed under the rule, the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies, and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns

on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms that are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Interfund Loan Rate to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Credit Facility Team will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Repo Rate, and, if applicable, the yield of any money market fund in which the lending Fund could otherwise invest and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan; (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral; (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days); and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowing from all sources immediately after the interfund borrowing total 10% or less than its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an

equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total borrowings immediately after the interfund borrowing would be more than 33 $\frac{1}{3}$ % of its total assets or its maximum borrowing limit set forth in the Fund's investment restrictions, whichever is less.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (a) repay all its outstanding Interfund Loans; (b) reduce its outstanding indebtedness to 10% or less of its total assets; or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend to another Fund through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 15% of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to

receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

10. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

11. The Credit Facility Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate Interfund Loans on an equitable basis among the Funds without the intervention of any portfolio manager of the Funds (other than the Portfolio Manager acting in his or her capacity as a member of the Credit Facility Team). All allocations will require approval of at least one member of the Credit Facility Team who is not the Portfolio Manager. The Credit Facility Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers (except to the extent that the Portfolio Manager has access to loan demand data in his or her capacity as a member of the Credit Facility Team). The Credit Facility Team will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds.

12. The Credit Facility Team will monitor the Interfund Loan Rate charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Board concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit under the facility.

13. The Board of each Fund, including a majority of the Independent Directors: (a) Will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

14. In the event an Interfund Loan is not paid according to its terms and the

default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, the Credit Facility Team will promptly refer the loan for arbitration to an independent arbitrator selected by the Board of any Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.² The arbitrator will resolve any problems promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Board setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

15. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity and rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, the yield on any money market fund in which the lending Fund could otherwise invest and such other information presented to the Fund's Board in connection with the review required by conditions 12 and 13.

16. The Credit Facility Team will prepare and submit to the Board for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of operations of the credit facility, the Credit Facility Team will report on the operations of the credit facility at the quarterly meetings of each Fund's Board. In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates the Credit Facility Team's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report will be prepared in accordance with the Statements on Standards for Attestation Engagements No. 10 and it shall be filed pursuant to Item 77Q3 of Form N-SAR, as such statements or form may be revised, amended, or superseded from time to time. In particular, the report

² If a dispute involves Funds with separate Boards, the respective Boards will agree on an independent arbitrator that is satisfactory to each Fund.

shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate and, if applicable, the yield of the money market funds, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board; and (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan. After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N-SAR.

17. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless all material facts about its intended participation are fully disclosed in the Fund's SAI.

18. A Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days.

19. The Board of each Fund will satisfy the fund governance standards as defined in rule 0-1(a)(7) under the Act by the compliance date for the rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,
Secretary.

[FR Doc. E6-6068 Filed 4-21-06; 8:45 am]
BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53657; File No. SR-Amex-2006-32]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Commentary .10 to Amex Rule 958 and Commentary .09 to Amex Rule 958-ANTE

April 14, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 11, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. Amex filed this proposal pursuant to section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder⁴ as non-controversial, and therefore the proposed rule change is effective immediately upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise Commentary .10 of Amex Rule 958 and Commentary .09 to Amex Rule 958-ANTE. The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, the Office of the Secretary, the Amex, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to provide that transactions on the Exchange floor in Partnership Units ("Units") pursuant to Amex Rule 1500 *et seq.* are subject to Commentary .10 of Amex Rule 958 and Commentary .09 to Amex Rule 958-ANTE ("Commentaries"). Currently, the Commentaries provide that transactions in index warrants, currency warrants, securities listed pursuant to section 107 of the Amex Guide, trust issued receipts

listed pursuant to Amex Rules 1200 *et seq.* ("Trust Issued Receipts"), and derivative products are subject to Amex Rules 958 and 958-ANTE. A "derivative product" is defined in Article I, section 3(d) of the Amex Constitution to include, in addition to standardized options, securities which are issued by the Options Clearing Corporation or another limited purpose entity or trust, and which are based solely on the performance of an index or portfolio of other publicly traded securities. A derivative product does not include warrants of any type or closed-end management investment companies. Portfolio Depository Receipts or Index Fund Shares are derivative products consistent with Article I, section 3(d) of the Amex Constitution.

The Commentaries further provide that these transactions may only be effected by registered traders ("Registered Traders") who are regular members of the Exchange. A Registered Trader who is logged onto Auto-Ex may only sign onto Auto-Ex for Portfolio Depository Receipts, Index Fund Shares, and Trust Issued Receipts (collectively "ETFs") traded on the same or contiguous panels, *i.e.*, ETFs traded by two adjoining Specialists or ETFs traded by the same Specialist for a maximum of three panels. Amex also proposes to include Units as an ETF for the purposes of this contiguous panel requirement. The Exchange solely seeks to provide clarity akin to the trading of ETFs. As a result, the Exchange proposes that Registered Traders may participate in the trading of Units consistent with the Commentaries.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,⁵ in general, and furthers the objectives of section 6(b)(5) of the Act,⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become immediately effective pursuant to section 19(b)(3)(A)⁷ of the Act and Rule 19b-4(f)(6)⁸ thereunder because: (i) It does not significantly affect the protection of investors or the public interest; (ii) it does not impose any significant burden on competition; and (iii) by its terms, it does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

Amex has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay of the proposal. The Commission believes that the waiver of the 5-day pre-filing requirement and the 30-day operative delay is consistent with the protection of investors and the public interest, because the waiver would allow Amex to immediately implement trading rules governing Units listed pursuant to Amex Rule 1500 *et seq.* that are identical to the trading rules for other ETFs traded on the Exchange. For this reason, the Commission designates the proposal effective and operative upon filing with the Commission.⁹

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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-2006-32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File No. SR-Amex-2006-32. 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 changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of 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 No. SR-Amex-2006-32 and should be submitted on or before May 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Nancy M. Morris,
Secretary.

[FR Doc. E6-6039 Filed 4-21-06; 8:45 am]

BILLING CODE 8010-01-P

¹⁰ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53656; File No. SR-Amex-2006-04]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto Relating to Procedures for Denying Initial and Continued Listing

April 14, 2006.

I. Introduction

On January 23, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposal to add new section 127 and amend sections 101, 401, 402, 710, 1002, and 1009 of the Amex Company Guide which the Exchange states will increase the transparency of the process associated with staff determinations to deny the initial or continued listing of a company's securities on the Amex. On February 22, 2006, Amex filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on March 13, 2006.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to add new section 127 and amend sections 101 and 1002 of the Amex Company Guide to clarify the circumstances in which the Exchange can use its discretionary authority to deny initial or continued listing to a company which raises public interest or other qualitative concerns about its condition or business. The proposed rule would specify that the Exchange has authority to deny initial listing to an applicant, impose additional or more stringent criteria on initial or continued listing of a company's securities, or delist a company's securities where there has been: (i) A history of regulatory misconduct; (ii) filing for protection under any provision of the federal bankruptcy laws or comparable foreign laws; (iii) issuance of a disclaimer opinion on financial statements required to be audited; (iv) failure to

provide required certification with the financial statements of the listed company or applicant; or (v) a determination that the listed company or applicant entity has violated or evaded applicable corporate governance standards.

Proposed section 127 of the Amex Company Guide would explain the factors used by the Exchange in evaluating whether the regulatory misconduct of an individual associated with a company should be used as a basis to deny initial or continued listing; explain the remedial measures that may serve to mitigate public interest concerns; and state that sections 101 and 1002 of the Amex Company Guide do not provide a basis for the Exchange to grant exemptions or exceptions from the enumerated initial or continued listing criteria.

The proposal also amends sections 402 and 1009 of the Amex Company Guide to conform the Amex disclosure time frames to those mandated by the Commission for current reports filed on Form 8-K by reducing to four business days the time within which a listed company must publicly disclose that the Exchange has given it written notice that it is noncompliant with one or more of the continued listing standards. The proposed amendments would also extend the disclosure obligations applicable to a company that receives a written delisting notice to include a company that receives a written notice of noncompliance with a continued listing requirement, which may be in the form of a Warning Letter or a Deficiency Letter.

In addition, the Amex proposes certain clarifying amendments to section 710 of the Amex Company Guide to provide that an exception to the shareholder approval requirements may be made upon application to the Exchange when (i) the delay in securing shareholder approval would seriously jeopardize the financial viability of the enterprise; and (ii) reliance by the company on the exception is expressly approved by the audit committee of the company's board of directors or a comparable body of the board of directors. The Exchange proposes to add that the comparable body of the board of directors, which may approve a company's reliance on the financial viability exception, must be comprised solely of independent and disinterested directors. The Exchange also proposes to prohibit a company from issuing, or authorizing its transfer agent or registrar to issue or register the securities subject to the shareholder approval requirements, until it has received written notification from the Exchange

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 53403 (March 2, 2006), 71 FR 12736.

that the financial viability exception has been granted, and the securities have been approved for listing. In addition, the Exchange proposes to require a company that receives the financial viability exception to issue a press release ten days before issuance of the subject securities, in addition to the notice to shareholders that is currently required by Exchange rules.

Further, the Exchange proposes to update its disclosure policies by amending sections 402 and 1009 of the Amex Company Guide and to make minor, technical changes to section 401 of the Amex Company Guide.

III. Discussion

After careful consideration of the amended proposal and consideration of the comment letters, 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 exchange⁴ and, in particular, the requirements of section 6 of the Act.⁵ Specifically, as discussed in detail below, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,⁶ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 6(b)(5) of the Act⁷ also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

The Commission believes that the proposal to set forth the factors used by the Exchange in evaluating the regulatory conduct and corporate governance of a company clarifies the Exchange rules and provides greater transparency to listed companies and applicants about the criteria and evaluation methods that the Exchange employs in its broad discretionary

authority to deny initial or continued listing to a company.⁸

The Commission believes that the proposal to update the Exchange's disclosure policies may provide increased investor protection by conforming the disclosure time frames with existing federal securities laws and requiring increased disclosure, such as when the company relies on the financial viability exception or when it receives a Warning Letter or a Deficiency Letter. The Commission also believes that the proposal to amend shareholder approval requirements may provide increased investor protection by requiring companies, when relying on the financial viability exception, to obtain the approval of independent and disinterested directors and to prohibit the issuance or registration of the securities subject to shareholder approval until companies have received written approval confirmation from the Exchange.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-Amex-2006-04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Nancy M. Morris,
Secretary.

[FR Doc. E6-6040 Filed 4-21-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53666; File No. SR-Amex-2005-107]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 To Amend Exchange Delisting Rules To Conform to Recent Amendments to Commission Rules Regarding Removal From Listing and Withdrawal From Registration

April 17, 2006.

I. Introduction

On October 24, 2005, the American Stock Exchange LLC ("Amex" or

"Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange delisting rules to conform to recent amendments to Commission rules regarding removal from listing and withdrawal from registration. On October 27, 2005, Amex filed Amendment No. 1 to the proposed rule change.³ On February 1, 2006, Amex filed Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as amended, was published for comment in the **Federal Register** on March 13, 2006.⁵ No comments were received regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

Section 12 of the Act⁶ and Rule 12d2-2 thereunder⁷ ("SEC Rule 12d2-2") govern the process for the delisting and deregistration of securities listed on national securities exchanges. Recent amendments to SEC Rule 12d2-2 ("amended SEC Rule 12d2-2") and other Commission rules require the electronic filing of revised Form 25 on the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system by exchanges and issuers for all delistings, other than delistings of standardized options and securities futures, which are exempted.⁸

The Amex proposes to revise Amex Rule 18 and sections 1010, 1011, 1201, 1202, 1203, 1204, 1205 and 1206 of the Amex Company Guide with respect to delisting procedural requirements as mandated by recent amendments to SEC Rule 12d2-2.

In the case of exchange-initiated delistings, amended SEC Rule 12d2-2(b) states that a national securities exchange may file an application on Form 25 to strike a class of securities from listing and/or withdraw the registration of such securities, in accordance with its rules,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced the original proposed rule change in its entirety.

⁴ In Amendment No. 2, Amex added footnotes to the Form 19b-4 and Exhibit 1 that reference appropriate sections of the Amex Company Guide; made grammatical corrections to the proposed rule text regarding the final effective date of the old Amex rules; and clarified the circumstances under which the Exchange is authorized to file a Form 25 for certain corporate actions.

⁵ See Securities Exchange Act Release No. 53398 (March 2, 2006), 71 FR 12738.

⁶ 15 U.S.C. 78l.

⁷ 17 CFR 240.12d2-2.

⁸ See Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

⁷ *Id.*

⁸ The Commission notes that this proposed rule change is substantially similar to a proposal submitted by the National Association of Securities Dealers, Inc. and approved by the Commission. See Securities Exchange Act Release No. 52342 (August 26, 2005), 70 FR 52456 (September 2, 2005) (SR-NASD-2004-125).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

if the rules of such exchange, at a minimum, provide for:⁹

(i) Notice to the issuer of the exchange's decision to delist its securities;

(ii) An opportunity for appeal to the exchange's board of directors, or to a committee designated by the board; and

(iii) Public notice of the national securities exchange's final determination to remove the security from listing and/or registration, by issuing a press release and posting notice on its Web site. Public notice must be disseminated no fewer than 10 days before the delisting becomes effective pursuant to amended SEC Rule 12d2-2(d)(1), and must remain posted on its Web site until the delisting is effective.

With respect to the above requirements set forth in amended SEC Rule 12d2-2(b), Amex rules currently provide the requisite issuer notice as well as an opportunity for appeal to a committee designated by the Board.¹⁰ Amex rules do not currently provide for the mandated public notice, and accordingly the Amex is proposing changes to section 1010(c) of the Amex Company Guide to incorporate such public notice as required by the recent amendments to SEC Rule 12d2-2(b). The proposed changes do not impact the Amex's existing authority to suspend trading in an issuer's securities following an adverse panel decision but prior to the filing of a delisting application and/or effective date of a delisting.

In the case of an issuer-initiated delisting, Amex proposes revisions to Amex Rule 18 and section 1010 of the Amex Company Guide, as mandated, to require the issuer to:

(i) Comply with the Exchange's rules for delisting and applicable state laws;

(ii) Submit written notice to the Exchange, no fewer than ten days before filing a Form 25, of its intent to withdraw its security, which notice includes a statement of all material facts relating to the reasons for filing the application (effectively, this notice to the Exchange will be provided at least 20 days before the delisting becomes effective); and

(iii) Issue public notice of its intent to delist via a press release, and, if it has a publicly available Web site, by posting the notice on that Web site,

⁹ See also Form 8-K (Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing), which sets forth disclosure requirements for issuers that do not satisfy listing standards.

¹⁰ See Amex Company Guide, Section 1202 (Written Notice of Staff Determination) and section 1203 (Request for Hearing).

contemporaneously with providing written notice to the exchange and keeping it posted until the delisting is effective.

In addition, changes are proposed to Amex Rule 18 to require that the board of directors (or comparable governing body) of an issuer initiating the delisting of its securities must approve the decision to delist, and that the issuer provide the Exchange with a certified copy of the relevant board resolution prior to filing the Form 25. The issuer must notify the Exchange that it has filed Form 25 with the Commission contemporaneously with such filing.

The Amex also proposes that an issuer seeking to voluntarily apply to withdraw a class of securities from listing on the Exchange that has received notice from the Exchange that it is below the Exchange's continued listing policies and standards, or that is aware that it is below such continued listing policies and standards notwithstanding that it has not received such notice from the Exchange, must disclose that it is no longer eligible for continued listing (including the specific continued listing policies and standards that the issue is below) in: (i) Its statement of all material facts relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by amended SEC Rule 12d2-2(c)(2)(ii) and; (ii) its public press release and Web site notice required by amended SEC Rule 12d2-2(c)(2)(iii).

Further, as required by amended SEC Rule 12d2-2(c)(3), the Amex represents that it will post notice of issuer-initiated delistings on its Web site beginning on the business day following receipt of notice from the issuer, and it will keep the notice posted until the delisting becomes effective. As in the case of an exchange-initiated delisting, the Amex will retain the ability to suspend trading in an issuer's securities, in order to accommodate its transfer to another marketplace, prior to the effective date of the delisting.

Finally, Amex has made changes in its rules to clarify that the Form 25 serves as the application to remove a security from listing and/or registration and to specify that the proposed changes will be effective as of April 24, 2006 as required by amended SEC Rule 12d2-2.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

exchange¹¹ and, in particular, the requirements of section 6 of the Act.¹² Specifically, as discussed below, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,¹³ which requires, in part, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Further, as noted in more detail below, the changes being adopted by Amex meet the requirements of amended SEC Rule 12d2-2.

A. Exchange Delisting

Amended SEC Rule 12d2-2(b) states that a national securities exchange may file an application on Form 25 to strike a class of securities from listing and/or withdraw the registration of such securities, in accordance with its rules, if the rules of such exchange, at a minimum, provide for notice to the issuer of the exchange's decision to delist, opportunity for appeal, and public notice of the exchange's final determination to delist. The Commission believes that Amex's current rules and proposal comply with the dictates of amended SEC Rule 12d2-2(b).

Amex rules currently provide the requisite issuer notice as well as an opportunity for appeal to a committee designated by the Board.¹⁴ Specifically, issuers may appeal staff delisting determinations to panel of at least two members of the Committee on Securities, which is a board-appointed committee.¹⁵ Adverse panel decisions may be appealed to the Committee on Securities.¹⁶ In addition, the Board may in its discretion call any Committee on Securities decision for review.¹⁷ In addition, the proposed rule change will provide for public notice of the Exchange's final determination to

¹¹ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See *supra* note 10.

¹⁵ See Amex Company Guide, section 1204 (The Listing Qualifications Panel).

¹⁶ See Amex Company Guide, section 1205 (Review by the Amex Committee on Securities).

¹⁷ See Amex Company Guide, section 1206 (Discretionary Review by Amex Board).

remove the security from listing and/or registration. The Commission notes that the proposed changes do not impact the Amex's existing authority to suspend trading in an issuer's securities following an adverse panel decision but prior to the filing of a delisting application and/or effective date of a delisting.

B. Issuer Voluntary Delisting

In the case of an issuer-initiated delisting, Amex is proposing revisions to Amex Rule 18 and section 1010 of the Amex Company Guide, as mandated, to require the issuer to:

(i) Comply with the Exchange's rules for delisting and applicable state laws;

(ii) Submit written notice to the Exchange, no fewer than ten days before filing a Form 25, of its intent to withdraw its security, which notice includes a statement of all material facts relating to the reasons for filing the application (effectively, this notice to the Exchange will be provided at least 20 days before the delisting becomes effective); and

(iii) Issue public notice of its intent to delist via a press release, and, if it has a publicly available Web site, by posting the notice on that Web site, contemporaneously with providing written notice to the exchange and keeping it posted until the delisting is effective.

The Commission believes that the amendments will fully inform issuers of the requirements for voluntary delisting of their securities under Amex rules and federal securities laws.

The proposal also sets forth a new requirement not in amended SEC Rule 12d2-2 that would require the issuer to notify the Exchange that it has filed Form 25 with the Commission contemporaneously with such filing. This requirement will allow the Exchange to be fully informed of the actual filing of a Form 25 and prepare to take timely action in accordance with the filing of the Form.

In addition, Amex has proposed a new requirement that the board of directors (or comparable governing body) of an issuer initiating the delisting of its securities must approve the decision to delist and that the issuer provide the Exchange with a certified copy of the relevant board resolution. The Commission believes that these requirements may help ensure that the decision to delist a security voluntarily has been well-considered by the issuer's board.

Amex also proposes that an issuer seeking to voluntarily apply to withdraw a class of securities from listing on the Exchange that has

received notice from the Exchange that it is below the Exchange's continued listing policies and standards, or that is aware that it is below such continued listing policies and standards notwithstanding that it has not received such notice from the Exchange, must disclose that it is no longer eligible for continued listing (including the specific continued listing policies and standards that the issue is below) in: (i) Its statement of all material facts relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by amended SEC Rule 12d2-2(c)(2)(ii) and; (ii) its public press release and Web site notice required by amended SEC Rule 12d2-2(c)(2)(iii). The Commission believes that this requirement will allow shareholders to be informed and aware that the issuer has failed to meet Exchange listing standards and is voluntarily delisting. Issuers will therefore not be permitted to delist voluntarily without public disclosure of their noncompliance with Exchange listing standards.

The Commission notes that Amex represents that it will, as required by the revised Commission rules, post notice of issuer-initiated delistings on its Web site beginning on the business day following receipt of notice from the issuer, and it will keep the notice posted until the delisting becomes effective. The Commission also notes that, as in the case of an exchange-initiated delisting, the Amex will retain the ability to suspend trading in an issuer's securities, in order to accommodate its transfer to another marketplace, prior to the effective date of the delisting.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁸ that the proposed rule change (File No. SR-Amex-2005-107), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Nancy M. Morris,
Secretary.

[FR Doc. E6-6078 Filed 4-21-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53665; File No. SR-CBOE-2005-87]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 To Amend Exchange Delisting Rules to Conform to Recent Amendments to Commission Rules Regarding Removal From Listing and Withdrawal From Registration

April 17, 2006.

I. Introduction

On October 21, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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 amend Exchange delisting rules to conform to recent amendments to Commission rules regarding removal from listing and withdrawal from registration. On December 14, 2005, CBOE filed Amendment No. 1 to the proposed rule change.³ On February 24, 2006, CBOE filed Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as amended, was published for comment in the **Federal Register** on March 13, 2006.⁵ No comments were received regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

Section 12 of the Act⁶ and SEC Rule 12d2-2 govern the process for the delisting and deregistration of securities listed on national securities exchanges. Recent amendments to SEC Rule 12d2-2 ("amended SEC Rule 12d2-2") and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced the original proposed rule change in its entirety.

⁴ In Amendment No. 2, CBOE amended CBOE Rule 31.94(G)(h) to state that in appropriate circumstances, when the Exchange is considering delisting because a company no longer meets the requirements for continued listing, a company may, with the consent of the Exchange, file a Form 25 with the SEC, provided that it follows the requirements set forth in SEC Rule 12d2-2(c) and discloses that it is no longer eligible for continued listing on the Exchange in its written notice to the Exchange and public press release, and if it has a publicly accessible Web site, posts such notice on that Web site.

⁵ See Securities Exchange Act Release No. 53399 (March 2, 2006), 71 FR 12749.

⁶ 15 U.S.C. 78l.

¹⁸ *Id.*

¹⁹ 17 CFR 200.30-3(a)(12).

other Commission rules require the electronic filing of revised Form 257 on the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system by exchanges and issuers for all delistings, other than delistings of standardized options and securities futures, which are exempted.⁸

In the case of exchange-initiated delistings, amended SEC Rule 12d2-2(b) states that a national securities exchange may file an application on Form 25 to strike a class of securities from listing and/or withdraw the registration of such securities, in accordance with its rules, if the rules of such exchange, at a minimum, provide for:

(i) Notice to the issuer of the exchange's decision to delist its securities;

(ii) An opportunity for appeal to the exchange's board of directors, or to a committee designated by the board; and

(iii) Public notice of the national securities exchange's final determination to remove the security from listing and/or registration, by issuing a press release and posting notice on its Web site. Public notice must be disseminated no fewer than 10 days before the delisting becomes effective pursuant to amended SEC Rule 12d2-2(d)(1), and must remain posted on its Web site until the delisting is effective.

CBOE Chapter 31 sets forth the Exchange's non-option securities listing rules. The Exchange proposes to revise CBOE Rule 31.94(G) to incorporate the new requirements set forth in amended SEC Rule 12d2-2(b). The provisions set forth in current CBOE Rule 31.94(G), which provide for notification to the issuer in the event that the Exchange determines to delist the issuer's securities and the right to appeal the Exchange's determination, satisfy the minimum provisions set forth in amended SEC Rule 12d2-2(b), except for the requirement in amended SEC Rule 12d2-2(b)(iii) that requires national securities exchanges to provide public notice of determinations to delist an issuer's securities. Therefore, proposed CBOE Rule 31.94(G)(h) would require the Exchange to provide public notice, in accordance with SEC Rule 12d2-2(b)(iii), of a final determination by the Exchange to strike an issuer's securities from listing and/or withdraw the registration of such securities on the Exchange in all cases other than as provided pursuant to amended SEC Rule 12d2-2(a).

The Exchange also proposes to make clear in proposed Rule 31.94(G) that the issuer is required to notify the Exchange in case it elects to delist its securities from the Exchange, and upon such notification, the Exchange would be required to issue a public notice of such determination. These proposed changes reflect the requirements set forth in amended SEC Rule 12d2-2(c). The proposed rule filing sets forth a requirement in addition to those set forth in amended SEC Rule 12d2-2(c) that would require the issuer to notify the Exchange that it has filed Form 25⁹ with the SEC contemporaneously with such filing.

In addition, CBOE proposes to amend CBOE Rule 31.94(G)(h) to state that in appropriate circumstances, when the Exchange is considering delisting because a company no longer meets the requirements for continued listing, a company may, with the consent of the Exchange, file a Form 25 with the SEC, provided that it follows the requirements set forth in amended SEC Rule 12d2-2(c) and discloses that it is no longer eligible for continued listing on the Exchange in its written notice to the Exchange and public press release, and if it has a publicly accessible Web site, posts such notice on that Web site.¹⁰

Lastly, the Exchange is proposing to make housekeeping changes that relate to references to the Act and certain rules in the Act. The proposed changes, other than the housekeeping changes, will be effective as of April 24, 2006 as required by amended SEC Rule 12d2-2.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange¹¹ and, in particular, the requirements of section 6 of the Act.¹² Specifically, as discussed below, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,¹³ which requires, in part, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information

with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Further, as noted in more detail below, the changes being adopted by CBOE meet the requirements of amended SEC Rule 12d2-2.

A. Exchange Delisting

Amended SEC Rule 12d2-2(b) states that a national securities exchange may file an application on Form 25 to strike a class of securities from listing and/or withdraw the registration of such securities, in accordance with its rules, if the rules of such exchange, at a minimum, provide for notice to the issuer of the exchange's decision to delist, opportunity for appeal, and public notice of the exchange's final determination to delist. The Commission believes that CBOE's current rules and proposal comply with the dictates of amended SEC Rule 12d2-2(b).

CBOE rules currently provide the requisite issuer notice as well as an opportunity for appeal to a committee designated by the Board.¹⁴ Specifically, issuers may appeal staff delisting determinations to an Exchange committee which may be either a standing committee or a committee specially appointed for the purpose and may consist of directors, Exchange officials, members, and/or other persons (not having an interest in the matter) as the Board of Directors shall determine.¹⁵ In addition, the Board may in its discretion authorize the Executive Committee to consider any or all appeals, and in such case the decision of the Executive Committee with respect thereto shall be final and conclusive.¹⁶ Finally, the proposed rule change will provide for public notice of the exchange's final determination to remove the security from listing and/or registration.

B. Issuer Voluntary Delisting

The Exchange proposes to set forth in its Exchange rules the general requirements of amended SEC Rule 12d2-2(c) regarding issuer voluntary delisting. For example, the Exchange proposes to clarify in proposed Rule 31.94(G) that the issuer is required to notify the Exchange in case it elects to delist its securities from the Exchange, and upon such notification, the Exchange would be required to issue a

⁹ 17 CFR 249.25.

¹⁰ See Amendment No. 2, *supra* note 4.

¹¹ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See CBOE Rule 31.94(G)(a)-(g).

¹⁵ See CBOE Rule 31.94(G)(d).

¹⁶ See CBOE Rule 31.94(G)(g).

⁷ 17 CFR 249.25.

⁸ See Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

public notice of such determination. The Commission believes that the proposal will better inform issuers of the requirements for voluntary delisting of their securities under CBOE rules and federal securities laws.

The proposal also sets forth a new requirement not in amended SEC Rule 12d2-2 that would require the issuer to notify the Exchange that it has filed Form 25 with the Commission contemporaneously with such filing. The Commission believes that this requirement will allow the Exchange to be fully informed of the filing of a Form 25 and prepared to take timely action in accordance with the filing of the Form.

In addition, CBOE proposes to amend CBOE Rule 31.94(G)(h) to state that in appropriate circumstances, when the Exchange is considering delisting because a company no longer meets the requirements for continued listing, a company may, with the consent of the Exchange, file a Form 25 with the SEC, provided that it follows the requirements set forth in SEC Rule 12d2-2(c) and discloses that it is no longer eligible for continued listing on the Exchange in its written notice to the Exchange and public press release, and if it has a publicly accessible Web site, posts such notice on that Web site.¹⁷ The Commission believes that this requirement will allow shareholders to be informed and aware that the issuer has failed to meet Exchange listing standards and is voluntarily delisting with the consent of the Exchange. Issuers will therefore not be permitted to delist voluntarily without public disclosure of their noncompliance with Exchange listing standards.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁸ that the proposed rule change (File No. SR-CBOE-2005-87), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Nancy M. Morris,
Secretary.

[FR Doc. E6-6074 Filed 4-21-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53664; File No. SR-CHX-2006-03]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Prohibition of Trade Shredding

April 17, 2006.

I. Introduction

On January 24, 2006, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change relating to trade shredding. The proposed rule change was published for comment in the **Federal Register** on March 16, 2006.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposed to amend its rules to prohibit its participants from breaking customer orders into smaller multiple orders for the primary purpose of maximizing rebates or other payments to the participant without regard for the customer's interest.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,⁴ particularly Section 6(b)(5) of the Act which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.⁵ The Commission

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240. 19b-4.

³ See Securities Exchange Act Release No. 53441 (March 8, 2006), 71 FR 13642.

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

believes that the proposed rule change should help eliminate the distortive practice of trade shredding, and, therefore, promote just and equitable principles of trade.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (File No. SR-CHX-2006-03), be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Nancy M. Morris,
Secretary.

[FR Doc. E6-6070 Filed 4-21-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53671; File Nos. SR-FICC-2006-03 and SR-NSCC-2006-03]

Self-Regulatory Organizations; Fixed Income Clearing Corporation and National Securities Clearing Corporation; Notice of Filing of Proposed Rule Changes To Institute a Clearing Fund Premium Based Upon a Member's Clearing Fund Requirement To Excess Regulatory Capital Ratio

April 18, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 22, 2006, the Fixed Income Clearing Corporation ("FICC") and the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I, II, and III below, which items have been primarily prepared by FICC and NSCC. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

FICC and NSCC are seeking to institute a clearing fund premium on their members based on a member's clearing fund requirement to excess regulatory capital ratio.

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

¹⁷ See Amendment No. 2, *supra* note 4.

¹⁸ *Id.*

¹⁹ 17 CFR 200.30-3(a)(12).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, FICC and NSCC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. FICC and NSCC have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. FICC Clearing Fund Premium

The degree to which the collateral requirement of a clearing agency member compares to the member's excess regulatory capital is an important indicator of the potential risk that the member presents to the clearing agency. In 2002, the Government Securities Clearing Corporation ("GSCC"), the predecessor to the Government Securities Division ("GSD") of FICC, received Commission approval to impose a collateral premium on netting members whose clearing fund requirement exceeds their excess regulatory capital.³ Specifically, the GSD currently imposes a 25 percent collateral premium when a member's ratio of clearing fund requirement to excess net capital, excess liquid capital, excess regulatory capital, or excess adjusted capital is greater than 1.0. The 25 percent premium is applied to the amount by which the member's clearing fund requirement exceeds the member's excess regulatory capital.

In order to more effectively manage the risk posed by a GSD member whose activity causes it to have a clearing fund requirement that is greater than its excess regulatory capital, FICC now proposes to strengthen the above-mentioned risk management tool by applying a clearing fund premium that is equal to the member's ratio of clearing fund requirement to excess regulatory capital in place of the current flat premium of 25 percent.⁴ The premium

would be determined by multiplying: (a) The amount by which a member's clearing fund requirement exceeds its capital by (b) the member's ratio of clearing fund to excess regulatory capital expressed as a percent. This formula would allow the premium to increase or decrease in proportion to changes in the ratio and should allow for risk management that is measured in proportion to the risk presented. For example, if a member has a clearing fund requirement of \$11.4 million and excess net capital of \$10 million, its ratio is 1.14 (or 114 percent), and the applicable collateral premium would be 114 percent of \$1.4 million (*i.e.*, the amount by which the member's clearing fund requirement exceeds its excess net capital) or \$1,596,000. If the same member had a clearing fund requirement of \$20 million, its ratio would be 2.0 (or 200 percent), and the applicable collateral premium would be 200 percent of \$10 million or \$20 million.

Currently, the collateral premium applies to members whose excess regulatory capital is measured as excess net capital, excess liquid capital, or excess adjusted net capital. The proposed rule change seeks to also include excess equity capital as regulatory excess capital so that the premium can be applied to bank and trust company netting members whose capital is measured as equity capital.

The proposed rule change also seeks an additional change to Rule 4 (Clearing Fund, Watch List and Loss Allocation), Section 3 (Watch List) to remove a provision which states that FICC may require a netting member to adjust its trading activity so that its excess regulatory capital ratio decreases to a satisfactory level. This provision was appropriate under the fixed 25 percent premium but no longer would be appropriate because the proposed rule change would impose a variable premium based on activity which would require members to adjust their trading activity or be subject to the higher premium.

2. NSCC Clearing Fund Premium

NSCC is proposing to impose a clearing fund premium on Rule 2 (Members) broker/dealer and bank members whose clearing fund requirement exceeds their regulatory excess capital. NSCC's proposed excess regulatory capital premium would apply to members whose regulatory excess capital is measured as excess net capital or excess equity capital. The excess

regulatory capital premium would be triggered when a member's ratio of clearing fund requirement to excess regulatory capital is greater than 1.0 and would be determined using the same formula as that proposed by FICC. The new premium would be added to NSCC's clearing fund formula in Procedure XV (Clearing Fund Formula and Other Matters).⁵

As a matter of practice, when a FICC or NSCC member's clearing fund requirement to excess regulatory capital ratio is between .50 and 1.0, a warning notification will be issued which will put the member on notice that a collateral premium will be required if the ratio reaches an amount greater than 1.0. When a member's ratio exceeds 1.0, it will be notified on that business day that a collateral premium has been calculated and will be collected.

FICC and NSCC will reserve the right to: (i) Apply a lesser collateral premium (including no premium) based on specific circumstances (such as a member being subject to an unexpected haircut or capital charge that does not fundamentally change its risk profile) and (ii) return all or a portion of the premium amount if it believes that the member's risk profile does not require the maintenance of that amount.

FICC and NSCC believe that the proposed rule changes are consistent with the requirements of Section 17A of the Act⁶ and the rules and regulations thereunder applicable to FICC and NSCC because they should help FICC and NSCC assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible by allowing FICC and NSCC to more effectively manage risk presented by certain members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC and NSCC do not believe that the proposed rule changes would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule changes, and none have been received.

⁵ This premium would not apply to the Canadian Depository for Securities Limited ("CDS") clearing fund requirement that is computed pursuant to Appendix 1 of NSCC's rules.

⁶ 15 U.S.C. 78q-1.

² The Commission has modified the text of the summaries prepared by FICC and NSCC.

³ Securities Exchange Act Release No. 45647 (March 26, 2002), 67 FR 15438 (April 1, 2002) [File No. SR-GSCC-2001-15]. "Excess regulatory capital" for purposes of GSD's collateral premium included excess net capital, excess liquid capital, or excess adjusted capital.

⁴ If FICC imposes this premium on a Netting Member, then it shall be considered included as

part of the netting member's "required fund deposit" as defined in the GSD's rules.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five 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 ninety 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 changes or

(B) institute proceedings to determine whether the proposed rule changes 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 changes are 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 Numbers SR-FICC-2006-03 and SR-NSCC-2006-03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Numbers SR-FICC-2006-03 and SR-NSCC-2006-03. These file numbers 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 offices of FICC and NSCC and on FICC's Web site at <http://www.ficc.com/gov/gov.docs.jsp?NS-query> and on NSCC's Web site at <http://www.nsc.com/legal/>. 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 Numbers SR-FICC-2006-03 and SR-NSCC-2006-03 and should be submitted on or before May 15, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Nancy M. Morris,

Secretary.

[FR Doc. E6-6066 Filed 4-21-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53669; File No. SR-NASD-2006-046]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Technical Amendments to Rule 3080 (Disclosure to Associated Persons When Signing Form U-4)

April 18, 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 April 13, 2006, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD filed the proposed rule change as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act,³ which rendered the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to amend NASD Rule 3080 (Disclosure to Associated Persons When Signing Form U-4) to correct the reference to the name of the Form U4 (Uniform Application for Securities Industry Registration or Transfer) and the location of the predispute arbitration clause in the Form U4. The text of the proposed rule change is available on NASD's Web site, <http://www.nasd.com>, at NASD's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 3080 requires that members disclose to associated persons certain information regarding the nature and process of arbitration proceedings that the associated person agrees to be bound by upon signing a Form U4. The references to the name of the Form and the location of the predispute arbitration clause in the Form are not correct due to prior amendments to the Form.⁴ Accordingly, the proposed rule change will amend NASD Rule 3080 to eliminate the hyphen in the name of the Form U4 and to indicate that the predispute arbitration clause is in Item 5 of section 15A of the Form U4. The effective date and the implementation date of the proposed rule change will be the date of filing.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with section 15A of

⁴ See Securities Exchange Act Release Nos. 48161 (July 10, 2003), 68 FR 42444 (July 17, 2003) (SR-NASD-2003-57) (which, among other things, changed the name of the Form from "U-4" to "U4") and 45531 (March 11, 2002), 67 FR 11735 (March 15, 2002) (SR-NASD-2002-05) (which, among other things, relocated the predispute arbitration clause to a new Section 15A of the Form U4).

the Act,⁵ in general, and section 15A(b)(6)⁶ of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that amending the references in NASD Rule 3080 to the name of the Form and the location of the predispute arbitration clause in the Form will eliminate confusion as to these points.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

NASD has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁸

NASD has requested that the Commission waive the 30-day operative delay period for "non-controversial" proposals and make the proposed rule change effective and operative upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, because the proposed rule change is intended to correct references and cross-references in NASD 3080 which are no longer correct due to the operation of prior rule changes. For this reason, the Commission designates the proposal to

be effective and operative upon filing with the Commission.⁹

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2006-046 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-046. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does

not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2006-046 and should be submitted on or before May 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Nancy M. Morris,
Secretary.

[FR Doc. E6-6076 Filed 4-21-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53663; File No. SR-NSX-2006-05]

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing of Proposed Rule Change To Prohibit Tape Shredding

April 17, 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 April 4, 2006, National Stock ExchangeSM ("NSX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to add an interpretation to Rule 3.1, which identifies the splitting of any order into multiple smaller orders ("tape shredding") for any purpose other than best execution as contrary to the high standards of commercial honor and just and equitable principles of trade. The text of the proposed rule change is below. Proposed new language is *in italic*.

RULES OF NATIONAL STOCK EXCHANGE

* * * * *

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

CHAPTER III.

Rules of Fair Practice

Rule 3.1. Business Conduct of Members

A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade

Interpretations and Policies:

01. A member may not split any order into multiple smaller orders for any purpose other than seeking the best execution for the entire order.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NSX 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 Commission has expressed concern that participants in the United States securities markets may be engaging in the practice of "tape shredding," the practice of unbundling customer orders into multiple smaller orders for the primary purpose of maximizing payments to the participant or participant firms. Accordingly, the Commission has requested self-regulatory organizations to adopt rules to prohibit the practice.

The Exchange strongly believes that the practice of tape shredding is inappropriate and should be prohibited. Further, it believes that tape shredding constitutes conduct that is inconsistent with the high standard of commercial honor and just and equitable principles of trade. Accordingly, the Exchange is adding an interpretation and policy to its Rule 3.1 to explicitly prohibit NSX members from splitting large orders into multiple smaller orders for any purpose other than best execution.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,³

in general, and furthers the objectives of Section 6(b)(5) of the Act,⁴ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NSX-2006-05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NSX-2006-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices of NSX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NSX-2006-05 and should be submitted on or before May 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Nancy M. Morris,

Secretary.

[FR Doc. E6-6067 Filed 4-21-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53658; File No. SR-NYSE-2006-20]

Self-Regulatory Organizations; New York Stock Exchange, LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to List and Trade Index-Linked Securities of Barclays Bank PLC Linked to the Performance of the GSCI® Total Return Index

April 14, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 13, 2006 the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 27, 2006, NYSE filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to list and trade Index-Linked Securities (the "Notes") of Barclays Bank PLC ("Barclays") linked to the performance of the GSCI® Total Return Index (the "Index"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose The Notes

Under section 703.19 of the NYSE Listed Company Manual (the "Manual"), the Exchange may approve for listing and trading securities not otherwise covered by the criteria of sections 1 and 7 of the Manual, provided the issue is suited for auction market trading.⁴ The Exchange proposes to list and trade, under section 703.19 of the Manual, the Notes, which are linked to the performance of the Index. Barclays intends to issue the Notes

under the name "iPathSM Exchange-Traded Notes."⁵

The Exchange believes that the Notes will conform to the initial listing standards for equity securities under section 703.19 of the Manual, as Barclays is an affiliate of Barclays PLC,⁶ an Exchange listed company in good standing, the Notes will have a minimum life of one year, the minimum public market value of the Notes at the time of issuance will exceed \$4 million, there will be at least one million Notes outstanding, and there will be at least 400 holders at the time of issuance.

The Notes are a series of medium-term debt securities of Barclays that provide for a cash payment at maturity or upon earlier exchange at the holder's option, based on the performance of the Index subject to the adjustments described below. The principal amount of each Note is expected to be \$50. The Notes will trade on the Exchange's equity trading floor, and the Exchange's existing equity trading rules will apply to trading in the Notes. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. In fact, the value of the Index must increase for the investor to receive at least the \$50 principal amount per Note at maturity or upon exchange or redemption. If the value of the Index decreases or does not increase sufficiently to offset the investor fee (described below), the investor will receive less, and possibly significantly less, than the \$50 principal amount per Note. In addition, holders of the Notes will not receive any interest payments from the Notes. The Notes are expected to have a term of 30 years. The Notes are not callable.⁷

⁵ Goldman, Sachs & Co. and Barclays have entered into a license agreement granting to Barclays a non-transferable, non-exclusive license to use the Goldman Sachs Commodity Index® or any sub-indices (individually and collectively, the "GSCI®") in connection with the Notes. Goldman, Sachs & Co. or any of its affiliates or subsidiaries, individually or collectively, are referred to as the "Index Sponsor."

⁶ The issuer of the Notes, Barclays, is an affiliate of an Exchange-listed company (Barclays PLC) and not an Exchange-listed company itself. However, Barclays, though an affiliate of Barclays PLC, would exceed the Exchange's earnings and minimum tangible net worth requirements in section 102. Additionally, the Exchange states that the Notes when combined with the original issue price of all other Note offerings of the issuer that are listed on a national securities exchange (or association) does not exceed 25% of the issuer's net worth. Telephone conference between Florence E. Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, and John Carey, Assistant General Counsel, Exchange, on April 11, 2006 ("April 11 Telephone Conference").

⁷ April 11 Telephone Conference.

Holders who have not previously redeemed their Notes will receive a cash payment at maturity equal to the principal amount of their Notes times the index factor on the Final Valuation Date (as defined below) minus the investor fee on the Final Valuation Date. The "index factor" on any given day will be equal to the closing value of the Index on that day divided by the initial index level. The index factor on the Final Valuation Date will be equal to the final index level divided by the initial index level. The "initial index level" is the closing value of the Index on the date of issuance of the Notes (the "Trade Date"), and the "final index level" is the closing value of the Index on the Final Valuation Date. The investor fee is equal to 0.75% per year times the principal amount of a holder's Notes times the index factor, calculated on a daily basis in the following manner: the investor fee on the Trade Date will equal zero. On each subsequent calendar day until maturity or early redemption, the investor fee will increase by an amount equal to 0.75% times the principal amount of a holder's Notes times the index factor on that day (or, if such day is not a trading day, the index factor on the immediately preceding trading day) divided by 365. The investor fee is the only fee holders will be charged in connection with their ownership of the Notes.

Prior to maturity, holders may, subject to certain restrictions, redeem their Notes on any Redemption Date (defined below) during the term of the Notes provided that they present at least 50,000 Notes for redemption, or they act through a broker or other financial intermediaries (such as a bank or other financial institution not required to register as a broker-dealer to engage in securities transactions) that are willing to bundle their Notes for redemption with other investors' Notes. If a holder chooses to redeem such holder's Notes on a Redemption Date, such holder will receive a cash payment on such date equal to the principal amount of such holder's Notes times the index factor on the applicable Valuation Date minus the investor fee on the applicable Valuation Date. A "Redemption Date" is the third business day following a Valuation Date (other than the Final Valuation Date (defined below)). A "Valuation Date" is each Thursday from the first Thursday after issuance of the Notes until the last Thursday before maturity of the Notes (the "Final Valuation Date") inclusive (or, if such date is not a trading day,⁸

⁸ A "trading day" is a day on which (i) the value of the Index is published by the Index Sponsor, (ii)

³ In Amendment No. 1, the Exchange notes a proposed Supplementary Material to Rule 1301B in SR-NYSE-2006-17, which sets forth guidelines for specialists applicable to this product.

⁴ See Securities Exchange Act Release No. 28217 (July 18, 1990), 55 FR 30056 (July 24, 1990) (SR-NYSE-90-30).

the next succeeding trading day), unless the calculation agent determines that a market disruption event, as described below, occurs or is continuing on that day.⁹ In that event, the Valuation Date for the maturity date or corresponding Redemption Date, as the case may be, will be the first following trading day on which the calculation agent determines that a market disruption event does not occur and is not continuing. In no event, however, will a Valuation Date be postponed by more than five trading days.

Any of the following will be a market disruption event: (i) A material limitation, suspension or disruption in the trading of any Index component that results in a failure by the trading facility on which the relevant contract is traded to report a daily contract reference price (*i.e.*, the price of the relevant contract that is used as a reference or benchmark by market participants);¹⁰ (ii) the daily contract reference price for any Index component is a "limit price," which means that the daily contract reference price for such contract has increased or decreased from the previous day's daily contract reference price by the maximum amount permitted under the applicable rules or procedures of the relevant trading facility; (iii) failure by the Index Sponsor to publish the closing value of the Index or of the applicable trading facility or other price source to announce or publish the daily contract reference price for one or more Index components; or (iv) any other event, if the calculation agent determines in its sole discretion that the event materially interferes with Barclays' ability or the ability of any of Barclays' affiliates to

trading is generally conducted on the Exchange, and (iii) trading is generally conducted on the markets on which the futures contracts underlying the GSCI[®] are traded, in each case as determined by the calculation agent in its sole discretion.

⁹ Barclays will serve as the initial calculation agent.

¹⁰ The "daily contract reference price" with respect to each contract expiration and contract is the price of the relevant contract, expressed in U.S. dollars, that is generally used by participants in the related cash or over-the-counter market as a benchmark for transactions related to such contract. The daily contract reference price may, but is not required to, be the price (i) used by such trading facility or related clearing facility to determine the margin obligations (if any) of its members or participants or (ii) referred to generally as the reference, closing or settlement price of the relevant contract. If a trading facility publishes a daily settlement price for a particular contract expiration, such settlement price will generally serve as the daily contract reference price for such contract expiration unless, in the reasonable judgment of the Index Sponsor, in consultation with the Policy Committee, such settlement price does not satisfy the criteria set forth in this definition. The daily contract reference price of a contract may be determined and published either by the relevant trading facility or by one or more third parties.

unwind all or a material portion of a hedge with respect to the Notes that Barclays or Barclays' affiliates have effected or may effect as described herein in connection with the sale of the Notes.¹¹

If a Valuation Date is postponed by five trading days, that fifth day will nevertheless be the date on which the value of the Index will be determined by the calculation agent. In such an event, the calculation agent will make a good faith estimate in its sole discretion of the value of the Index.

To redeem their Notes, holders must instruct their broker or other person through whom they hold their Notes to take the following steps:

- Deliver a notice of redemption to Barclays via email by no later than 11 a.m. New York time on the business day prior to the applicable Valuation Date. If Barclays receives such notice by the time specified in the preceding sentence, it will respond by sending the holder a confirmation of redemption;
- Deliver the signed confirmation of redemption to Barclays via facsimile in the specified form by 4 p.m. New York time on the same day. Barclays must acknowledge receipt in order for the confirmation to be effective; and
- Transfer such holder's book-entry interest in its Notes to the trustee, The Bank of New York, on Barclays' behalf at or prior to 10 a.m. New York time on the applicable Redemption Date (the third business day following the Valuation Date).¹²

If holders elect to redeem their Notes, Barclays may request that Barclays Capital Inc. (a broker-dealer) purchase the Notes for the cash amount that would otherwise have been payable by Barclays upon redemption. In this case, Barclays will remain obligated to redeem the Notes if Barclays Capital Inc. fails to purchase the Notes. Any Notes purchased by Barclays Capital Inc. may remain outstanding.

If an event of default occurs and the maturity of the Notes is accelerated Barclays will pay the default amount in respect of the principal of the Notes at maturity. The default amount for the Notes on any day will be an amount, determined by the calculation agent in its sole discretion, equal to the cost of

¹¹ If a "market disruption event" is of more than a temporary nature, the Exchange will file a proposed rule change pursuant to Rule 19b-4 under the Act. Unless approved for continued trading, the Exchange would commence delisting proceedings. See "Continued Listing Criteria," *infra*. Telephone conference between Florence Harmon, Senior Special Counsel, Division, Commission; John Carey, Assistant General Counsel, Exchange; and Michael Cavalier, Assistant General Counsel, Exchange, on April 10, 2006 ("April 10 Telephone Conference").

¹² April 10 Telephone Conference.

having a qualified financial institution, of the kind and selected as described below, expressly assume all Barclays' payment and other obligations with respect to the Notes as of that day and as if no default or acceleration had occurred, or to undertake other obligations providing substantially equivalent economic value to the holders of the Notes with respect to the Notes. That cost will equal:

- The lowest amount that a qualified financial institution would charge to effect this assumption or undertaking, plus
- The reasonable expenses, including reasonable attorneys' fees, incurred by the holders of the Notes in preparing any documentation necessary for this assumption or undertaking.¹³

Indicative Value

An intraday "Indicative Value" meant to approximate the intrinsic economic value of the Notes will be calculated and published via the facilities of the Consolidated Tape Association ("CTA") every 15 seconds throughout the NYSE trading day on each day on which the Notes are traded on the Exchange.¹⁴ Additionally, Barclays or an affiliate will calculate and publish the closing Indicative Value of the Notes on each trading day at www.ipathetn.com. In connection with the Notes, the term "Indicative Value" refers to the value at a given time determined based on the following equation:

$$\text{Indicative Value} = \text{Principal Amount per Unit X (Current Index Level Initial Index Level)} - \text{Current Investor Fee}$$

where:

Principal Amount per Unit = \$50.

Current Index Level = The most recent published level of the Index as reported by the Index Sponsor.

Initial Index Level = The Index level on the trade date for the Notes.

¹³ Additional information about the default provisions of the Notes is provided in the Exchange's Form 19b-4 and Barclays Bank PLC Registration Statement Form F-3 (333-126811), as amended by Amendment No. 1 on September 11, 2005.

¹⁴ The Indicative Value calculation will be provided for reference purposes only. It is not intended as a price or quotation, or as an offer or solicitation for the purchase, sale, redemption or termination of the Notes, nor does it reflect hedging or transaction costs, credit considerations, market liquidity, or bid-offer spreads. Published Index levels from the index sponsors may occasionally be subject to delay or postponement. Any such delays or postponements will affect the Current Index Level and therefore the Indicative Value of the Notes. Index levels provided by the index sponsors will not necessarily reflect the depth and liquidity of the underlying commodities markets. For this reason and others, the actual trading price of the Notes may be different from their Indicative Value.

Current Investor Fee = The most recent daily calculation of the investor fee with respect to the Notes, determined as described above (which, during any trading day, will be the investor fee determined on the preceding calendar day).

The Indicative Value will not reflect price changes to the price of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and the close of trading on the NYSE at 4 p.m. New York time.¹⁵ The value of the Notes may accordingly be influenced by non-concurrent trading hours between the NYSE and the various futures exchanges on which the futures contracts based on the Index commodities are traded. While the Notes will trade on the NYSE from 9:30 a.m. to 4 p.m. New York time, the table below lists the trading hours for each of the Index components.¹⁶

CBOT:

Corn	10:30 a.m.–2:15 p.m.
Soybeans	10:30 a.m.–2:15 p.m.
Wheat	10:30 a.m.–2:15 p.m.

CME:

Feeder Cattle	10:05 a.m.–2 p.m.
Lean Hogs	10:10 a.m.–2 p.m.
Live Cattle	10:05 a.m.–2 p.m.

COMEX:

Gold	8:20 a.m.–1:30 p.m.
Silver	8:25 a.m.–1:25 p.m.

CSCE:

Coffee	9:15 a.m.–12:30 p.m.
Cocoa	8 a.m.–11:50 a.m.
Sugar #11	9 a.m.–12 p.m.

ICE Futures:

Brent Crude Oil	8 p.m.–5 p.m.
Gas Oil	8 p.m.–5 p.m.

KCBOT:

Kansas Wheat	10:30 a.m.–2:15 p.m.
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NYBOT:

Cotton #2	10:30 a.m.–2:15 p.m.
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NYMEX:

Heating Oil	10:05 a.m.–2:30 p.m.
Natural Gas	10 a.m.–2:30 p.m.
Unleaded Gasoline	10:05 a.m.–2:30 p.m.
WTI Crude Oil	10 a.m.–2:30 p.m.

LME:

Aluminum	6:55 a.m.–12 p.m.
Copper	7 a.m.–12 p.m.
Lead	7:05 a.m.–11:50 a.m.
Nickel	7:15 a.m.–11:55 a.m.
Zinc	7:10 a.m.–11:55 a.m.

While the market for futures trading for each of the Index commodities is open, the Indicative Value can be expected to closely approximate the redemption value of the Notes. However, during NYSE trading hours when the futures contracts have ceased trading, spreads and resulting premiums or discounts may widen, and therefore, increase the difference between the price of the Notes and their redemption value. The Indicative Value

disseminated during NYSE trading hours should not be viewed as a real time update of the redemption value.

Description of the Index

The Exchange states that all disclosure in this filing regarding the Index and the GSCI® is derived from publicly available information. The GSCI is a separate index from the Index; however, the value of the Index is derived from the GSCI, as described below.¹⁷

The Index was established in May 1991, and is designed to be a diversified benchmark for physical commodities as an asset class. The Index reflects the excess returns that are potentially available through an unleveraged investment in the contracts comprising the GSCI® plus the Treasury Bill rate of interest that could be earned on funds committed to the trading of the underlying contracts.¹⁸ The value of the Index, on any given day, reflects (i) the price levels of the contracts included in the GSCI® (which represents the value of the GSCI®); (ii) the “contract daily return,” which is the percentage change in the total dollar weight of the GSCI® from the previous day to the current day; and (iii) the Treasury Bill rate of interest that could be earned on funds committed to the trading of the underlying contracts.

Because the value of the Index reflects the futures contracts included in the GSCI, the Exchange below describes the index methodology for the GSCI. The GSCI®, upon which the Index is based, is a proprietary index on a production-weighted basket of futures contracts on physical commodities traded on trading facilities in major industrialized countries.¹⁹ The GSCI® is designed to be a measure of the performance over time of the markets for these commodities. The only commodities represented in the GSCI® are those physical commodities on which active and liquid contracts are traded on trading facilities in major industrialized countries. The

commodities represented in the GSCI® are weighted, on a production basis, to reflect their relative significance (in the view of the Index Sponsor, in consultation with the Policy Committee) to the world economy. The fluctuations in the value of the GSCI® are intended generally to correlate with changes in the prices of such physical commodities in global markets. The value of the GSCI® has been normalized such that its hypothetical level on January 2, 1970 was 100. Futures contracts on the GSCI®, and options on such futures contracts, are currently listed for trading on the Chicago Mercantile Exchange.

The contracts to be included in the GSCI® at any given time must satisfy several sets of eligibility criteria established by the Index Sponsor.²⁰ First, the Index Sponsor identifies those contracts that meet the general criteria for eligibility. Second, the contract volume and weight requirements are applied and the number of contracts is determined, which serves to reduce the list of eligible contracts. At that point, the list of designated contracts for the relevant period is complete. The composition of the GSCI® is also reviewed on a monthly basis by the Index Sponsor.²¹

Set forth below is a summary of the composition of and the methodology used to calculate the GSCI® as of this date. The methodology for determining the composition and weighting of the GSCI® and for calculating its value is subject to modification in a manner consistent with the purposes of the GSCI®, as described below. The Index Sponsor makes the official calculations of the GSCI®. At present, this calculation is performed continuously

²⁰ Goldman, Sachs & Co. is the Index Sponsor for both the Index and the GSCI. Telephone conference between Florence E. Harmon, Senior Special Counsel, Division, Commission, and Michael Cavalier, Assistant General Counsel, Exchange, on April 13, 2006 (“April 13 Telephone Conference”).

²¹ The Index Sponsor, Goldman, Sachs & Co., who calculates the GSCI and thus the Index, is a broker-dealer. The Index Sponsor has represented to Barclays that it will (i) implement and maintain procedures reasonably designed to prevent the use and dissemination by officers and directors of the Index Sponsor, in violation of applicable laws, rules and regulations, of material non-public information relating to changes in the composition or method of computation or calculation of the Index and (ii) periodically check the application of such procedures as they relate to officers and directors of the Index Sponsor directly responsible for such changes. In addition, the Policy Committee members (as described below) are subject to written policies with respect to material, non-public information. Telephone conversation between Florence Harmon, Senior Special Counsel, Division, Commission; John Carey, Assistant General Counsel, Exchange; and Michael Cavalier, Assistant General Counsel, Exchange, on April 14, 2006 (“April 14 Telephone Conference with John Carey and Michael Cavalier”).

¹⁷ Telephone conference between Florence E. Harmon, Senior Special Counsel, Division, Commission, and John Carey, Assistant General Counsel, Exchange, on April 14, 2006 (“April 14 Telephone Conference with John Carey”). See also footnote 5, *supra*.

¹⁸ The Treasury Bill rate of interest used for purposes of calculating the index on any day is the 91-day auction high rate for U.S. Treasury Bills, as reported on Telerate page 56, or any successor page, on the most recent of the weekly auction dates prior to such day.

¹⁹ Futures contracts on physical commodities and commodity indices are traded on regulated futures exchanges. Futures exchanges in the United States are subject to regulation by the Commodity Futures Trading Commission (“CFTC”) and futures markets outside the United States are generally subject to regulation by comparable regulatory authorities.

¹⁵ April 10 Telephone Conference.

¹⁶ *Id.*

and is reported on Reuters page GSCI® (or any successor or replacement page) and will be updated on Reuters at least every 15 seconds during business hours on each day on which the offices of the Index Sponsor in New York City are open for business (a "GSCI Business Day").²² The settlement price for the Index is also reported on Reuters page GSCI® (or any successor or replacement page) on each GSCI Business Day between 4 p.m. and 6 p.m., New York time.

In light of the rapid development of electronic trading platforms and the potential for significant shifts in liquidity between traditional exchanges and such platforms, the Index Sponsor has undertaken a review of both the procedures for determining the contracts to be included in the GSCI®, as well as the procedures for evaluating available liquidity on an intra-year basis in order to provide GSCI® market participants with efficient access to new sources of liquidity and the potential for more efficient trading. In particular, the Index Sponsor is examining the conditions under which an instrument traded on an electronic platform, rather than a traditional futures contract traded on a traditional futures exchange, should be permitted to be included in the GSCI® and how the composition of the GSCI® should respond to rapid shifts in liquidity between such instruments and contracts currently included in the GSCI®. Any changes made to the GSCI® composition or methodology as a result of this examination will be announced by the Index Sponsor and provided in a written statement to any investor upon request to the calculation agent. Barclays will not have any obligation to notify holders of the Notes if the Index Sponsor changes the composition of the GSCI®, the methodology of calculating the value of the GSCI® or any other policies of the Index Sponsor relevant to the Index. However, the Exchange would have to file a proposed rule

²² Additionally, the intraday index value of the Index will be updated and disseminated at least every 15 seconds by a major market data vendor during the time the Notes trade on the Exchange. April 13 Telephone Conference. The intraday information with respect to the Index reported on Reuters is derived solely from trading prices on the principal trading markets for the various Index components. For example, the Index currently includes contracts traded on ICE Futures ("ICE") and the London Metal Exchange (the "LME"), both of which are located in London and consequently have trading days that end several hours before those of the U.S.-based markets on which the rest of the Index components are traded. During the portion of the New York trading day when ICE and LME are closed, the last reported prices for Index Components traded on ICE or LME are used to calculate the intraday Index information disseminated on Reuters.

change pursuant to Rule 19b-4,²³ seeking Commission approval to continue trading the Notes. Unless approved for continued listing, the Exchange would commence delisting proceedings.²⁴

Index Disruptions

The Index is determined, calculated and maintained solely by the Index Sponsor. If the Index Sponsor discontinues publication of the Index and it or any other person or entity publishes a substitute index that the calculation agent determines is comparable to the Index and approves as a successor index then the calculation agent will determine the value of the Index on the applicable Valuation Date and the amount payable at maturity or upon redemption by reference to such successor index.

If the calculation agent determines that the publication of the Index is discontinued and that there is no successor index, or that the closing value of the Index is not available because of a market disruption event (as defined below) or for any other reason, on the date on which the value of the Index is required to be determined, or if for any other reason the Index is not available to Barclays or the calculation agent on the relevant date, the calculation agent will determine the amount payable by a computation methodology that the calculation agent determines will as closely as reasonably possible replicate the Index.²⁵

If the calculation agent determines that the Index, the Index components or the method of calculating the Index has been changed at any time in any respect—including any addition, deletion or substitution and any reweighting or rebalancing of Index components, and whether the change is made by the Index Sponsor under its existing policies or following a modification of those policies, is due to the publication of a successor index, is due to events affecting one or more of the Index components, or is due to any other reason—then the calculation agent will be permitted (but not required) to make such adjustments to the Index or method of calculating the Index as it believes are appropriate to ensure that the value of the Index used to determine

²³ 17 CFR 240.19b-4.

²⁴ See "Continued Listing Criteria," *infra*. April 10 Telephone Conference.

²⁵ In such case, the Exchange will file a proposed rule change pursuant to Rule 19b-4 under the Act. Unless approved for continued trading, the Exchange would commence delisting proceedings. See "Continued Listing Criteria," *infra*. April 10 Telephone Conference.

the amount payable on the maturity date or upon redemption is equitable.²⁶

The Exchange states that all determinations and adjustments to be made by the calculation agent with respect to the value of the Index and the amount payable at maturity or upon redemption or otherwise relating to the value of the Index may be made by the calculation agent in its sole discretion.²⁷

The Policy Committee

The Index Sponsor has established a Policy Committee to assist it with the operation of the GSCI®.²⁸ The principal purpose of the Policy Committee is to advise the Index Sponsor with respect to, among other things, the calculation of the GSCI®, the effectiveness of the GSCI® as a measure of commodity futures market performance and the need for changes in the composition or the methodology of the GSCI®. The Policy Committee acts solely in an advisory and consultative capacity. All decisions with respect to the composition, calculation and operation of the GSCI® and the Index are made by the Index Sponsor.

The Policy Committee generally meets in October of each year. Prior to the meeting, the Index Sponsor determines the contracts to be included in the GSCI® for the following calendar year and the weighting factors for each commodity. The Policy Committee's members receive the proposed composition of the GSCI® in advance of the meeting and discuss the composition at the meeting. The Index Sponsor also consults the Policy Committee on any other significant matters with respect to the calculation and operation of the GSCI®. The Policy Committee may, if necessary or practicable, meet at other times during the year as issues arise that warrant its consideration.

The Policy Committee currently consists of eight persons, three of whom are employees of the Index Sponsor or its affiliates and five of whom are not affiliated with the Index Sponsor.²⁹

²⁶ *Id.*

²⁷ *Id.*

²⁸ The component selections for the GSCI would obviously affect the Index. Telephone conference between Florence Harmon, Senior Special Counsel, Division, Commission, and Michael Cavalier, Assistant General Counsel, Exchange, on April 12, 2006 ("April 12 Telephone Conference").

²⁹ The current members of the Policy Committee who are affiliated with the Index Sponsor are Peter O'Hagan, Steven Strongin and Laurie Ferber, each of whom is a Managing Director of Goldman, Sachs & Co. The current non-affiliated members and their affiliations are: Richard Redding (Chicago Mercantile Exchange), Kenneth A. Froot (finance professor at the Harvard Business School), Dan Kelly (Harvard Management Company), Jelle Beenen (PGGM), and Tham Chiew Kit (GIC). As

Composition of the GSCI®

In order to be included in the GSCI®, a contract must satisfy the following eligibility criteria:

- (1) The contract must:
 - Be in respect of a physical commodity (rather than a financial commodity);
 - Have a specified expiration or term, or provide in some other manner for delivery or settlement at a specified time, or within a specified period, in the future; and
 - At any given point in time, be available for trading at least five months prior to its expiration or such other date or time period specified for delivery or settlement.
- (2) The commodity must be the subject of a contract that:
 - Is denominated in U.S. dollars; and
 - Is traded on or through an exchange, facility or other platform (referred to as a "trading facility") that has its principal place of business or operations in a country which is a member of the Organization for Economic Cooperation and Development³⁰ and:
 - Makes price quotations generally available to its members or participants (and, if the Index Sponsor is not such a member or participant, to the Index Sponsor) in a manner and with a frequency that is sufficient to provide reasonably reliable indications of the level of the relevant market at any given point in time;
 - Makes reliable trading volume information available to the Index Sponsor with at least the frequency required by the Index Sponsor to make the monthly determinations;
 - Accepts bids and offers from multiple participants or price providers; and
 - Is accessible by a sufficiently broad range of participants.

(3) The daily contract reference price for the relevant contract generally must have been available on a continuous basis for at least two years prior to the proposed date of inclusion in the

stated, the Policy Committee are subject to written policies with respect to material, non-public information. Telephone conference between Florence Harmon, Senior Special Counsel, Division, Commission, and Michael Cavalier, Assistant General Counsel, Exchange, on April 14, 2006 ("April 14 Telephone Conference with Michael Cavalier").

³⁰ The Organization for Economic Cooperation and Development has 30 member countries: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States.

GSCI®. In appropriate circumstances, however, the Index Sponsor may determine that a shorter time period is sufficient or that historical daily contract reference prices for such contract may be derived from daily contract reference prices for a similar or related contract. The daily contract reference price may be (but is not required to be) the settlement price or other similar price published by the relevant trading facility for purposes of margining transactions or for other purposes.

(4) At and after the time a contract is included in the GSCI®, the daily contract reference price for such contract must be published between 10 a.m. and 4 p.m., New York time, on each GSCI® Business Day relating to such contract by the trading facility on or through which it is traded and must generally be available to all members of, or participants in, such facility (and, if the Index Sponsor is not such a member or participant, to the Index Sponsor) on the same day from the trading facility or through a recognized third-party data vendor. Such publication must include, at all times, daily contract reference prices for at least one expiration or settlement date that is five months or more from the date the determination is made, as well as for all expiration or settlement dates during such five-month period.

(5) Volume data with respect to such contract must be available for at least the three months immediately preceding the date on which the determination is made.

(6) A contract that is not included in the GSCI® at the time of determination and that is based on a commodity that is not represented in the GSCI® at such time must, in order to be added to the GSCI® at such time, have a total dollar value traded, over the relevant period, as the case may be and annualized, of at least U.S. \$15 billion. The total dollar value traded is the dollar value of the total quantity of the commodity underlying transactions in the relevant contract over the period for which the calculation is made, based on the average of the daily contract reference prices on the last day of each month during the period.

(7) A contract that is already included in the GSCI® at the time of determination and that is the only contract on the relevant commodity included in the GSCI® must, in order to continue to be included in the GSCI® after such time, have a total dollar value traded, over the relevant period, as the case may be and annualized, of at least U.S. \$5 billion and at least U.S. \$10 billion during at least one of the three

most recent annual periods used in making the determination.

(8) A contract that is not included in the GSCI® at the time of determination and that is based on a commodity on which there are one or more contracts already included in the GSCI® at such time must, in order to be added to the GSCI® at such time, have a total dollar value traded, over the relevant period, as the case may be and annualized, of at least U.S. \$30 billion.

(9) A contract that is already included in the GSCI® at the time of determination and that is based on a commodity on which there are one or more contracts already included in the GSCI® at such time must, in order to continue to be included in the GSCI® after such time, have a total dollar value traded, over the relevant period, as the case may be and annualized, of at least U.S. \$10 billion and at least U.S. \$20 billion during at least one of the three most recent annual periods used in making the determination.

(10) A contract that is already included in the GSCI® at the time of determination must, in order to continue to be included after such time, have a reference percentage dollar weight of at least 0.10%. The reference percentage dollar weight of a contract is determined by multiplying the CPW (defined below) of a contract by the average of its daily contract reference prices on the last day of each month during the relevant period. These amounts are summed for all contracts included in the GSCI® and each contract's percentage of the total is then determined.

(11) A contract that is not included in the GSCI® at the time of determination must, in order to be added to the GSCI® at such time, have a reference percentage dollar weight of at least 1.00%.

(12) In the event that two or more contracts on the same commodity satisfy the eligibility criteria, such contracts will be included in the GSCI® in the order of their respective total quantity traded during the relevant period (determined as the total quantity of the commodity underlying transactions in the relevant contract), with the contract having the highest total quantity traded being included first, provided that no further contracts will be included if such inclusion would result in the portion of the GSCI® attributable to such commodity exceeding a particular level. If additional contracts could be included with respect to several commodities at the same time, that procedure is first applied with respect to the commodity that has the smallest portion of the GSCI® attributable to it at

the time of determination. Subject to the other eligibility criteria set forth above, the contract with the highest total quantity traded on such commodity will be included. Before any additional contracts on the same commodity or on any other commodity are included, the portion of the GSCI® attributable to all commodities is recalculated. The selection procedure described above is then repeated with respect to the contracts on the commodity that then has the smallest portion of the GSCI® attributable to it.

Currently, 24 contracts meet the eligibility requirement for inclusion on the GSCI®.

CONTRACTS INCLUDED IN THE GSCI®
FOR 2006, AS OF MARCH 2, 2006

Trading facility	Commodity (contract)	2006 Reference price dollar weight (percent)
CBOT ...	Wheat (Chicago Wheat).	2.51
KCBOT	Wheat (Kansas Wheat).	1.00
CBOT ...	Corn	2.35
CBOT ...	Soybeans	1.53
CSCE ...	Coffee "C"	0.73
CSCE ...	Sugar #11	2.06
CSCE ...	Cocoa	0.19
NYBOT	Cotton #2	0.93
CME	Lean Hogs	1.49
CME	Cattle (Live Cattle).	2.50
CME	Cattle (Feeder Cattle).	.68
NYMEX	Oil (No. 2 Heating Oil, NY).	8.28
ICE	Oil (Gasoil) ...	4.49
NYMEX	Oil (Unleaded Reg Gas, NY).	7.55
NYMEX	Oil (WTI Crude Oil).	30.59
ICE	Oil (Brent Crude Oil).	14.79
NYMEX	Natural Gas ..	7.98
LME	High Grade Primary Aluminum.	3.18
LME	Copper—Grade A.	3.09
LME	Standard Lead.	0.33
LME	Primary Nickel.	0.70
LME	Special High Grade Zinc.	0.88
COMEX	Gold	1.94
COMEX	Silver	0.24

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The quantity of each of the contracts included in the GSCI® is determined on the basis of a five-year average (referred to as the "world production average") of the production quantity of the

underlying commodity as published by the United Nations Statistical Yearbook, the Industrial Commodity Statistics Yearbook and other official sources. However, if a commodity is primarily a regional commodity, based on its production, use, pricing, transportation or other factors, the Index Sponsor may calculate the weight of such commodity based on regional, rather than world, production data.

The five-year moving average is updated annually for each commodity included in the GSCI®, based on the most recent five-year period (ending approximately two years prior to the date of calculation and moving backwards) for which complete data for all commodities is available. The contract production weights (the "CPW") used in calculating the GSCI® are derived from world or regional production averages, as applicable, of the relevant commodities, and are calculated based on the total quantity traded for the relevant contract and the world or regional production average, as applicable, of the underlying commodity.

However, if the volume of trading in the relevant contract, as a multiple of the production levels of the commodity, is below specified thresholds, the CPW of the contract is reduced until the threshold is satisfied. This is designed to ensure that trading in each such contract is sufficiently liquid relative to the production of the commodity.

In addition, the Index Sponsor performs this calculation on a monthly basis and, if the multiple of any contract is below the prescribed threshold, the composition of the GSCI® is reevaluated, based on the criteria and weighting procedure described above. This procedure is undertaken to allow the GSCI® to shift from contracts that have lost substantial liquidity into more liquid contracts during the course of a given year. As a result, it is possible that the composition or weighting of the GSCI® will change on one or more of these monthly Valuation Dates. In addition, regardless of whether any changes have occurred during the year, the Index Sponsor reevaluates the composition of the GSCI® at the conclusion of each year, based on the above criteria. Other commodities that satisfy such criteria, if any, will be added to the GSCI®. Commodities included in the GSCI® which no longer satisfy such criteria, if any, will be deleted.

The Index Sponsor also determines whether modifications in the selection criteria or the methodology for determining the composition and weights of and for calculating the GSCI®

are necessary or appropriate in order to assure that the GSCI® represents a measure of commodity market performance. The Index Sponsor has the discretion to make any such modifications.

Contract Expirations

Because the GSCI® is comprised of actively traded contracts with scheduled expirations, it can only be calculated by reference to the prices of contracts for specified expiration, delivery or settlement periods, referred to as "contract expirations." The contract expirations included in the GSCI® for each commodity during a given year are designated by the Index Sponsor, provided that each such contract must be an "active contract." An "active contract" for this purpose is a liquid, actively traded contract expiration, as defined or identified by the relevant trading facility or, if no such definition or identification is provided by the relevant trading facility, as defined by standard custom and practice in the industry. The relative liquidity of the various active contracts is one of the factors that may be taken into consideration in determining which of them the Index Sponsor includes in the GSCI (and thus the Index).

If a trading facility deletes one or more contract expirations, the GSCI® will be calculated during the remainder of the year in which such deletion occurs on the basis of the remaining contract expirations designated by the Index Sponsor. If a trading facility ceases trading in all contract expirations relating to a particular contract, the Index Sponsor may designate a replacement contract on the commodity. The replacement contract must satisfy the eligibility criteria for inclusion in the GSCI®. To the extent practicable, the replacement will be effected during the next monthly review of the composition of the index. If that timing is not practicable, the Index Sponsor will determine the date of the replacement and will consider a number of factors, including the differences between the existing contract and the replacement contract with respect to contractual specifications and contract expirations.

Value of the GSCI®

The value of the GSCI® on any given day is equal to the total dollar weight of the GSCI® divided by a normalizing constant that assures the continuity of the GSCI® over time. The total dollar weight of the GSCI® is the sum of the dollar weight of each index component. The dollar weight of each such index component on any given day is equal to:

- The daily contract reference price,

- Multiplied by the appropriate CPWs, and
- During a roll period, the appropriate "roll weights" (discussed below).

The daily contract reference price used in calculating the dollar weight of each index component on any given day is the most recent daily contract reference price made available by the relevant trading facility, except that the daily contract reference price for the most recent prior day will be used if the exchange is closed or otherwise fails to publish a daily contract reference price on that day. In addition, if the trading facility fails to make a daily contract reference price available or publishes a daily contract reference price that, in the reasonable judgment of the Index Sponsor, reflects manifest error, the relevant calculation will be delayed until the price is made available or corrected. However, if the price is not made available or corrected by 4 p.m. New York time, the Index Sponsor, if it deems such action to be appropriate under the circumstances, will determine the appropriate daily contract reference price for the applicable futures contract in its reasonable judgment for purposes of the relevant GSCI® calculation.³¹

Contract Daily Return

The contract daily return on any given day is equal to the sum, for each of the commodities included in the GSCI®, of the applicable daily contract reference price on the relevant contract multiplied by the appropriate CPW and the appropriate "roll weight," divided by the total dollar weight of the GSCI® on the preceding day, minus one.

The "roll weight" of each commodity reflects the fact that the positions in contracts must be liquidated or rolled forward into more distant contract expirations as they approach expiration. If actual positions in the relevant markets were rolled forward, the roll would likely need to take place over a period of days. Since the GSCI® is designed to replicate the performance of actual investments in the underlying contracts, the rolling process incorporated in the GSCI® also takes place over a period of days at the beginning of each month (referred to as the "roll period"). On each day of the roll period, the "roll weights" of the

first nearby contract expirations on a particular commodity and the more distant contract expiration into which it is rolled are adjusted, so that the hypothetical position in the contract on the commodity that is included in the GSCI® is gradually shifted from the first nearby contract expiration to the more distant contract expiration.

If on any day during a roll period any of the following conditions exists, the portion of the roll that would have taken place on that day is deferred until the next day on which such conditions do not exist:

- No daily contract reference price is available for a given contract expiration;
- Any such price represents the maximum or minimum price for such contract month, based on exchange price limits (referred to as a "Limit Price");
- The daily contract reference price published by the relevant trading facility reflects manifest error, or such price is not published by 4 p.m., New York time. In that event, the Index Sponsor may, but is not required to, determine a daily contract reference price and complete the relevant portion of the roll based on such price; *provided, that*, if the trading facility publishes a price before the opening of trading on the next day, the Index Sponsor will revise the portion of the roll accordingly; or
- Trading in the relevant contract terminates prior to its scheduled closing time.

If any of these conditions exist throughout the roll period, the roll with respect to the affected contract, will be effected in its entirety on the next day on which such conditions no longer exist.

Value of the Index

The Exchange now describes the value of the Index (as opposed to the above description of the GSCI) which the Notes are designed to track. The value of the Index on any GSCI Business Day is equal to the product of (1) the value of the Index on the immediately preceding GSCI Business Day multiplied by (2) one plus the sum of the contract daily return and the Treasury Bill return on the GSCI Business Day on which the calculation is made multiplied by (3) one plus the Treasury Bill return for each non-GSCI Business Day since the immediately preceding GSCI Business Day. The Treasury Bill return is the return on a hypothetical investment in the GSCI® at a rate equal to the interest rate on a specified U.S. Treasury Bill. The initial value of the GSCI® was normalized such

that the hypothetical level of the Index on January 2, 1970 was 100.

Historical Performance

While the following historical performance table is based on the selection criteria and methodology described herein, the Index was not actually calculated and published prior to May 1, 1991. Accordingly, the following table illustrates:

(i) On a hypothetical basis, how the Index would have performed from January 2, 1970 to January 2, 1991 based on the selection criteria and methodology described above; and

(ii) On an actual basis, how the Index has performed from January 2, 1992 onwards.

January 2, 1970	100.00
January 4, 1971	115.78
January 3, 1972	138.90
January 2, 1973	198.45
January 2, 1974	354.32
January 2, 1975	478.50
January 2, 1976	400.02
January 3, 1977	351.05
January 3, 1978	390.02
January 2, 1979	515.25
January 2, 1980	692.40
January 2, 1981	764.66
January 4, 1982	593.61
January 3, 1983	657.98
January 3, 1984	747.23
January 3, 1985	760.67
January 2, 1986	833.67
January 2, 1987	868.83
January 4, 1988	1,105.18
January 3, 1989	1,371.33
January 2, 1990	1,937.46
January 2, 1991	2,346.03
January 2, 1992	2,304.20
January 4, 1993	2,371.27
January 3, 1994	2,111.22
January 3, 1995	2,185.21
January 2, 1996	2,711.25
January 2, 1997	3,591.15
January 2, 1998	3,019.39
January 4, 1999	1,992.32
January 3, 2000	2,766.77
January 2, 2001	4,022.43
January 2, 2002	2,891.27
January 2, 2003	3,819.38
January 2, 2004	4,520.70
January 3, 2005	5,173.25
January 3, 2006	6,729.99

The historical performance of the Index should not be taken as an indication of future performance, and no assurance can be given that the value of the Index will increase sufficiently to cause holders of the Note receive a payment at maturity or upon redemption equal to or in excess of the principal amount of such Notes.

Continued Listing Criteria

The Exchange prohibits the initial and/or continued listing of any security

³¹ If such actions by the Index Sponsor are implemented on more than a temporary basis, the Exchange will contact the Commission Staff and, as necessary, file a proposed rule change pursuant to Rule 19b-4 seeking Commission approval to continue to trade the Shares. Unless approved for continued trading, the Exchange would commence delisting proceedings. See "Continued Listing Criteria," *infra*. April 10 Telephone Conference.

that is not in compliance with Rule 10A-3 under the Act.³²

The Exchange will delist the Notes:

- If, following the initial twelve month period from the date of commencement of trading of the Notes, the Notes have more than 60 days remaining until maturity and (i) there are fewer than 50 beneficial holders of the Notes for 30 or more consecutive trading days; (ii) if fewer than 50,000 Notes remain issued and outstanding; or (iii) if the market value of all outstanding Notes is less than \$1,000,000;

- If the Index value ceases to be calculated or available during the time the Notes trade on the Exchange on at least every 15 second basis through one or more major market data vendors;³³
- If, during the time the Notes trade on the Exchange, the Indicative Value ceases to be available on 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.

Additionally, the Exchange will file a proposed rule change pursuant to Rule 19b-4 under the Act³⁴ seeking approval to continue trading the Notes and unless approved, the Exchange will commence delisting the Notes if:

- The Index Sponsor substantially changes either the Index component selection methodology or the weighting methodology;

- If a new component is added to the Index (or pricing information is used for a new or existing component) that constitutes more than 10% of the weight of the Index with whose principal trading market the Exchange does not have a comprehensive surveillance sharing agreement;³⁵ or

- If a successor or substitute index is used in connection with the Notes. The filing will address, among other things the listing and trading characteristics of the successor or substitute index and the Exchange's surveillance procedures applicable thereto.

Trading Rules

The Exchange's existing equity trading rules will apply to trading of the Notes. The Notes will trade between the hours of 9:30 a.m. and 4 p.m. New York

time and will be subject to the equity margin rules of the Exchange.³⁶

(1) Trading Halts

The Exchange will cease trading the Notes if there is a halt or disruption in the dissemination of the Index value or the Indicative Value.³⁷ The Exchange will also cease trading the Notes if a "market disruption event" occurs that is of more than a temporary nature.³⁸ In the event that the Exchange is open for business on a day that is not a GSCI Business Day, the Exchange will not permit trading of the Notes on that day.

(2) Specialist Trading Obligations

Pursuant to new Supplementary Material .10 to NYSE Rule 1301B, the provisions of NYSE Rules 1300B(b) and 1301B would be applied to certain securities listed on the Exchange pursuant to section 703.19 ("Other Securities") of the Exchange's Manual. Specifically, NYSE Rules 1300B(b) and 1301B will apply to securities listed under section 703.19 of the Manual where the price of such securities is based in whole or part on the price of (a) a commodity or commodities; (b) any futures contracts or other derivatives based on a commodity or commodities; or (c) any index based on either (a) or (b) above.

As a result of application of NYSE Rule 1300B(b), the specialist in the Notes, the specialist's member organization and other specified persons will be prohibited under paragraph (m) of NYSE Rule 105 Guidelines from acting as market maker or functioning in any capacity involving market-making responsibilities in the Index components, the commodities underlying the Index components, or options, futures or options on futures on the Index, or any other derivatives (collectively, "derivative instruments") based on the Index or based on any Index component or any physical commodity underlying an Index component. If the member organization acting as specialist in the Notes is entitled to an exemption under NYSE Rule 98 from paragraph (m) of NYSE Rule 105 Guidelines, then that member organization could act in a market making capacity in the Index components, the commodities

underlying the Index components, or derivative instruments based on the Index or based on any Index component or commodity underlying an Index component, other than as a specialist in the Notes themselves, in another market center.

Under NYSE Rule 1301B(a), the member organization acting as specialist in the Notes (1) will be obligated to conduct all trading in the Notes 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), (2) will be required to file with the Exchange and keep current a list identifying all accounts for trading in the Index components or the physical commodities underlying the Index components, or derivative instruments based on the Index or based on the Index components or the physical commodities underlying the Index components, which the member organization acting as specialist may have or over which it may exercise investment discretion, and (3) will be prohibited from trading in the Index components or the physical commodities underlying the Index components, or derivative instruments based on the Index or based on the Index components or the physical commodities underlying the Index components, in an account in which a member organization acting as specialist, controls trading activities which have not been reported to the Exchange as required by NYSE Rule 1301B.

Under NYSE Rule 1301B(b), the member organization acting as specialist in the Notes will be required to make available to the Exchange such books, records or other information pertaining to transactions by the member organization and other specified persons for its or their own accounts in the Index components or the physical commodities underlying the Index components, or derivative instruments based on the Index or based on the Index components or the physical commodities underlying the Index components, as may be requested by the Exchange. This requirement is in addition to existing obligations under Exchange rules regarding the production of books and records.

Under NYSE Rule 1301B(c), in connection with trading the Index components or the physical commodities underlying the Index components, or derivative instruments based on the Index or based on the Index components or the physical commodities underlying the Index components, the specialist could not use any material nonpublic information

³² 17 CFR 240.10A-3; see also 15 U.S.C. 78a.

³³ The Exchange confirmed that the Index value (along with the GSCI index value) will be disseminated at least every 15 seconds by one or more major market data vendors during the time the Notes trade on the Exchange. The Exchange also confirmed these indexes have daily settlement values that are widely disclosed. April 13 Telephone Conference.

³⁴ 17 CFR 240.19b-4.

³⁵ April 10 Telephone Conference.

³⁶ See NYSE Rule 431.

³⁷ In the event the Index value or Indicative Value is no longer calculated or disseminated, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances.

³⁸ In the event a "market disruption event" occurs that is of more than a temporary nature, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances.

received from any person associated with a member or employee of such person regarding trading by such person or employee in the Index components or the physical commodities underlying the Index components, or derivative instruments based on the Index or based on the Index components or the physical commodities underlying the Index components.

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes and the Index components. The Exchange will rely upon existing NYSE surveillance procedures governing equities with respect to surveillance of the Notes. The Exchange believes that these procedures are adequate to monitor Exchange trading of the Notes and to detect violations of Exchange rules, consequently deterring manipulation. In this regard, the Exchange currently has the authority under NYSE Rule 476 to request the Exchange specialist in the Notes to provide NYSE Regulation with information that the specialist uses in connection with pricing the Notes on the Exchange, including specialist proprietary or other information regarding securities, commodities, futures, options on futures or other derivative instruments. The Exchange believes it also has authority to request any other information from its members—including floor brokers, specialists and “upstairs” firms—to fulfill its regulatory obligations.

With regard to the Index components, the Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the New York Mercantile Exchange (“NYMEX”), the Kansas City Board of Trade, ICE, and the LME, pursuant to its comprehensive information sharing agreements with each of those exchanges. All of the other trading venues on which current Index components are traded are members of the Intermarket Surveillance Group (“ISG”), and the Exchange therefore has access to all relevant trading information with respect to those contracts without any further action being required on the part of the Exchange. All these surveillance arrangements constitute comprehensive surveillance sharing arrangements.³⁹

³⁹ April 14 Telephone Conference with John Carey.

Suitability

Pursuant to NYSE Rule 405, the Exchange will 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 Notes.⁴⁰ With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

Information Memorandum

The Exchange will, prior to trading the Notes, distribute an information memorandum to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes. The information memorandum will note to members language in the prospectus used by Barclays in connection with the sale of the Notes regarding prospectus delivery requirements for the Notes. Specifically, in the initial distribution of the Notes,⁴¹ and during any subsequent distribution of the Notes, NYSE members will deliver a prospectus to investors purchasing from such distributors.⁴²

The information memorandum will discuss the special characteristics and risks of trading this type of security. Specifically, the information memorandum, among other things, will discuss what the Notes are, how the Notes are redeemed, applicable Exchange rules, dissemination of information regarding the Index value and the Indicative Value, trading information and applicable suitability rules.

The information memorandum will also notify members and member organizations about the procedures for redemptions of Notes and that Notes are not individually redeemable but are redeemable only in aggregations of at least 50,000 Notes.

The information memorandum will also reference the fact that there is no regulated source of last sale information

⁴⁰ NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

⁴¹ The Registration Statement reserves the right to do subsequent distributions of these Notes.

⁴² April 10 Telephone Conference.

regarding physical commodities and that the SEC has no jurisdiction over the trading of physical commodities such as aluminum, gold, crude oil, heating oil, corn and wheat, or the futures contracts on which the value of the Notes is based, and that the CFTC has no regulatory jurisdiction over the trading of certain foreign based futures contracts.⁴³

The information memorandum will also discuss other exemptive or no-action relief under the Act provided by the Commission staff.⁴⁴

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5)⁴⁵ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NYSE 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 Commission is considering granting accelerated approval of the

⁴³ April 14 Telephone Conference with John Carey.

⁴⁴ April 10 Telephone Conference.

⁴⁵ 15 U.S.C. 78f(b)(5).

proposed rule change at the end of a 15-day comment period.⁴⁶

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-2006-20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2006-20. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2006-20 and should be submitted on or before May 9, 2006.

⁴⁶ The NYSE has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof, following the conclusion of a 15-day comment period. April 10 Telephone Conference.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁷

Nancy M. Morris,

Secretary.

[FR Doc. E6-6073 Filed 4-21-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53659; File No. SR-NYSE-2006-17]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To List and Trade Shares of the iShares GSCI Commodity Indexed Trust Under New Rules 1300B and 1301B, et seq.

April 17, 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 March 7, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NYSE. On March 24, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to list and trade under new NYSE Rules 1300B, et seq. shares ("Commodity Trust Shares" or

⁴⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the NYSE made some technical and clarifying changes. In addition, the Exchange added Supplementary Material .10 to its proposed Rule 1301B, applying the provisions of its proposed Rules 1300B(b) and 1301B to certain securities listed on the Exchange pursuant to section 703.19 ("Other Securities") of the NYSE Listed Company Manual, in addition to the securities in this proposal. Specifically, NYSE Rules 1300B(b) and 1301B would apply to securities listed under section 703.19 where the price of such securities is based in whole or part on the price of a commodity or commodities, a commodities index, or any futures contracts or other derivatives based thereon. Examples of the securities to which these securities will apply are the subjects of File No. SR-NYSE-2006-16 (proposal to list and trade Index-Linked Securities of Barclays Bank PLC ("Notes") linked to the performance of the Dow Jones-AIG Commodity Index Total Return™ and File No. SR-NYSE-2006-20 (proposal to list and trade Notes linked to the performance of GSCI Total Return Index).

"Shares") of the iShares® GSCI® Commodity—Indexed Trust ("Trust"), which will issue units of beneficial interest representing fractional undivided beneficial interests in the net assets of the Trust. NYSE Rules 1300B and 1301B are set forth below, with new text underlined:

Rule 1300B

Commodity Trust Shares

(a) The provisions of this Rule 1300B series apply only to Commodity Trust Shares. The term "Commodity Trust Shares" as used in this Rule and in Rule 1301B means a security that (a) is issued by a trust ("Trust") which (i) is a commodity pool that is managed by a commodity pool operator registered as such with the Commodity Futures Trading Commission, and (ii) which holds positions in futures contracts on a specified commodity index, or interests in a commodity pool which, in turn, holds such positions; (b) when aggregated in some specified minimum number may be surrendered to the Trust by the beneficial owner to receive positions in futures contracts on a specified index and cash or short term securities. The term "futures contract" is commonly known as a "contract of sale of a commodity for future delivery" set forth in section 2(a) of the Commodity Exchange Act. While Commodity Trust Shares are not technically Investment Company Units and thus are not covered by Rule 1100, all other rules that reference "Investment Company Units," as defined and used in Para. 703.16 of the Listed Company Manual, including, but not limited to Rules 13, 36.30, 98, 104, 460.10, 1002, and 1005 shall also apply to Commodity Trust Shares. When these rules reference Investment Company Units, the word "index" (or derivative or similar words) will be deemed to be the applicable commodity index and the word "security" (or derivative or similar words) will be deemed to be "Commodity Trust Shares".

(b) As is the case with Investment Company Units, paragraph (m) of the Guidelines to Rule 105 shall also apply to Commodity Trust Shares. Specifically, Rule 105(m) shall be deemed to prohibit an equity specialist, his member organization, other member, allied member or approved person in such member organization or officer or employee thereof from acting as a market maker or functioning in any capacity involving market-making responsibilities in the physical commodities included in, or options, futures or options on futures on, the index underlying an issue of Commodity

Trust Shares, or any other derivatives based on such index or based on any commodity included in such index. However, an approved person of an equity specialist entitled to an exemption from Rule 105(m) under Rule 98 may act in a market making capacity, other than as a specialist in the same issue of Commodity Trust Shares in another market center, in physical commodities included in, or options, futures or options on futures on, the index underlying an issue of Commodity Trust Shares, or any other derivatives based on such index or based on any commodity included in such index.

(c) Except to the extent that specific provisions in this Rule govern, or unless the context otherwise requires, the provisions of all Exchange Rules and policies shall be applicable to the trading of Commodity Trust Shares on the Exchange. Pursuant to Exchange Rule 3 ("Security"), Commodity Trust Shares are included within the definition of "security" or "securities" as those terms are used in the rules of the Exchange.

Rule 1301B

Commodity Trust Shares: Securities Accounts and Orders of Specialists

(a) The member organization acting as specialist in Commodity Trust Shares is obligated to conduct all trading in the 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 Rules 104.12 and 104.13.) In addition, the member organization acting as specialist in Commodity Trust Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in the physical commodities included in, or options, futures or options on futures on, an index underlying an issue of Commodity Trust Shares in which the member organization acts as specialist, or any other derivatives based on such index or based on any commodity included in such index, which the member organization acting as specialist may have or over which it may exercise investment discretion. No member organization acting as specialist in Commodity Trust Shares shall trade in physical commodities included in, or options, futures or options on futures on, an index underlying an issue of Commodity Trust Shares in which the member organization acts as specialist, or any other derivatives based on such index or based on any commodity included in such index, 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 hereby.

(b) In addition to the existing obligations under Exchange rules regarding the production of books and records (see, e.g., Rule 476(a)(11)), the member organization acting as specialist in Commodity Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any member, allied member, approved person, registered or non-registered employee affiliated with such entity for its or their own accounts in options, futures or options on futures on, an index underlying an issue of Commodity Trust Shares in which the member organization acts as specialist; or in any commodity included in such index; or in any other derivatives based on such index or based on any commodity included in such index, as may be requested by the Exchange.

(c) In connection with trading any physical commodity included in, or options, futures or options on futures on, an index underlying an issue of Commodity Trust Shares in which the member organization acts as specialist, or any other derivatives based on such index (including Commodity Trust Shares) or based on any commodity included in such index, the specialist registered as such in an issue of Commodity Trust Shares shall not use any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in the options, futures or options on futures on an index underlying an issue of Commodity Trust Shares in which the member organization acts as specialist; or in any other derivatives on such index; or in any commodity included in such index or any derivatives on such commodity.

Supplementary Material:

.10 The provisions of Rule 1300B (b) and Rule 1301B shall apply to securities listed on the Exchange pursuant to Section 703.19 ("Other Securities") of the Listed Company Manual where the price of such securities is based in whole or part on the price of (a) a commodity or commodities, (b) any futures contracts or other derivatives based on a commodity or commodities; or (c) any index based on either (a) or (b) above.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change as amended and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade Commodity Trust Shares under new NYSE Rules 1300B *et seq.* The Trust, a Delaware statutory trust, will issue Shares that represent fractional undivided beneficial interests in its net assets. Substantially all of the assets of the Trust consist of its holdings of the limited liability company interests of a commodity pool ("Investing Pool Interests"), which are the only securities in which the Trust may invest. That commodity pool, iShares® GSCI Commodity—Indexed Investing Pool LLC ("Investing Pool"), holds long positions in futures contracts on the GSCI Excess Return Index ("CERFs"), which are listed on the Chicago Mercantile Exchange ("CME"), and will post margin in the form of cash or short-term securities to collateralize these futures positions. According to the Trust's registration statement,⁴ it is the objective of the Trust that the performance of the Shares will correspond generally to the performance of the GSCI Total Return Index ("Index") before payment of the Trust's and the Investing Pool's expenses and liabilities. The Trust and the Investing Pool are each commodity pools managed by a commodity pool operator registered as such with the Commodity Futures Trading Commission ("CFTC"). Neither the Trust nor the Investing Pool is an investment company registered under the Investment Company Act of 1940 ("Investment Company Act").

The Shares are intended to constitute a relatively cost-effective means of achieving investment exposure to the

⁴ The sponsor of the Trust ("Sponsor"), Barclays Global Investors International, Inc., on behalf of the Trust, filed the Form S-1 (the "Registration Statement") on July 22, 2005, as amended. See Registration No. 333-126810.

performance of the Index, which is intended to reflect the performance of a diversified group of commodities. Although the Shares will not be the exact equivalent of an investment in the underlying futures contracts and Treasury securities represented by the Index, the Shares are intended to provide investors with an alternative way of participating in the commodities market.

a. The Sponsor and Trustee

The Sponsor's primary business function is to act as Sponsor and commodity pool operator of the Trust and manager of the Investing Pool ("Manager"), as discussed below.⁵ The advisor to the Investing Pool ("Advisor") is Barclays Global Fund Advisors, a California corporation and an indirect subsidiary of Barclays Bank PLC.

As Manager, Barclays Global Investors International, Inc. will serve as commodity pool operator of the Investing Pool and be responsible for its administration. The Manager will arrange for and pay the costs of organizing the Investing Pool. The Manager has delegated some of its responsibilities for administering the Investing Pool to the Administrator, Investors Bank & Trust Company, which in turn, has employed the Investing Pool Administrator and the Tax Administrator (Pricewaterhouse Coopers) to maintain various records on behalf of the Investing Pool.

The trustee of the Trust ("Trustee") is Barclays Global Investors, N.A., a national banking association affiliated with the Sponsor. The Trustee is responsible for the day-to-day administration of the Trust. Day-to-day administration includes: (i) Processing orders for the creation and redemption of Baskets (as described below, with each Basket an aggregation of 50,000 Shares); (ii) coordinating with the Manager of the Investing Pool the receipt and delivery of consideration transferred to, or by, the Trust in connection with each issuance and redemption of Baskets; and (iii) calculating the net asset value of the Trust on each Business Day.⁶ The Trustee has delegated these responsibilities to the Trust Administrator, Investors Bank & Trust

⁵ Barclays Global Investors International, Inc. is a commodity pool operator registered with the CFTC.

⁶ The Trust Registration Statement defines "Business Day" as any day (1) on which none of the following occurs: (a) The NYSE is closed for regular trading, (d) the CME is closed for regular trading, or (c) the Federal Reserve transfer system is closed for cash wire transfers, or (2) the Trustee determines that it is able to conduct business.

Company, a banking corporation that is not affiliated with the Sponsor or the Trustee.⁷

b. The Investing Pool

The Investing Pool will hold long positions in CERFs, which are cash-settled futures contracts listed on the CME that have a term of approximately five years after listing and whose settlement at expiration is based on the value of the GSCI Excess Return Index ("GSCI-ER") at that time. The Investing Pool will also earn interest on the assets used to collateralize its holdings of CERFs. Trading on the CME Globex electronic trading platform of CERFs commenced effective March 12, 2006 for trade date March 13, 2006.

Each CERF is a contract that provides for cash settlement, at expiration, based upon the final settlement value of the GSCI-ER at the expiration of the contract multiplied by a fixed dollar multiplier. The final settlement value is determined for this purpose. Accordingly, a position in CERFs provides the holder with the positive or negative return on the GSCI-ER during the period in which the position is held. On a daily basis, most market participants with positions in CERFs are obligated to pay, or entitled to receive, cash (known as "variation margin") in an amount equal to the change in the daily settlement level of the CERF from the preceding trading day's settlement level (or, initially, the contract price at which the position was entered into). Specifically, if the daily settlement price of the contract increases over the previous day's price, the seller of the contract must pay the difference to the buyer, and if the daily settlement price is less than the previous day's price, the buyer of the contract must pay the difference to the seller. The Investing Pool, however, and certain other categories of investors, will be required to deposit initial margin equal to 100% of the value of the CERF position at the time it is established.

The GSCI-ER is calculated based on the same commodities included in the Goldman Sachs Commodity Index ("GSCI"), which is a production-weighted index of the prices of a diversified group of futures contracts on physical commodities. The GSCI, the GSCI-ER and the Index are administered, calculated, and published by Goldman, Sachs & Co. ("Index

⁷ Except as otherwise specifically noted, the information provided in this proposed rule filing relating to the Trust and the Shares, commodities markets, and related information is based entirely on information included in the Registration Statement.

Sponsor"),⁸ a subsidiary of The Goldman Sachs Group Inc. The Index Sponsor is a broker-dealer.⁹

The GSCI-ER reflects the return of an uncollateralized investment in the contracts comprising the GSCI, and in addition incorporates the economic effect of "rolling" the contracts included in the GSCI as they near expiration. "Rolling" a futures contract means closing out a position in an expiring futures contract and establishing an equivalent position in the contract on the same commodity with the next expiration date. The Index reflects the return of the GSCI-ER, together with the return on specified U.S. Treasury securities that are deemed to have been held to collateralize a hypothetical long position in the futures contracts comprising the GSCI. If Goldman, Sachs & Co. ("Goldman Sachs") ceases to maintain the GSCI-ER, the Trust, through the Investing Pool, may seek investment results that correspond generally to the Index by holding a fully-collateralized investment in a successor index, or an index that, in the opinion of the Manager, is reasonably similar to the GSCI-ER.¹⁰

The Trust, through the Investing Pool, will be a passive investor in CERFs and the cash or Short-Term Securities¹¹ posted as margin to collateralize the

⁸ Telephone conference between Michael Cavalier, Assistant General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Commission, on April 13, 2006 ("April 13 Telephone Conference").

⁹ *Id.*

¹⁰ In the event the Trust utilizes any index that is a successor to or similar to the GSCI-ER or the GSCI Total Return Index, the Exchange will file a proposed rule change pursuant to Rule 19b-4 under the Act. Such filing would address, among other things, the characteristics of the successor or substitute index and the Exchange's surveillance procedures applicable to such index. Unless approved for continued trading, the Exchange would commence delisting proceedings. See "Continued Listing Criteria," *infra*. Telephone conference between Michael Cavalier, Assistant General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Commission, on April 10, 2006 ("April 10 Telephone Conference").

The Exchange will also file a proposed rule change pursuant to Rule 19b-4 if GSCI substantially changes either the Index component selection methodology or the weighting methodology. In addition, the Exchange will file a proposed rule change pursuant to Rule 19b-4 whenever GSCI adds a new component to the Index using pricing information from a market with which the Exchange does not have a previously existing information sharing agreement or switches to using pricing information from such a market with respect to an existing component when such component constitutes more than 10% of the weight of the Index. Unless approved for continued trading, the Exchange would commence delisting proceedings. See "Continued Listing Criteria," *infra*. April 10 Telephone Conference.

¹¹ "Short-Term Securities" means U.S. Treasury Securities or other short-term securities and similar securities, in each case that are eligible as margin deposits under the rules of the CME.

Investing Pool's CERF positions. Neither the Trust nor the Investing Pool will engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the value of CERFs or securities posted as margin.

The Investing Pool, and some other types of market participants, will be required to deposit margin with a value equal to 100% of the value of each CERF position at the time it is established. Those market participants not subject to the 100% margin requirement are required to deposit margin generally with a value of 3% to 5% of the established position. Interest paid on the collateral deposited as margin, net of expenses, will be reinvested by the Investing Pool or, at the Trustee's discretion, may be distributed from time to time to the Shareholders. The Investing Pool's profit or loss on its CERF positions should correlate with increases and decreases in the value of the GSCI-ER, although this correlation will not be exact. The interest on the collateral deposited by the Investing Pool as margin, together with the returns corresponding to the performance of the GSCI-ER, is expected to result in a total return for the Investing Pool that corresponds generally, but is not identical, to the Index. Differences between the returns of the Investing Pool and the Index may be based on, among other factors, any differences between the return on the assets used by the Investing Pool to collateralize its CERF positions and the U.S. Treasury rate used to calculate the return component of the Index, timing differences, differences between the weighting of the Investing Pool's proportion of assets invested in CERFs versus the Index, and the payment of expenses and liabilities by the Investing Pool. The Trust's net asset value will reflect the performance of the Investing Pool, its sole investment.

The Investing Pool will be managed by the Advisor, which will invest all of the Investing Pool's assets in long positions in CERFs and post margin in the form of cash or Short-Term Securities to collateralize the CERF positions. Any cash that the Investing Pool accepts as consideration from the Trust for Investing Pool Interests will be used to purchase additional CERFs, in an amount that the Advisor determines will enable the Investing Pool to achieve investment results that correspond with the Index, and to collateralize the CERFs. According to the Registration Statement, the Advisor will not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in value of any of the commodities represented by the

GSCI or the positions or other assets held by the Investing Pool.

c. Futures Contracts on the GSCI-ER

The assets of the Investing Pool will consist of CERFs and cash or Short-Term Securities posted as margin to collateralize the Investing Pool's CERF positions. Futures contracts and options on futures contracts on the GSCI, which does not reflect the excess return embedded in the GSCI-ER, have been traded on the CME since 1992. CERFs are listed and traded separately from the GSCI futures contracts and options on futures contracts.

CERFs trading is subject to the rules of the CME. According to the Registration Statement, CERFs trade on GLOBEX, the CME's electronic trading system, and do not trade through open outcry on the floor of the CME.¹² Transactions in CERFs are cleared through the CME clearing house by the trader's futures commission merchant ("FCM") acting as its agent. Under these clearing arrangements, the CME clearing house becomes the buyer to each member FCM representing a seller of the contract and the seller to each member FCM representing a buyer of the contract. As a result of these clearing arrangements, each trader holding a position in CERFs is subject to the credit risk of the CME clearing house and the FCM carrying its position in CERFs.

Each CERF is a contract that provides for cash settlement, at expiration, based upon the final settlement value of the GSCI-ER at the expiration of the contract, multiplied by a fixed dollar multiplier. The final settlement value is determined for this purpose on the date set forth in the Trust prospectus. On a daily basis, most market participants with positions in CERFs are obligated to pay, or entitled to receive, cash (known as "variation margin") in an amount equal to the change in the daily settlement level of the CERF from the preceding trading day's settlement level (or, initially, the contract price at which the position was entered into). Specifically, if the daily settlement price of the contract increases over the previous day's price, the seller of the contract must pay the difference to the buyer, and if the daily settlement price is less than the previous day's price, the buyer of the contract must pay the difference to the seller.

Futures contracts also typically require deposits of initial margin as well as payments of daily variation margin as

the value of the contracts fluctuate. For most market participants, the initial margin requirement for CERFs is generally expected to be 3% to 5%. Certain market participants (known as "100% margin participants"), however, will be required to deposit with their FCM initial margin in an amount equal to 100% of the value of the CERF on the date the position is established. The FCM, in turn, will be required to deliver to the CME clearing house initial margin in a specified amount and pledge to the clearing house, pursuant to a separate custody arrangement, an amount equal to the remainder of the 100% margin amount posted by 100% margin participants, either from amounts posted by those 100% margin participants or from its own assets. The separate custody arrangement will be either an account with the FCM or a third party custody account.

As a result of these arrangements, a 100% margin participant buying a CERF will be subject to substantially greater initial margin requirements than other market participants, but will not be required to pay any additional amounts to its FCM as variation margin if the value of the CERFs declines. Instead, the FCM will be obligated to make variation margin payments to the clearinghouse in respect of CERFs held by 100% margin participants, which it will withdraw from the separate custody account (and, in turn, from the 100% margin posted by those participants).

If the daily settlement price increases, the FCM will receive variation margin from the clearinghouse for the account of the 100% margin participant, which it will hold in the separate custody account for the benefit of 100% margin participants. The buyer will not, however, be entitled to receive this variation margin from its FCM (until the liquidation or final settlement of its CERF position). The buyer will be entitled to receive interest or other income on the assets it has deposited as margin or that are credited to the custody account on its behalf from time to time.

Upon liquidation or settlement of a CERF, a 100% margin participant will receive from its FCM its initial margin deposit, adjusted for variation margin paid or received by the FCM with respect to the contract during the time it was held by the participant (or the proceeds from liquidation of any investments made with such funds for the benefit of the participant under the terms of its custody arrangement with the carrying FCM).

The 100% margin participants will include any market participant that is:

- (i) An investment company registered

¹² Trading hours for CERFs on GLOBEX will be as follows: Sunday, 6 p.m. to 2:40 p.m. (next day) (New York time); Monday to Thursday, 6 p.m. to 2:40 p.m. (next day) and 3 p.m. to 5 p.m. (New York time).

under the Investment Company Act; or (ii) an investment fund, commodity pool, or other similar type of pooled trading vehicle (other than a pension plan or fund) that is offered to the public pursuant to an effective registration statement filed under the Securities Act of 1933, regardless of whether it is also registered under the Investment Company Act, and that has its principal place of business in the United States.

The Investing Pool will be a 100% margin participant. The Investing Pool will satisfy the 100% margin requirement by depositing with the Clearing FCM cash or Short-Term Securities with a value equal to 100% of the value of each long position in CERFs.

According to the Registration Statement, CERFs differ from traditional futures contracts in another significant respect. In contrast to other types of futures contracts, which are typically listed with monthly, bimonthly or quarterly expirations, CERFs will be listed only with approximately five-year expirations. A buyer or seller of CERFs will be able to trade CERFs on the market maintained by the CME and will consequently be able to liquidate its position at any time, subject to the existence of a liquid market. If a party to a CERF wishes to hold its position to expiration, however, it will be necessary to maintain the position for up to five years. According to the Registration Statement, as a CERF nears expiration, it is anticipated, but there can be no assurance, that the CME will list an additional CERF with an approximately five-year expiration.

Creation and redemption of interests in the Trust, and the corresponding creation and redemption of interests in the Investing Pool, will generally be effected through transactions in "exchanges of futures for physicals," or "EFPs." EFPs involve contemporaneous transactions in futures contracts and the underlying cash commodity or a closely related commodity. In a typical EFP, the buyer of the futures contract sells the underlying commodity to the seller of the futures contract in exchange for a cash payment reflecting the value of the commodity and the relationship between the price of the commodity and the related futures contract. According to the Registration Statement, in the context of CERFs, CME rules permit the execution of EFPs consisting of simultaneous purchases (sales) of CERFs and sales (purchases) of Shares. This mechanism will generally be used by the Trust in connection with the creation and redemption of Baskets. Specifically, it is anticipated that an

"Authorized Participant" (defined below) requesting the creation of additional Baskets typically will transfer CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) to the Trust in return for Shares.¹³

The Trust will simultaneously contribute to the Investing Pool the CERFs (and any cash or securities) received from the Authorized Participant in return for an increase in its Investing Pool Interests. If an EFP is executed in connection with the redemption of one or more Baskets, an Authorized Participant will transfer to the Trust the interests being redeemed and the Trust will transfer to the Authorized Participant CERFs, cash or Short-Term Securities. In order to obtain the CERFs, cash or Short-Term Securities to be transferred to the Authorized Participant, the Trust will redeem an equivalent portion of its interest in the Investing Pool Interests.

d. *The Index and the GSCI-ER*

The Index and the GSCI-ER were established in May of 1991. The Index reflects the value of an investment in the GSCI-ER together with a Treasury bill return. The GSCI-ER reflects the returns that are potentially available through a rolling uncollateralized investment in the contracts comprising the GSCI.

Because futures contracts have scheduled expirations, or delivery months, as one contract nears expiration it becomes necessary to close out the position in that delivery month and establish a position in the next available delivery month. This process is referred to as "rolling" the position forward. The GSCI-ER is designed to reflect the return from rolling each contract included in the GSCI in this manner into the next available delivery month as it nears expiration. This is accomplished by selling the position in the first delivery month and purchasing a position of equivalent value in the second delivery month. If the price of the second contract is lower than the price of the first contract, the "rolling" process results in a greater quantity of the second contract being acquired for the same value. Conversely, if the price of the second contract is higher than the price of the first contract, the "rolling" process results in a smaller quantity of the second contract being acquired for the same value.

The GSCI itself is an index on a production-weighted basket of principal

¹³ Authorized Participants will require access to a commodities account in connection with creation/redemption activity of Shares. April 13 Telephone Conference.

physical commodities that satisfy specified criteria. The GSCI reflects the level of commodity prices at a given time and is designed to be a measure of the performance over time of the markets for these commodities. The commodities represented in the GSCI are those physical commodities on which active and liquid contracts are traded on trading facilities in major industrialized countries. The commodities included in the GSCI are weighted, on a production basis, to reflect the relative significance (in the view of the Index Sponsor, in consultation with its Policy Committee described below) of those commodities to the world economy. The fluctuations in the level of the GSCI are intended generally to correlate with changes in the prices of those physical commodities in global markets.

The Index Sponsor makes the official calculations of the value of the Index.¹⁴ At present, this calculation is performed continuously and is reported on Reuters Page GSCI and is updated on Reuters at least every fifteen seconds during NYSE trading hours for the Shares and during business hours on each Business Day on which the offices of Goldman, Sachs in New York City are open for business. In the event that the Exchange is open for business on a day that is not a GSCI Business Day, the Exchange will not permit trading of the Shares on that day.¹⁵ The settlement prices for the Index and GSCI-ER are also reported on Reuters Page GSCI at the end of each GSCI Business Day and on Bloomberg page GSCI-ER index.

e. *The Policy Committee*

The Index Sponsor has established a Policy Committee to assist it with the operation of the GSCI.¹⁶ The principal purpose of the Policy Committee is to advise the Index Sponsor with respect to, among other things, the calculation of the GSCI, the effectiveness of the GSCI as a measure of commodity futures market performance and the need for changes in the composition or the methodology of the GSCI. The Policy Committee acts solely in an advisory and consultative capacity. All decisions with respect to the composition,

¹⁴ Goldman, Sachs & Co., which is a broker/dealer, calculates the GSCI and GSCI-ER. April 13 Telephone Conference.

¹⁵ See "Calculation of the Index," *infra*.

¹⁶ The GSCI is a separate index from the Index; however, the value of the Index (and GSCI-ER index) is derived from the GSCI, as described below. The component selection for the GSCI would obviously affect the Index and the GSCI-ER. April 13 Telephone Conference.

calculation and operation of the GSCI are made by the Index Sponsor.¹⁷

The Policy Committee generally meets in October of each year. Prior to the meeting, the Index Sponsor determines the commodities to be included in the GSCI for the following calendar year and the weighting factors for each commodity. The Policy Committee's members receive the proposed composition of the GSCI in advance of the meeting and discuss the composition at the meeting. The Index Sponsor also consults the Policy Committee on any other significant matters with respect to the calculation and operation of the GSCI. The Policy Committee may, if necessary or practicable, meet at other times during the year as issues arise that warrant its consideration.

The Policy Committee currently consists of eight persons, three of whom are employees of the Index Sponsor or its affiliates and five of whom are not affiliated with the Index Sponsor.

f. Composition of the GSCI

Because the value of the Index (which the Shares track) reflects the futures contracts included in the GSCI, the Exchange describes below the index methodology for the GSCI.¹⁸ In order to be included in the GSCI, a contract must satisfy the following eligibility criteria:

- (i) The contract must:
 - (a) Be in respect of a physical commodity and not a financial commodity;
 - (b) Have a specified expiration or term, or provide in some other manner for delivery or settlement at a specified time, or within a specified period, in the future; and
 - (c) Be available, at any given point in time, for trading at least five months prior to its expiration or such other date or time period specified for delivery or settlement.

¹⁷ As mentioned above, Goldman, Sachs & Co., a broker-dealer, is the Index Sponsor of the GSCI, the GSCI-ER and the Index, and in that capacity the company calculates those indices. Goldman, Sachs & Co. has represented to the Trust Sponsor that they: (i) Have or will, prior to issuance of the Shares, put in place policies reasonably designed to prevent the use and dissemination by Goldman, Sachs & Co. employees in violation of applicable laws, rules and regulations, of material, non-public information relating to changes in the composition or method of computation or calculation of the Index; and (ii) periodically check the application of such policies as they related to Goldman, Sachs & Co. employees directly responsible for such changes. In addition, the Policy Committee members are subject to written policies with respect to material, non-public information. April 13 Telephone Conference.

¹⁸ Telephone conference between Michael Cavalier, Assistant General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Commission, on April 14, 2006 ("April 14 Telephone Conference").

(ii) The commodity must be the subject of a contract that:

- (a) Is denominated in U.S. dollars;
- (b) Is traded on or through an exchange, facility or other platform, referred to as a "trading facility," that has its principal place of business or operations in a country that is a member of the Organization for Economic Cooperation and Development and:
 - (1) Makes price quotations generally available to its members or participants (and, if the Index Sponsor is not such a member or participant, to the Index Sponsor) in a manner and with a frequency that is sufficient to provide reasonably reliable indications of the level of the relevant market at any given point in time;
 - (2) Makes reliable trading volume information available to the Index Sponsor with at least the frequency required by the Index Sponsor to make the monthly determinations;
 - (3) Accepts bids and offers from multiple participants or price providers; and
 - (4) Is accessible by a sufficiently broad range of participants.
- (iii) The price of the relevant contract that is used as a reference or benchmark by market participants, referred to as the "daily contract reference price," generally must have been available on a continuous basis for at least two years prior to the proposed date of inclusion in the GSCI. In appropriate circumstances, however, the Index Sponsor, in consultation with its Policy Committee, may determine that a shorter time period is sufficient or that historical daily contract reference prices for that contract may be derived from daily contract reference prices for a similar or related contract. The daily contract reference price may be (but is not required to be) the settlement price or other similar price published by the relevant trading facility for purposes of margining transactions or for other purposes.

(iv) At and after the time a contract is included in the GSCI, the daily contract reference price for that contract must be published between 10 a.m. and 4 p.m., New York time, on each Business Day relating to that contract by the trading facility on or through which it is traded and must generally be available to all members of, or participants in, that trading facility (and, if the Index Sponsor is not such a member or participant, to the Index Sponsor) on the same day from the trading facility or through a recognized third-party data vendor. Such publication must include, at all times, daily contract reference prices for at least one expiration or settlement date that is five months or

more from the date the determination is made, as well as for all expiration or settlement dates during that five-month period.

(v) Volume data with respect to the contract must be available for at least the three months immediately preceding the date on which the determination is made.

(vi) A contract that is not included in the GSCI at the time of determination and that is based on a commodity that is not represented in the GSCI at that time must, in order to be added to the GSCI at that time, have a total dollar value traded, over the relevant period, as the case may be and annualized, of at least \$15 billion. The total dollar value traded is the dollar value of the total quantity of the commodity underlying transactions in the relevant contract over the period for which the calculation is made, based on the average of the daily contract reference prices on the last day of each month during the period.

(vii) A contract that is already included in the GSCI at the time of determination and that is the only contract on the relevant commodity included in the GSCI must, in order to continue to be included in the GSCI after that time, have a total dollar value traded, over the relevant period, as the case may be and annualized, of at least \$5 billion and at least \$10 billion during at least one of the three most recent annual periods used in making the determination.

(viii) A contract that is not included in the GSCI at the time of determination and that is based on a commodity on which there are one or more contracts already included in the GSCI at that time must, in order to be added to the GSCI at that time, have a total dollar value traded, over the relevant period, as the case may be and annualized, of at least \$30 billion.

(ix) A contract that is already included in the GSCI at the time of determination and that is based on a commodity on which there are one or more contracts already included in the GSCI at that time must, in order to continue to be included in the GSCI after that time, have a total dollar value traded, over the relevant period, as the case may be and annualized, of at least \$10 billion and at least \$20 billion during at least one of the three most recent annual periods used in making the determination.

(x) A contract that is:

(a) Already included in the GSCI at the time of determination must, in order to continue to be included after that time, have a reference percentage dollar weight of at least 0.10%. The "reference

percentage dollar weight" of a contract represents the current value of the quantity of the underlying commodity that is included in the Index at a given time. This figure is determined by multiplying the contract production weight of a contract, or "CPW," by the average of its daily contract reference prices on the last day of each month during the relevant period. These amounts are summed for all contracts included in the GSCI and each contract's percentage of the total is then determined. The CPW of a contract is its weight in the Index.

(b) Not included in the GSCI at the time of determination must, in order to be added to the GSCI at that time, have a reference percentage dollar weight of at least 0.75%.

(xi) In the event that two or more contracts on the same commodity satisfy the eligibility criteria:

(a) Such contracts will be included in the GSCI in the order of their respective total quantity traded during the relevant period (determined as the total quantity of the commodity underlying transactions in the relevant contract), with the contract having the highest total quantity traded being included

first, provided that no further contracts will be included if such inclusion would result in the portion of the GSCI attributable to that commodity exceeding a particular level.

(b) If additional contracts could be included with respect to several commodities at the same time, that procedure is first applied with respect to the commodity that has the smallest portion of the GSCI attributable to it at the time of determination. Subject to the other eligibility criteria described above, the contract with the highest total quantity traded on that commodity will be included. Before any additional contracts on the same commodity or on any other commodity are included, the portion of the GSCI attributable to all commodities is recalculated. The selection procedure described above is then repeated with respect to the contracts on the commodity that then has the smallest portion of the GSCI attributable to it.

Beginning in 2007, in order for a contract to be included in the GSCI: (i) The trading facility in which the contract is traded must allow market participants to execute spread transactions, through a single order

entry, between the pairs of contract expirations included in the GSCI that at any given point in time will be involved in the rolls to be effected in the next three roll periods; and (ii) a contract that is not included in the GSCI at the time of determination must, in order to be added to the GSCI at that time, have a reference percentage dollar weight of at least 1.00%.

The contracts currently included in the GSCI are all futures contracts traded on the New York Mercantile Exchange, Inc. ("NYM"), the ICE Futures ("ICE"), the CME, the Chicago Board of Trade ("CBT"), the Coffee, Sugar & Cocoa Exchange, Inc. ("CSC"), the New York Cotton Exchange ("NYC"), the Kansas City Board of Trade ("KBT"), the COMEX Division of the New York Mercantile Exchange, Inc. ("CMX") and the London Metal Exchange ("LME").

The futures contracts currently included in the GSCI, their percentage dollar weights (as of January 20, 2006), their market symbols and the exchanges on which they are traded, trading hours (New York time), Average Daily Trading Volume ("ADTV") for 2005, and units per contract are as follows:

Commodity	PDW 01/20/06 (percent)	Market symbol	Trading Facility	ADTV (contracts)	Units (per contract)
Crude Oil	30.05	CL	NYM	237,535	1,000 bbls
Brent Crude Oil	13.81	LCO	ICE	114,628	1,000 gal
Natural Gas	10.30	NG	NYM	76,139	10,000 gal
Heating Oil	8.16	HO	NYM	76,139	10,000 gal
Gasoline	7.84	HU	NYM	52,406	42,000 gal
Gas Oil	4.41	LGO	ICE	41,561	100 Mtons
Live Cattle	2.88	LC	CME	23,173	40,000 lbs
Wheat	2.47	W	CBT	38,838	5,000 bushels
Aluminum	2.88	IA	LME	120,568	25 Mtons
Corn	2.46	C	CBT	101,308	5,000 bushels
Copper	2.37	IC	LME	76,116	25 Mtons
Soybeans	1.77	S	CBT	73,957	5,000 bushels
Lean Hogs	2.00	LH	CME	16,449	40,000 lbs
Gold	1.73	GC	CMX	63,232	100 oz
Sugar	1.30	SB	CSC	51,822	112,000 lbs
Cotton	0.99	CT	NYC	15,335	50,000 lbs
Red Wheat	0.90	KW	KBT	14,613	5,000 bushels
Coffee	0.80	KC	CSC	15,888	37,500 lbs
Standard Lead	0.29	IL	LME	16,128	25 Mtons
Feeder Cattle	0.78	FC	CME	4,042	40,000 lbs
Zinc	0.54	IZ	LME	42,070	25 Mtons
Primary Nickel	0.82	IN	LME	13,812	6 Mtons
Cocoa	0.23	CC	CSC	10,291	10 Mtons
Silver	0.20	SI	CMX	22,017	5,000 oz

The hours of trading (New York time) of the commodities in the chart above are as follows:

Commodity	Trading facility	Trading hours (NY time)
Crude Oil	NYM	10 am–2:30 pm.
Brent Crude Oil	ICE	8 pm–5:00 pm (next day).
Natural Gas	NYM	10 am–2:30 pm.
Heating Oil	NYM	10:05 am–2:30 pm.

Commodity	Trading facility	Trading hours (NY time)
Gasoline	NYM	10:05 am–2:30 pm.
Gas Oil	ICE	8 pm–5:00 pm (next day).
Live Cattle	CME	10:05 am–2 pm.
Wheat	CBT	10:30 am–2:15 pm.
Aluminum	LME	6:55 am–12 pm.
Corn	CBT	10:30 am–2:15 pm.
Copper	LME	7 am–12 pm.
Soybeans	CBT	10:30 am–2:15 pm.
Lean Hogs	CME	9:10 am–1 pm.
Gold	CMX	8:20 am–1:30 pm.
Sugar	CSC	9 am–12 pm.
Cotton	NYC	10:30 am–2:15 pm.
Red Wheat	KBT	10:30 am–2:15 pm.
Coffee	CSC	9:15 am–12:30 pm.
Standard Lead	LME	7:05 am–11:50 am.
Feeder Cattle	CME	10:05 am–2 pm.
Zinc	LME	7:10 am–11:55 am.
Primary Nickel	LME	7:10 am–11:55 am.
Cocoa	CSC	8 am–11:50 am.
Silver	CMX	8:25 am–1:25 pm.

The quantity of each of the contracts included in the GSCI is determined on the basis of a five-year average, referred to as the “world production average,” of the production quantity of the underlying commodity as published by the United Nations Statistical Yearbook, the Industrial Commodity Statistics Yearbook and other official sources. However, if a commodity is primarily a regional commodity, based on its production, use, pricing, transportation or other factors, the Index Sponsor, in consultation with its Policy Committee, may calculate the weight of that commodity based on regional, rather than world, production data. At present, natural gas is the only commodity the weights of which are calculated on the basis of regional production data, with the relevant region defined as North America.

The five-year moving average is updated annually for each commodity included in the GSCI, based on the most recent five-year period (ending approximately two years prior to the date of calculation and moving backwards) for which complete data for all commodities is available. The CPWs used in calculating the GSCI are derived from world or regional production averages, as applicable, of the relevant commodities, and are calculated based on the total quantity traded for the relevant contract and the world or regional production average, as applicable, of the underlying commodity. However, if the volume of trading in the relevant contract, as a multiple of the production levels of the commodity, is below specified thresholds, the CPW of the contract is reduced until the threshold is satisfied. This is designed to ensure that trading in each contract is sufficiently liquid

relative to the production of the commodity.

In addition, the Index Sponsor performs this calculation on a monthly basis and, if the multiple of any contract is below the prescribed threshold, the composition of the GSCI is reevaluated, based on the criteria and weighting procedure described above. This procedure is undertaken to allow the GSCI to shift from contracts that have lost substantial liquidity into more liquid contracts during the course of a given year. As a result, it is possible that the composition or weighting of the GSCI will change on one or more of these monthly evaluation dates. The likely circumstances under which the Index Sponsor would be expected to change the composition of the Index during a given year, however, are: (i) A substantial shift of liquidity away from a contract included in the Index as described above; or (ii) an emergency, such as a natural disaster or act of war or terrorism, that causes trading in a particular contract to cease permanently or for an extended period of time. In either event, the Index Sponsor will consult with the Policy Committee in connection with the changes to be made and will publish the nature of the changes, through Web sites, news media or other outlets, with as much prior notice to market participants as is reasonably practicable. Moreover, regardless of whether any changes have occurred during the year, the Index Sponsor reevaluates the composition of the GSCI, in consultation with its Policy Committee, at the conclusion of each year, based on the above criteria. Other commodities that satisfy that criteria, if any, will be added to the GSCI. Commodities included in the GSCI that

no longer satisfy that criteria, if any, will be deleted.

The Index Sponsor, in consultation with its Policy Committee, also determines whether modifications in the selection criteria or the methodology for determining the composition and weights of and for calculating the GSCI are necessary or appropriate in order to assure that the GSCI represents a measure of commodity market performance. The Index Sponsor has the discretion to make any such modifications, in consultation with its Policy Committee.

g. Total Dollar Weight of the GSCI

The total dollar weight of the GSCI is the sum of the dollar weight of each of the underlying commodities. The dollar weight of each such commodity on any given day is equal to:

- The daily contract reference price;
 - Multiplied by the appropriate CPW;
- and
- During a roll period, the appropriate “roll weights” (discussed below).

The daily contract reference price used in calculating the dollar weight of each commodity on any given day is the most recent daily contract reference price made available by the relevant trading facility, except that the daily contract reference price for the most recent prior day will be used if the exchange is closed or otherwise fails to publish a daily contract reference price on that day. In addition, if the trading facility fails to make a daily contract reference price available or publishes a daily contract reference price that, in the reasonable judgment of the Index Sponsor, reflects manifest error, the relevant calculation will be delayed until the price is made available or

corrected; provided, that, if the price is not made available or corrected by 4 p.m. New York time, the Index Sponsor may, if it deems that action to be appropriate under the circumstances, determine the appropriate daily contract reference price for the applicable futures contract in its reasonable judgment for purposes of the relevant GSCI calculation.¹⁹

h. Calculation of the GSCI-ER

The value of the GSCI-ER on any GSCI Business Day is equal to the product of: (i) The value of the GSCI-ER on the immediately preceding GSCI Business Day multiplied by (ii) one plus the sum of the contract daily return²⁰ on the GSCI Business Day on which the calculation is made. The value of the GSCI-ER has been normalized such that its hypothetical level on January 2, 1970 was 100.

i. Calculation of the Index

The value of the Index on any GSCI Business Day is equal to the product of: (i) The value of the Index on the immediately preceding GSCI Business Day multiplied by (ii) one plus the sum of the contract daily return and the Treasury bill return on the GSCI Business Day on which the calculation is made, multiplied by (iii) one plus the Treasury bill return for each non-GSCI Business Day since the immediately preceding GSCI Business Day. The Treasury bill return is the return on a

hypothetical investment in the GSCI at a rate equal to the interest rate on a specified U.S. Treasury bill.

j. Valuation of CERFs; Computation of Trust's Net Asset Value

On each Business Day on which the NYSE is open for regular trading, as soon as practicable after the close of regular trading of the Shares on the NYSE (normally, 4:15 p.m., New York time), the Trustee will determine the net asset value ("NAV") of the Trust and per share as of that time.

The Trustee will value the Trust's assets based upon the determination by the Manager, which may act through the Investing Pool Administrator, of the NAV of the Investing Pool. The Manager will determine the NAV of the Investing Pool as of the same time that the Trustee determines the NAV of the Trust.

The Manager will value the Investing Pool's long position in CERFs on the basis of that day's announced CME settlement price for the CERF. The value of the Investing Pool's CERF position (including any related margin) will equal the product of: (i) The number of CERF contracts owned by the Investing Pool and (ii) the settlement price on the date of calculation. If there is no announced CME settlement price for the CERF on a Business Day, the Manager will use the most recently announced CME settlement price unless the Manager determines that that price is inappropriate as a basis for valuation. The daily settlement price for the CERF is established by the CME shortly after the close of trading in Chicago at 2:40 p.m. New York time on each trading day.²¹

Once the value of the CERFs and interest earned on any assets posted as margin and any other assets of the Investing Pool has been determined, the Manager will subtract all accrued expenses and liabilities of the Investing Pool as of the time of calculation in order to calculate the net asset value of the Investing Pool. The Manager, or the Investing Pool Administrator on its behalf, will then calculate the value of the Trust's Investing Pool Interest and provide this information to the Trustee.

Once the value of the Trust's Investing Pool Interests have been determined and provided to the Trustee, the Trustee will subtract all accrued expenses and other liabilities of the Trust from the total value of the assets of the Trust, in each case as of the calculation time. The resulting amount is the NAV of the Trust. The Trustee will determine the NAV per Share by dividing the NAV of the Trust by the

number of Shares outstanding at the time the calculation is made.

The NAV for each Business Day on which the NYSE is open for regular trading will be distributed through major market data vendors and will be published online at <http://www.iShares.com>, or any successor thereto. The Trust will update the NAV as soon as practicable after each subsequent NAV is calculated.

k. Creations of Baskets

The Trust will offer Shares on a continuous basis on each business day, but only in Baskets consisting of 50,000 Shares. Baskets will be typically issued only in exchange for an amount of CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) equal to the Basket Amount for the Business Day on which the creation order was received by the Trustee. The Basket Amount for a Business Day will have a per Share value equal to the NAV as of such day. However, orders received by the Trustee after 2:40 p.m., New York time, will be treated as received on the next following Business Day. The Trustee will notify the Authorized Participants of the Basket Amount on each Business Day prior to the opening of the Exchange.

Before the Trust will issue any Baskets to an Authorized Participant, that Authorized Participant must deliver to the Trustee a written creation order indicating the number of Baskets it intends to purchase and providing other details with respect to the procedures by which the Baskets will be transferred. The Trustee will acknowledge the creation order unless it or the Sponsor decides to refuse the order as described in the prospectus.

Upon the transfer of the required consideration of CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) in the amounts, and to the accounts, specified by the Trustee, and the Trustee's transaction fee per Basket (described below), the Trustee will deliver the appropriate number of Baskets to the Depository Trust Company ("DTC") account of the Authorized Participant. In limited circumstances and with the approval of the Trustee, Baskets may be created for cash, in which case the Authorized Participant will be required to pay any additional issuance costs, including the costs to the Investing Pool of establishing the corresponding CERF position.

Only Authorized Participants can transfer the required consideration and receive Baskets in exchange. Authorized Participants may act for their own accounts or as agents for broker-dealers,

¹⁹ If such actions by the Index Sponsor are implemented on more than a temporary basis, the Exchange will contact the Commission Staff and, as necessary, file a proposed rule change pursuant to Rule 19b-4 seeking Commission approval to continue to trade the Shares. Unless approved for continued trading, the Exchange would commence delisting proceedings. See "Continued Listing Criteria," *infra*; April 10 Telephone Conference.

²⁰ The contract daily return on any given day is equal to the sum, for each of the commodities included in the GSCI, of the applicable daily contract reference price on the relevant contract multiplied by the appropriate CPW and the appropriate "roll weight," divided by the total dollar weight of the GSCI on the preceding day, minus one.

The "roll weight" of each commodity reflects the fact that the positions in contracts must be liquidated or rolled forward into more distant contract expirations as they near expiration. If actual positions in the relevant markets were rolled forward, the roll would likely need to take place over a period of days. Since the GSCI is designed to replicate the performance of actual investments in the underlying contracts, the rolling process incorporated in the GSCI also takes place over a period of days at the beginning of each month, referred to as the "roll period." On each day of the roll period, the "roll weights" of the first nearby contract expirations on a particular commodity and the more distant contract expiration into which it is rolled are adjusted, so that the hypothetical position in the contract on the commodity that is included in the GSCI is gradually shifted from the first nearby contract expiration to the more distant contract expiration.

²¹ April 10 Telephone Conference.

custodians, and other securities market participants that wish to create or redeem Baskets. An Authorized Participant will have no obligation to create or redeem Baskets for itself or on behalf of other persons. An order for one or more baskets may be placed by an Authorized Participant on behalf of multiple clients. The Sponsor and the Trustee will maintain a current list of Authorized Participants.

No Shares will be issued unless and until the Trustee receives confirmation that: (i) The required consideration has been received in the account or accounts specified by the Trustee; and (ii) the Manager confirms that Investing Pool Interests with an initial value equal to the consideration received for the Shares have been issued to the Trust. It is expected that delivery of the Shares will be made against transfer of consideration on the next Business Day (T+1) following the Business Day on which the creation order is received by the Trustee. If the Trustee has not received the required consideration for the Shares to be delivered on the delivery date, by 11 a.m., New York time, the Trustee may cancel the creation order.²²

l. Redemptions of Baskets

Authorized Participants may typically surrender Baskets in exchange only for an amount of CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) equal to the Basket Amount on the Business Day the redemption request is received by the Trustee. However, redemption requests received by the Trustee after 2:40 p.m., New York time (or, on any day on which the CME is scheduled to close early, after the close of trading of CERFs on the CME on such day), will be treated as received on the next following Business Day. Holders of Baskets who are not Authorized Participants will be able to redeem their Baskets only through an Authorized Participant. It is expected that Authorized Participants may redeem Baskets for their own accounts or on behalf of Shareholders who are not Authorized Participants, but they are under no obligation to do so.

Before surrendering Baskets for redemption, an Authorized Participant must deliver to the Trustee a written request indicating the number of Baskets it intends to redeem and

providing other details with respect to the procedures by which the required Basket Amount will be transferred. The Trustee will acknowledge the redemption order unless it or the Sponsor decides to refuse the redemption order as described in the Trust prospectus.

After the delivery by the Authorized Participant to the Trustee's DTC account of the total number of Shares to be redeemed by an Authorized Participant, the Trustee will deliver to the order of the redeeming Authorized Participant redemption proceeds consisting of CERFs and cash (or, in the discretion of the Trustee, Short-term Securities in lieu of cash). In connection with a redemption order, the redeeming Authorized Participant authorizes the Trustee to deduct from the proceeds of redemption a transaction fee per Basket (described below). In limited circumstances and with the approval of the Trustee, Baskets may be redeemed for cash, in which case the Authorized Participants will be required to pay any additional redemption costs, including the costs to the Investing Pool of liquidating the corresponding CERF position. The Trust will receive these redemption proceeds pursuant to the Trust's contemporaneous redemption of Investing Pool Interests of corresponding value. Shares can be surrendered for redemption only in Baskets consisting of 50,000 Shares each.

It is expected that delivery of the CERFs, cash or Short-term Securities to the redeeming Shareholder will be made against transfer of the Baskets on the next Business Day following the Business Day on which the redemption request is received by the Trustee. If the Trustee's DTC account has not been credited with the total number of Shares to be redeemed pursuant to the redemption order by 11 a.m., New York time, on the delivery date, the Trustee may cancel the redemption order. DTC will accept the Shares for settlement through its book-entry settlement system. Shares do not have any voting rights.

m. Fees and Expenses of the Trustee

Each order for the creation of Baskets must be accompanied by a payment to the Trustee of a transaction fee per Basket of \$10.00 multiplied by the number of CERFs included in the Basket Amount. For redemption orders, the redeeming Authorized Participant will authorize the Trustee to deduct from the proceeds of the redemption a transaction fee per Basket equal to \$10.00 multiplied by the number of CERFs included in the Basket Amount,

plus any expenses, taxes or charges (such as stamp taxes or stock transfer taxes or fees) related to the creation or surrender for redemption. The Trustee will be entitled to reimburse itself from the assets of the Trust for all expenses and disbursements incurred by it for extraordinary services it may provide to the Trust or in connection with any discretionary action the Trustee may take to protect the Trust or the interests of the holders to the extent not paid by the Sponsor.

n. Dissemination of Information Relating to the Shares, Trust Holdings, and Relevant Indices

The Web site for the Trust (<http://www.iShares.com>), which will be publicly accessible at no charge, will contain the following information: (i) The prior Business Day's NAV and the reported closing price; (ii) the mid-point of the bid-ask price in relation to the NAV as of the time the NAV is calculated (the "Bid-Ask Price"); (iii) calculation of the premium or discount of such price against such NAV; (iv) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters; (v) the prospectus; (vi) the holdings of the Trust, including CERFs, cash and Treasury securities; (vii) the Basket Amount; and (viii) other applicable quantitative information. The Exchange on its Web site at <http://www.nyse.com> will include a hyperlink to the Trust's Web site at <http://www.iShares.com>.

As described above, the NAV for the Fund will be calculated and disseminated daily. The NYSE also intends to disseminate, during NYSE trading hours for the Trust on a daily basis by means of CTA/CQ High Speed Lines information with respect to the Indicative Value (as discussed below), recent NAV, and Shares outstanding. The Exchange will also make available on <http://www.nyse.com> daily trading volume, closing prices, and the NAV.

Real-time information is available about the Trust's holdings in the Investing Pool. Various data vendors and news publications publish futures prices and data. Futures quotes and last sale information for the commodities underlying the Index and the CERFs are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, complete real-time data for such futures, including the CERFs, is available by subscription from Reuters and Bloomberg. The futures exchanges or which the underlying commodities

²² The price at which the Shares trade should be disciplined by arbitrage opportunities created by the ability to purchase or redeem shares of the Trust in Basket size. This should help ensure that the Shares will not trade at a material discount or premium to their net asset value or redemption value.

and CERFs trade also provide delayed futures information on current and past trading sessions and market news generally free of charge on their respective Web sites. The specific contract specifications for the futures contracts are also available from the futures exchanges on their Web sites as well as other financial informational sources.

As stated above, major market data vendors will disseminate at least every 15 seconds (during the time that the Shares trade on the Exchange) the GSCI and Index values. Additionally, major market data vendors will disseminate at least every 15 seconds (during the time that the Shares trade on the Exchange) the value of the GSCI-ER, which the CERFs (held by the Investing Pool) trading on CME are designed to track.²³ Daily settlement values for the GSCI, the Index, and the GSCI-ER are also widely disseminated.²⁴

o. Indicative Value

In order to provide updated information relating to the Trust for use by investors, professionals, and other persons, the Exchange will disseminate through the facilities of CTA an updated Indicative Value on a per Share basis as calculated by Bloomberg. The Indicative Value will be disseminated at least every 15 seconds from 9:30 a.m. to 4:15 p.m. New York time. The Indicative Value will be calculated based on the cash and collateral in a Basket Amount divided by 50,000, adjusted to reflect the market value of the investments held by the Investing Pool, *i.e.*, CERFs.²⁵ The Indicative Value will not reflect price changes to the price of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and the close of trading on the NYSE at 4:15 p.m. New York time.

When the market for futures trading for each of the Index commodities is open, the Indicative Value can be expected to closely approximate the value per Share of the Basket Amount. However, during NYSE trading hours when the futures contracts have ceased

²³ The value of a Share may accordingly be influenced by non-concurrent trading hours between the NYSE and the various futures exchanges on which the futures contracts based on the Index commodities are traded. While the Shares will trade on the NYSE from 9:30 a.m. to 4:15 p.m. New York time, the table above lists the trading hours for each of the Index commodities underlying the futures contracts.

²⁴ April 13 Telephone Conference.

²⁵ Telephone conference between Michael Cavalier, Assistant General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Commission, on April 5, 2006 (authorizing clarification of sentence).

trading, spreads and resulting premiums or discounts may widen, and, therefore, increase the difference between the price of the Shares and the NAV of the Shares. Indicative Value on a per Share basis disseminated during NYSE trading hours should not be viewed as a real time update of the NAV, which is calculated only once a day. The Exchange believes that dissemination of the Indicative Value provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with the Shares trading on the Exchange or creation or redemption of the Shares.

p. Other Characteristics of the Shares

i. General Information

A minimum of three Baskets, representing 150,000 Shares, will be outstanding at the commencement of trading on the Exchange.

Trading in Shares on the Exchange will be effected normally until 4:15 p.m. each day on which the Exchange is open for trading. The minimum trading increment for Shares on the Exchange will be \$0.01.

ii. Fees

The Exchange original listing fee applicable to the listing of the Trust will be \$5,000. The annual continued listing fee for the Trust will be \$2,000.

iii. Continued Listing Criteria

Under the applicable continued listing criteria, the Shares may be delisted as follows: (i) Following the initial twelve-month period beginning upon the commencement of trading of the Shares, there are fewer than 50 record and/or beneficial holders of the Shares for 30 or more consecutive trading days; (ii) the value of the Index ceases to be calculated or available on at least a 15-second basis from a source unaffiliated with the Sponsor, the Trust or the Trustee; (iii) the Indicative Value ceases to be available on at least a 15-second delayed basis; or (iv) such other event shall occur or condition exist that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. In addition, the Exchange will remove Shares from listing and trading upon termination of the Trust.

Additionally, the Exchange will file a proposed rule change pursuant to Rule 19b-4 under the Act,²⁶ seeking approval to continue trading the Shares and unless approved, the Exchange will commence delisting the Shares if:

Additionally, the Exchange will file a proposed rule change pursuant to Rule

19b-4 under the Act,²⁷ seeking approval to continue trading the Notes and unless approved, the Exchange will commence delisting the Shares if:

- The Index Sponsor substantially change either the Index component selection methodology or the weighting methodology;

- If a new component is added to the Index (or pricing information is used for a new or existing component) that constitutes more than 10% of the weight of the Index with whose principal trading market the Exchange does not have a comprehensive surveillance sharing agreement;²⁸ or

- If a successor or substitute index is used in connection with the Shares. The filing will address, among other things the listing and trading characteristics of the successor or substitute index and the Exchange's surveillance procedures applicable thereto.

q. Exchange Trading Rules and Policies

The Shares are considered "securities" pursuant to NYSE Rule 3 and are subject to all applicable trading rules.

The Trust is exempt from corporate governance requirements in section 303A of the NYSE Listed Company Manual, including the Exchange's audit committee requirements in Section 303A.06.²⁹

The Exchange will adopt new NYSE Rule 1300B ("Commodity Trust Shares") to deal with issues related to the trading of the Shares. Specifically, for purposes of NYSE Rules 13 ("Definitions of Orders"), 36.30 ("Communications Between Exchange and Members' Offices"), 98

²⁷ 17 CFR 240.19b-4.

²⁸ April 10 Telephone Conference.

²⁹ See Rule 10A-3(c)(7), 17 CFR 240.10A-3(c)(7) (stating that a listed issuer is not subject to the requirements of Rule 10A-3 if the issuer is organized as a trust or other unincorporated association that does not have a board of directors and the activities of the issuer are limited to passively owning or holding securities or other assets on behalf of or for the benefit of the holders of the listed securities).

See also Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (SR-NYSE-2002-33, SR-NASD-2002-77, *et al.*) (specifically noting that the corporate governance standards will not apply to, among others, passive business organizations in the form of trusts); Securities Exchange Act Release No. 47654 (April 25, 2003), 68 FR 18787 (April 16, 2003) (noting in Section II(F)(3)(c) that "SROs may exclude from Exchange Act Rule 10A-3's requirements issuers that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.")

²⁶ 17 CFR 240.19b-4.

(“Restrictions on Approved Person Associated with a Specialist’s Member Organization), 104 (“Dealings by Specialists”), 105(m) (“Guidelines for Specialist’s” Specialty Stock Option Transactions Pursuant to Rule 105”), 460.10 (“Specialists Participating in Contests”), 1002 (“Availability of Automatic Feature”), and 1005 (“Order May Not Be Broken Into Smaller Accounts”), the Shares will be treated similar to Investment Company Units.³⁰

When these Rules discuss Investment Company Units, references to the word index (or derivative or similar words) will be deemed to be references to the applicable commodity or commodity index price and reference to the word security (or derivative or similar words) will be deemed to be references to the Commodity Index Trust Shares.

The Exchange does not currently intend to exempt Commodity Trust Shares from the Exchange’s “Market-on-Close/Limit-on-Close/Pre-Opening Price Indications” Policy, although the Exchange may do so by means of a rule change in the future if, after having experience with the trading of the Shares, the Exchange believes such an exemption is appropriate.

i. Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include (1) the extent to which trading is not occurring in the underlying commodities or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares is subject to trading halts caused by extraordinary market volatility pursuant to Exchange’s “circuit breaker” rule.³¹ The Exchange will halt trading in the Shares if the value of the Index is no longer calculated or available on at least a 15-second basis through one or more major market data vendors during the time the Shares trade on the NYSE, or if the Indicative Value per Share updated at

least every 15 seconds is no longer calculated or available.³²

ii. Specialists’ Trading Obligations

New Supplementary Material .10 to proposed NYSE Rule 1301B would apply the provisions of proposed Rule 1300B(b) and Rule 1301B to certain securities listed on the Exchange pursuant to section 703.19 (“Other Securities”) of the NYSE Listed Company Manual. Specifically, proposed NYSE Rules 1300B(b) and 1301B will apply to securities listed under section 703.19 where the price of such securities is based in whole or part on the price of a commodity or commodities, a commodities index, or any futures contracts or other derivatives based thereon. Examples of the securities to which Supplementary Material .10 will apply are the subjects of the following File Nos.: (i) SR-NYSE-2006-16 (proposal to list and trade Index-Linked Securities of Barclays Bank PLC linked to the performance of the Dow Jones-AIG Commodity Index Total Return™); (ii) SR-NYSE-2006-19 (proposal to list and trade Index-Linked Securities of Barclays Bank PLC linked to the performance of the Goldman Sachs Crude Oil Total Return Index™); and (iii) File No. SR-NYSE-2006-20 (proposal to list and trade Index-Linked Securities of Barclays Bank PLC linked to the performance of the GSCI Total Return Index™).

As a result of application of proposed NYSE Rule 1300B(b), the specialist in a relevant security listed under section 703.19 (“Section 703.19 security”), the specialist’s member organization and other specified persons will be prohibited under paragraph (m) of NYSE Rule 105 Guidelines from acting as market maker or functioning in any capacity involving market-making responsibilities in the physical commodities included in, or options, futures or options on futures on, the index underlying the relevant section 703.19 security, or any other derivatives (collectively, “derivative instruments”) based on such index. A specialist entitled to an exemption under NYSE Rule 98 from paragraph (m) of NYSE Rule 105 Guidelines could act in a market making capacity in physical commodities included in, or derivative instruments based on such index, other than as a specialist in the same section 703.19 security in another market center.

³² In such events, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances.

Under proposed NYSE Rule 1301B(a), the member organization acting as specialist in a Section 703.19 security: (i) Will be obligated to conduct all trading in the specialty security 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); (ii) will be required to file with the Exchange and keep current a list identifying all accounts for trading in the physical commodities included in, or derivative instruments based on the relevant index, which the member organization acting as specialist may have or over which it may exercise investment discretion; and (iii) will be prohibited from trading in physical commodities included in, or derivative instruments based on the relevant index, in an account in which a member organization acting as specialist, controls trading activities which have not been reported to the Exchange as required by proposed NYSE Rule 1301B.

Under Rule 1301B(b), the member organization acting as specialist in a relevant section 703.19 security will be required to make available to the Exchange such books, records or other information pertaining to transactions by the member organization and other specified persons for its or their own accounts in derivative instruments on an index underlying such section 703.19 security or any commodity included in such index, as may be requested by the Exchange. This requirement is in addition to existing obligations under Exchange rules regarding the production of books and records. Under proposed NYSE Rule 1301B(c), in connection with trading derivative instruments based on an index underlying a relevant section 703.19 security in which the member organization acts as specialist, the specialist could not use any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in derivative instruments based on the underlying index or in any commodity included in such index.

r. Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares and the Index components. The Exchange will rely upon existing NYSE surveillance procedures governing equities with respect to surveillance of the Shares. The Exchange believes that these procedures are adequate to monitor Exchange trading of the Shares, to detect violations of Exchange rules, consequently deterring manipulation. In this regard, the Exchange currently has

³⁰ In particular, proposed NYSE Rule 1300B provides that NYSE Rule 105(m) is deemed to prohibit an equity specialist, his member organization, other member, allied member or approved person in such member organization or officer or employee thereof from acting as a market maker or functioning in any capacity involving market-making responsibilities in the applicable futures contracts, except as otherwise provided therein.

³¹ NYSE Rule 80B.

the authority under NYSE Rule 476 to request the Exchange specialist in the Shares to provide NYSE Regulation with information that the specialist uses in connection with pricing the Shares on the Exchange, including specialist proprietary or other information regarding securities, commodities, futures, options on futures or other derivative instruments. The Exchange believes it also has authority to request any other information from its members—including floor brokers, specialists and “upstairs” firms—to fulfill its regulatory obligations.³³

With regard to the Index components, the Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the New York Mercantile Exchange (“NYMEX”), the Kansas City Board of Trade, ICE and the LME, pursuant to its comprehensive information sharing agreements with each of those exchanges. All of the other trading venues on which current Index components are traded are members of the Intermarket Surveillance Group (“ISG”) and the Exchange therefore has access to all relevant trading information with respect to those contracts without any further action being required on the part of the Exchange. If at any time the Index Sponsor includes in the Index a contract traded on any other market which is not a member or affiliate of the ISG and with respect to which the Exchange does not have a preexisting comprehensive information sharing agreement previously reviewed and found acceptable by the Commission, then, prior to the inclusion of such contract in the Index, the Exchange will: (i) Enter into adequate information sharing arrangements with that other market; and (ii) contact the Commission to discuss measures that may be appropriate under the circumstances, including whether the Exchange should file proposed rule change seeking Commission approval prior to the inclusion of the new contract in the Index.

³³ As a general matter, the Exchange has regulatory jurisdiction over its member organizations and any person or entity controlling a member organization. The Exchange also has regulatory jurisdiction over a subsidiary or affiliate of a member organization that is in the securities business. A member organization subsidiary or affiliate that does business only in commodities would not be subject to NYSE jurisdiction, but the Exchange could obtain certain information regarding the activities of such subsidiary or affiliate through reciprocal agreements with regulatory organizations of which such subsidiary or affiliate is a member.

s. Due Diligence

Before a member, member organization, allied member or employee thereof recommends a transaction in the Shares, such person must exercise due diligence to learn the essential facts relative to the customer pursuant to NYSE Rule 405, and must determine that the recommendation complies with all other applicable Exchange and Federal rules and regulations. A person making such recommendation should have a reasonable basis for believing, at the time of making the recommendation, that the customer has sufficient knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks and any special characteristics of the recommended transaction, and is financially able to bear the risks of the recommended transaction.

t. Information Memo

The Exchange will distribute an information memo (“Memo”) to its members in connection with the trading in the Shares. The Memo will discuss the special characteristics and risks of trading this type of security. Specifically, the Memo, among other things, will discuss what the Shares are, that Shares are not individually redeemable but are redeemable only in Baskets of 50,000 shares or multiples thereof, how a Basket is created and redeemed, applicable Exchange rules, the Indicative Value, dissemination information, trading information and the applicability of suitability rules, and exemptive relief granted by the Commission from certain rules under the Act.³⁴ The Memo will also reference that the Trust is subject to various fees and expenses described in the Registration Statement. Finally, the Memo will also note to members language in the Registration Statement regarding prospectus delivery requirements for the Shares. The Memo will also reference the fact that there is no regulated source of last sale information regarding physical commodities and that the Commission has no jurisdiction over the trading of physical commodities or the futures contracts on which the value of the shares is based.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under section

³⁴ The applicable rules are: Rule 10a-1; Rule 200(g) of Regulation SHO; section 11(d)(1) and Rule 11d1-2; and Rules 101 and 102 of Regulation M under the Act.

6(b)(5)³⁵ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule

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 NYSE has requested accelerated approval of the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**, following the conclusion of a 15-day comment period. While the Commission will not grant accelerated approval at this time, the Commission will consider granting accelerated approval of the proposal at the close of the abbreviated comment period of 15 days from the date of publication of the proposal in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

³⁵ 15 U.S.C. 78f(b)(5).

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-NYSE-2006-17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2006-17. 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-2006-17 and should be submitted on or before May 9, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁶

Nancy M. Morris,
Secretary.

[FR Doc. E6-6077 Filed 4-21-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53670; File No. SR-Phlx-2006-21]

**Self-Regulatory Organizations;
Philadelphia Stock Exchange, Inc.;
Notice of Filing and Immediate
Effectiveness of Proposed Rule
Change Relating To Delaying
Implementation of Its Cancellation Fee**

April 18, 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 March 31, 2006, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Phlx has filed the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the Phlx under Section 19(b)(3)(A)(ii)³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's
Statement of the Terms of Substance of
the Proposed Rule Change**

The Exchange proposes to amend the effective date for the cancellation fee it recently established⁵ from January 2, 2006 to May 1, 2006. The Exchange also proposes to clarify that the cancellation fee will not be assessed on any cancellation orders received prior to the opening of trading.

**II. Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change**

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See Securities Exchange Act Release No. 53226 (February 3, 2006), 71 FR 7602 (February 13, 2006) (SR-Phlx-2005-92).

*A. Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change*

1. Purpose

Previously, the Exchange adopted a cancellation fee of \$1.10 per cancellation order to be assessed on member organizations for each cancelled AUTOM-delivered⁶ order in excess of the number of orders executed on the Exchange by that member organization in a given month.⁷ The cancellation fee was not to be assessed in a month in which fewer than 500 AUTOM-delivered orders were cancelled. Simple cancels and cancel-replacement orders were the types of orders that were to be counted when calculating the number of AUTOM-delivered orders.⁸ The objective of the fee was to discourage excessive use of cancellations.⁹

Prior to implementing the cancellation fee, the Exchange analyzed data and then discussed with member organizations the potential effect of the fee. However, it later came to the attention of the Exchange that the data analyzed by the Exchange was incomplete. Therefore, member organizations, based on the Exchange's analysis, did not believe it was necessary to monitor the use of cancellation orders by any of their respective customers. In actuality, the assessment of the cancellation fee for some member organizations greatly exceeded the estimated amount that was communicated to them.

At this time, the Exchange has discussed with the affected member organizations the amount of the cancellation fees that would have been incurred based on revised and complete January and February 2006 data. Therefore, the Exchange proposes to delay implementation of the cancellation fee until May 1, 2006 to allow member organizations the opportunity either to change behavior or

⁶ AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. See Exchange Rules 1014(b)(ii) and 1080.

⁷ See *supra* note 5.

⁸ A cancel-replacement order is a contingency order consisting of two or more parts, which require the immediate cancellation of a previously received order prior to the replacement of a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety, the replacement order is automatically canceled or reduced by such number. See Exchange Rule 1066(c)(7).

⁹ The proposal did not cover orders delivered through the Exchange's Floor Broker Management System.

³⁶ 17 CFR 200.30-3(a)(12).

to determine how to most effectively deal with these charges. The Exchange believes it is appropriate to delay implementation of the cancellation fee due to the incomplete data that had been previously communicated to the member organizations.¹⁰ In addition, the Exchange seeks to clarify that pre-market cancellations are not included in the calculation of the cancellation fee because this is not the type of behavior that the Exchange is trying to discourage. No other changes are being proposed in connection with the delayed assessment of the cancellation fee.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹² in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act¹³ and Rule 19b-4(f)(2)¹⁴ thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

¹⁰ The Exchange indicated that no rebates need to be processed. Although January and February cancellation charges were billed on the February invoice, the Exchange separately discovered a billing issue and credited the amount of cancellation charges billed to member organizations while the billing issue was reviewed.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2006-21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2006-21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2006-21 and should be submitted on or before May 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Nancy M. Morris,

Secretary.

[FR Doc. E6-6072 Filed 4-21-06; 8:45 am]

BILLING CODE 8010-01-P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the addresses and fax number listed below:

(SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-965-6400.

The information collection listed below is pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain a copy of the collection instrument by calling the SSA Reports Clearance Officer at 410-965-0454 or by writing to the address listed above.

SSI Monthly Wage Reporting Phase 2 Pilot—20 CFR 416.701-732-0960-0715. Supplemental Security Income (SSI) recipients are required to report changes in their income, resources and living arrangements that may affect eligibility or payment amount.

¹⁵ 17 CFR 200.30-3(a)(12).

Currently, SSI recipients report changes on Form SSA-8150, Reporting Events—SSI, or to an SSA teleservice representative through SSA's toll-free telephone number, or they visit their local Social Security office.

The SSI wage reporting program area has the highest error rate largely due to non-reporting, which accounts for approximately \$500 million in overpayments each year. Consequently, SSA is evaluating methods for increasing reporting. SSA is conducting a pilot to test an additional method for individuals to report wages for the SSI program. We are testing to determine if, given an easily accessible automated format, individuals will increase compliance with reporting responsibilities. Increased timely reporting could result in a decrease in improper payments. SSA will also be testing the use of knowledge-based authentication to determine if this is an effective method of accessing SSA's system. Lastly, SSA will test recent system enhancements and additional systems enhancements expected in May 2006 that will make reporting easier.

During the pilot, participants who need to report a change in earned income will call an SSA toll-free telephone number to report the change. The participants will access SSA's system using knowledge-based authentication (providing name, SSN and date of birth). Participants will either speak their report (voice recognition technology) or key in the information using the telephone key pad. SSA will issue receipts to participants who report wages using this method. Respondents to this collection are SSI recipients, deermors and representative payees of recipients who agree to participate in the pilot.

Type of Request: Extension of OMB approval.

Number of Respondents: 600.

Frequency of Response: 7.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 350 hours.

Dated: April 18, 2006.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E6-6027 Filed 4-21-06; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF STATE

[Public Notice 5380]

Determination Related to the Participation of the Magen David Adom Society of Israel in the Activities of the International Red Cross and Red Crescent Movement

Pursuant to the requirements contained in the FY 2006 Foreign Operations, Export Financing and Related Programs Appropriations Act (Pub. L. 109-102), under the heading of Migration and Refugee Assistance, I hereby determine that the Magen David Adom Society of Israel is not being denied participation in the activities of the International Red Cross and Red Crescent Movement.

This Determination shall be published in the **Federal Register** and copies shall be provided to the appropriate committees of Congress.

Dated: April 14, 2006.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. E6-6107 Filed 4-21-06; 8:45 am]

BILLING CODE 4710-33-P

DEPARTMENT OF STATE

[Public Notice 5378]

Revised Notice of Meeting of the Advisory Committee on International Law

A meeting of the Advisory Committee on International Law will take place on Friday, April 28, 2006, from 10 a.m. to approximately 4 p.m., as necessary, in Room 1105 of the United States Department of State, 2201 C Street, NW., Washington, DC. The meeting will be chaired by the Legal Adviser of the Department of State, John B. Bellinger, III, and will be open to the public up to the capacity of the meeting room. The meeting will discuss various issues relating to current international legal topics, including the law of armed conflict and human rights, immunity for visiting artworks, international criminal accountability, and current issues related to nuclear cooperation.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring access to the session should, by Tuesday, April 25, 2006, notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone: 202-647-2767) of their name, date of birth; citizenship (country); ID number, *i.e.*, U.S. government ID (agency), U.S. military ID (branch), passport (country), or drivers license (state); professional

affiliation, address and telephone number in order to arrange admittance. This includes admittance for government employees as well as others. All attendees must use the "C" Street entrance, after being screened through the exterior screening facilities. One of the following valid IDs will be required for admittance: Any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Because an escort is required at all times, attendees should expect to remain in the meeting for the entire morning or afternoon session.

Dated: April 19, 2006.

Judith L. Osborn,

Attorney-Adviser, Office of United Nations Affairs, Office of the Legal Adviser, Executive Director, Advisory Committee on International Law, Department of State.

[FR Doc. 06-3902 Filed 4-21-06; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review, Request for Comments; Renewal of an Approved Information Collection Activity, Operating Requirements: Commuter and On-Demand Operation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) renewal of a current information collection. The **Federal Register** Notices with a 60-day comment period soliciting comments on the following collection of information was published on January 18, 2006, volume 71, #11, page 2982.

Standards have been established for the operation of agricultural aircraft and for the dispensing of chemicals, pesticides, and toxic substances. Information collected shows applicant compliance and eligibility for certification by FAA.

DATES: Please submit comments by May 24, 2006.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267-9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Operating Requirements: Commuter and On-Demand Operation.

Type of Request: Revision of an approved collection.

OMB Control Number: 2120-0039.

Form(s): FAA Form 8070-1.
Affected Public: A total of 2426 respondents.

Frequency: The information is collected on an as-needed basis.

Estimated Average Burden Per Response: Approximately 30 minutes per response, depending on the activity.

Estimated Annual Burden Hours: an estimated 1,147,928 hours annually.

Abstract: Title 49 U.S.C. 44702, authorizes the issuance of air carrier operating certificates. 14 CFR part 135 prescribes requirements for Air Carrier/Commercial Operators. The information collected shows compliance and applicant eligibility.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on April 18, 2006.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA-20.

[FR Doc. 06-3857 Filed 4-21-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM-05-115-019]

Interim Guidelines for Certification and Continued Airworthiness of Unbalanced Control Surfaces With Freeplay and Other Nonlinear Features

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed interim guidelines; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed Interim Guidelines for Certification and Continued Airworthiness of Unbalanced

Control Surfaces with Freeplay and Other Nonlinear Features.

DATES: Send your comments on or before May 25, 2006.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Gerald Lakin, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Standardization Branch, ANM-113, 1601 Lind Avenue, SW., Renton, WA 98055-4056; telephone (425) 227-1187; fax (425) 227-1320; e-mail: gerald.lakin@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed memorandum is available on the Internet at the following addresses: <http://www.airweb.faa.gov/rgl>, and http://www.faa.gov/aircraft/draft_docs. If you do not have access to the Internet, you can obtain a copy of the proposed memorandum by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The FAA invites your comments on this proposed memorandum. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT**. Mark your comments, "Comments to Policy Statement No. ANM-05-115-019."

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed interim guidelines.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed interim guidelines.

We will consider all communications received on or before the closing date for comments. We may change the proposed interim guidelines because of the comments received.

Background

This memorandum clarifies FAA guidance on the design, certification, and continued airworthiness of control surfaces that rely on retention of restraint stiffness for flutter prevention. These control surfaces typically do not have added mass balance, but there are some that are partially mass balanced for which the guidelines would also apply. This memorandum provides acceptable means of establishing and certifying freeplay limits and inspection

procedures, provides guidance for managing freeplay over the airplane service life, and provides a means of finding compliance for control system designs whose failure can result in a nonlinear aeroelastic configuration and limit cycle oscillation (LCO). This memorandum provides interim guidelines and standardized methods of compliance that address the inadequacies of current guidance, until the FAA revises the applicable guidance contained in AC 25.629-1A.

Issued in Renton, Washington, on April 9, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06-3858 Filed 4-21-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No: MARAD 2006-24149]

Availability of a Draft FONSI/FONPA

AGENCY: Department of Transportation, Maritime Administration.

ACTION: Notice of the Availability of a draft Finding of No Significant Impact/ Finding of No Practicable Alternative.

SUMMARY: The purpose of this Notice is to make available to the public the draft Finding of No Significant Impact/ Finding of No Practicable Alternative (FONSI/FONPA) for the Port of Anchorage Intermodal Expansion, North End Runway Material Extraction and Transport Project (Project).

A draft Environmental Assessment (EA), dated March 2006, was prepared that analyzed the potential impacts on the human and natural environment associated with the proposed material extraction activities at the North End Borrow Site and potential transportation corridors located on Elmendorf Air Force Base (EAFB). A final EA and a final FONSI/FONPA will be published once comments have been properly addressed. This environmental documentation supports the proposed expansion of the Port of Anchorage (POA), which includes a variety of activities to enhance the transportation of goods and people within the State of Alaska.

DATES: Comments on this draft FONSI/FONPA must be received by May 24, 2006.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number MARAD-2006-24149] by any of the following methods:

- Web site: <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 7th St., SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 7th St., SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number for this action. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 7th St., SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Daniel E. Yuska, Jr., Environmental Protection Specialist, Office of Environmental Activities, U.S. Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366-0714, fax (202) 366-6988.

SUPPLEMENTARY INFORMATION: An electronic version of this document and all documents entered into this docket are available at <http://dms.dot.gov>. In addition, copies of the EA are available for public viewing on the Port of Anchorage Web site (www.portofanchorage.org) or at the Loussac Library in Anchorage.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

Authority: 49 CFR 1.66.

Dated: April 18, 2006.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6-6038 Filed 4-21-06; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 18, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before May 24, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-0957.

Type of Review: Extension.

Title: Request for Waiver from Filing Information Returns Electronically/Magnetically (Forms W-2, W-2G, 1042-1098 Series, 1099 Series, 5498 Series, and 8027.

Form: IRS F-8508.

Description: Certain filers of information returns are required by law to file on magnetic media. In some instances, waivers from this requirement are necessary and justified. Form 8508 is submitted by the filer and provides information on which IRS will base its waiver determination.

Respondents: Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Estimated Total Burden Hours: 750 hours.

OMB Number: 1545-1233.

Type of Review: Extension.

Title: Adjusted Current Earnings (IA-14-91) (Final).

Description: This regulation affects business and other for-profit institutions. This information is required by the IRS to ensure the proper application of section 1.56(g)-1 of the regulation. It will be used to verify that taxpayers have properly elected the benefits of section 1.56(g)-1(r) of the regulation.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 1,000 hours.

OMB Number: 1545-1810.

Type of Review: Extension.

Title: Credit for Small Employer Pension Plan Startup Costs.

Form: IRS F-8881.

Description: Qualified small employers use Form 8881 to request a credit for start up costs related to eligible retirement plans. Form 8881 implements section 45E, which provides a credit based on costs incurred by an employer in establishing or administering an eligible employer plan or for the retirement-related education of employees with respect to the plan. The credit is 50% of the qualified costs for the tax year, up to a maximum credit of \$500 for the first tax year and each of the two subsequent tax years.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 526,670 hours.

OMB Number: 1545-1815.

Type of Review: Extension.

Title: Coverdell ESA Contribution Information.

Form: IRS F-5498-ESA.

Description: Form 5498-ESA is used by trustees and issuers of Coverdell Education Savings accounts to report contributions made to these accounts to beneficiaries.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 18,000 hours.

OMB Number: 1545-1824.

Type of Review: Extension.

Title: REG-139768-02 (Final) Excise Tax Relating to Structured Settlement Factoring Transactions.

Description: The regulations provide rules relating to the manner and method of reporting and paying the 40 percent excise tax imposed by section 5891 of the Internal Revenue Code with respect to acquiring of structured payment rights.

Respondents: Individuals or households and Business or other for-profit.

Estimated Total Burden Hours: 2 hours.

OMB Number: 1545-1980.

Type of Review: Extension.

Title: Notice 2006-01, Charitable Contributions of Certain Motor Vehicles, Boats and Airplanes. Reporting Requirements under 170(f)(12)(D).

Description: Charitable organizations are required to send an acknowledgment of car donations to the donor and to the

Service. The purpose of this is to prevent donors from taking inappropriate deductions.

Respondents: Individuals or households and Not-for-profit institutions.

Estimated Total Burden Hours: 21,500 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622-3428. Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395-7316. Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6-6084 Filed 4-21-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

**Submission for OMB Review;
Comment Request**

April 18, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 24, 2006 to be assured of consideration.

Bureau of Public Debt (PD)

OMB Number: 1535-0012.

Type of Review: Extension.

Title: Request by Fiduciary for Reissue of United States Savings Bonds Organizations.

Form: PD F 1455.

Description: Used by fiduciary to request distribution of U.S. Savings bonds to the person(s) entitled.

Respondents: Individuals or households.

Estimated Total Burden Hours: 8,850 hours.

OMB Number: 1535-0032.

Type of Review: Extension.

Title: Application for disposition of Retirement Plan/Individual Retirement Bonds without Admin. of Deceased Owners Estate.

Form: PD F 3565.

Description: Used by heirs of deceased owners of Retirement Plan/Indiv. Retirement Bonds to request disposition.

Respondents: Individuals or households.

Estimated Total Burden Hours: 17 hours.

OMB Number: 1535-055.

Type of Review: Extension.

Title: Creditors request for payment of Treasury Securities belonging to a decedent's estate being settled without administration.

Form: PD F 1050.

Description: Used to obtain creditor consent to dispose of securities of a deceased owner's estate without administration.

Respondents: Business or other for-profit; Individuals or households.

Estimated Total Burden Hours: 150 hours.

OMB Number: 1535-0084.

Type of Review: Extension.

Title: Order for Series I/EE U.S. Savings Bonds and Order for Series I/EE U.S. Savings Bond in name of fiduciary.

Form: PD F 5263, 5263-1, 5374 and 5374-1.

Description: Completed by the purchaser to issue U.S. Savings Bonds.

Respondents: Individuals or households.

Estimated Total Burden Hours: 830,000 hours.

OMB Number: 1535-0102.

Type of Review: Extension.

Title: Supporting Statement of Ownership for Overdue United States Bearer Securities.

Form: PD F 1071.

Description: Used to establish ownership and support a request for payment.

Respondents: Individuals or households and Business or other for-profit.

Estimated Total Burden Hours: 250 hours.

OMB Number: 1535-0126.

Type of Review: Extension.

Title: Application for Issue of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

Form: PD F 3871.

Description: Submitted by companies engaged in the business of writing mortgage guaranty insurance for purpose of purchasing "Tax and Loss" bonds.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 20 hours.

Clearance Officer: Vicki S. Thorpe, (304) 480-8150. Bureau of the Public

Debt, 200 Third Street, Parkersburg, West Virginia 26106.

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. E6-6085 Filed 4-21-06; 8:45 am]

BILLING CODE 4810-39-P

DEPARTMENT OF THE TREASURY

**Office of the Comptroller of the
Currency**

**Proposed Information Collection;
Comment Request**

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its collection titled "Securities Offering Disclosure Rules—12 CFR Part 16". The OCC is also giving notice that the information collection has been submitted to OMB for review.

DATES: You should submit written comments by: May 24, 2006.

ADDRESSES: You should direct all written comments to the Communications Division, Public Information Room, Mailstop 1-5, Attention: 1557-0120, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874-4448, or by electronic mail to regs.comments@occ.treas.gov. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874-5043.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557-0120, by mail to U.S. Office of Management and Budget, 725, 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb or Camille Dickerson, (202) 874-5090, Legislative and Regulatory Activities Division, Office of the

Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is requesting that OMB extend the expiration date on the following information collection:

Title: Securities Offering Disclosure Rules—12 CFR Part 16.

OMB Number: 1557-0120.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB approve its estimates, revised to more accurately reflect the number of reports filed and the hours required to complete such reports.

The requirements in part 16 enable the OCC to perform its responsibilities relating to offerings of securities by national banks by providing the investing public with facts about the condition of the bank, the reasons for raising new capital, and the terms of the offering. The public needs this information to make an informed decision on whether such securities are an appropriate investment.

- Section 16.3 requires a national bank to file its registration statement with the OCC.

- Section 16.5 provides exemptions for certain offers or sales of banks securities, which, in turn, require certain filings.

- Section 16.6 requires a national bank to file documents with the OCC and to make certain disclosures to purchasers in sales of nonconvertible debt.

- Section 16.7 provides exemptions for certain nonpublic offerings, which, in turn, require certain filings.

- Section 16.8 provides small issues exemptions, which, in turn, require certain filings.

- Section 16.15 requires a national bank to file a registration statement and sets forth content requirements for the registration statement.

- Section 16.20 requires a national bank to file current and periodic reports as required by sections 13 and 15(d) of the Exchange Act and those provisions of the Sarbanes-Oxley Act that the OCC is authorized to enforce. In addition, the OCC requires a national bank to give notice to it when the bank's duty to file public and periodic reports with the OCC is suspended. This requirement reflects SEC Rule 15d6.

- Section 16.30 requires a national bank to include certain elements and follow certain procedures in any request to the OCC for a no-objection letter.

Estimated number of respondents: 81.

Estimated number of responses: 191.

Average hours per response: Varies.

Estimated total burden hours: 5,333 hours.

Likely respondents: National banks.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 18, 2006.

Stuart Feldstein,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. E6-6031 Filed 4-21-06; 8:45 am]

BILLING CODE 4810-33-P

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Reformulated gasoline oxygen content requirement removed; Non-oxygenated reformulated gasoline commingling prohibition revised; published 2-22-06

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0-42	(869-056-00102-9)	61.00	July 1, 2005	87-99	(869-056-00157-6)	60.00	July 1, 2005
43-End	(869-056-00103-7)	60.00	July 1, 2005	100-135	(869-056-00158-4)	45.00	July 1, 2005
29 Parts:				136-149	(869-056-00159-2)	61.00	July 1, 2005
0-99	(869-056-00104-5)	50.00	July 1, 2005	150-189	(869-056-00160-6)	50.00	July 1, 2005
100-499	(869-056-00105-3)	23.00	July 1, 2005	190-259	(869-056-00161-4)	39.00	July 1, 2005
500-899	(869-056-00106-1)	61.00	July 1, 2005	260-265	(869-056-00162-2)	50.00	July 1, 2005
900-1899	(869-056-00107-0)	36.00	⁷ July 1, 2005	266-299	(869-056-00163-1)	50.00	July 1, 2005
1900-1910 (§§ 1900 to 1910.999)	(869-056-00108-8)	61.00	July 1, 2005	300-399	(869-056-00164-9)	42.00	July 1, 2005
1910 (§§ 1910.1000 to end)	(869-056-00109-6)	58.00	July 1, 2005	400-424	(869-056-00165-7)	56.00	⁸ July 1, 2005
1911-1925	(869-056-00110-0)	30.00	July 1, 2005	425-699	(869-056-00166-5)	61.00	July 1, 2005
1926	(869-056-00111-8)	50.00	July 1, 2005	700-789	(869-056-00167-3)	61.00	July 1, 2005
1927-End	(869-056-00112-6)	62.00	July 1, 2005	790-End	(869-056-00168-1)	61.00	July 1, 2005
30 Parts:				41 Chapters:			
1-199	(869-056-00113-4)	57.00	July 1, 2005	1, 1-1 to 1-10		13.00	³ July 1, 1984
200-699	(869-056-00114-2)	50.00	July 1, 2005	1, 1-11 to Appendix, 2 (2 Reserved)		13.00	³ July 1, 1984
700-End	(869-056-00115-1)	58.00	July 1, 2005	3-6		14.00	³ July 1, 1984
31 Parts:				7		6.00	³ July 1, 1984
0-199	(869-056-00116-9)	41.00	July 1, 2005	8		4.50	³ July 1, 1984
200-499	(869-056-00117-7)	33.00	July 1, 2005	9		13.00	³ July 1, 1984
500-End	(869-056-00118-5)	33.00	July 1, 2005	10-17		9.50	³ July 1, 1984
32 Parts:				18, Vol. I, Parts 1-5		13.00	³ July 1, 1984
1-39, Vol. I		15.00	² July 1, 1984	18, Vol. II, Parts 6-19		13.00	³ July 1, 1984
1-39, Vol. II		19.00	² July 1, 1984	18, Vol. III, Parts 20-52		13.00	³ July 1, 1984
1-39, Vol. III		18.00	² July 1, 1984	19-100		13.00	³ July 1, 1984
1-190	(869-056-00119-3)	61.00	July 1, 2005	1-100	(869-056-00169-0)	24.00	July 1, 2005
191-399	(869-056-00120-7)	63.00	July 1, 2005	101	(869-056-00170-3)	21.00	July 1, 2005
400-629	(869-056-00121-5)	50.00	July 1, 2005	102-200	(869-056-00171-1)	56.00	July 1, 2005
630-699	(869-056-00122-3)	37.00	July 1, 2005	201-End	(869-056-00172-0)	24.00	July 1, 2005
700-799	(869-056-00123-1)	46.00	July 1, 2005	42 Parts:			
800-End	(869-056-00124-0)	47.00	July 1, 2005	1-399	(869-056-00173-8)	61.00	Oct. 1, 2005
33 Parts:				400-429	(869-056-00174-6)	63.00	Oct. 1, 2005
1-124	(869-056-00125-8)	57.00	July 1, 2005	430-End	(869-056-00175-4)	64.00	Oct. 1, 2005
125-199	(869-056-00126-6)	61.00	July 1, 2005	43 Parts:			
200-End	(869-056-00127-4)	57.00	July 1, 2005	1-999	(869-056-00176-2)	56.00	Oct. 1, 2005
34 Parts:				1000-end	(869-056-00177-1)	62.00	Oct. 1, 2005
1-299	(869-056-00128-2)	50.00	July 1, 2005	44	(869-056-00178-9)	50.00	Oct. 1, 2005
300-399	(869-056-00129-1)	40.00	⁷ July 1, 2005	45 Parts:			
400-End & 35	(869-056-00130-4)	61.00	July 1, 2005	1-199	(869-056-00179-7)	60.00	Oct. 1, 2005
36 Parts:				200-499	(869-056-00180-1)	34.00	Oct. 1, 2005
1-199	(869-056-00131-2)	37.00	July 1, 2005	500-1199	(869-056-00171-9)	56.00	Oct. 1, 2005
200-299	(869-056-00132-1)	37.00	July 1, 2005	1200-End	(869-056-00182-7)	61.00	Oct. 1, 2005
300-End	(869-056-00133-9)	61.00	July 1, 2005	46 Parts:			
37	(869-056-00134-7)	58.00	July 1, 2005	1-40	(869-056-00183-5)	46.00	Oct. 1, 2005
38 Parts:				41-69	(869-056-00184-3)	39.00	⁹ Oct. 1, 2005
0-17	(869-056-00135-5)	60.00	July 1, 2005	70-89	(869-056-00185-1)	14.00	⁹ Oct. 1, 2005
18-End	(869-056-00136-3)	62.00	July 1, 2005	90-139	(869-056-00186-0)	44.00	Oct. 1, 2005
39	(869-056-00139-1)	42.00	July 1, 2005	140-155	(869-056-00187-8)	25.00	Oct. 1, 2005
40 Parts:				156-165	(869-056-00188-6)	34.00	⁹ Oct. 1, 2005
1-49	(869-056-00138-0)	60.00	July 1, 2005	166-199	(869-056-00189-4)	46.00	Oct. 1, 2005
50-51	(869-056-00139-8)	45.00	July 1, 2005	200-499	(869-056-00190-8)	40.00	Oct. 1, 2005
52 (52.01-52.1018)	(869-056-00140-1)	60.00	July 1, 2005	500-End	(869-056-00191-6)	25.00	Oct. 1, 2005
52 (52.1019-End)	(869-056-00141-0)	61.00	July 1, 2005	47 Parts:			
53-59	(869-056-00142-8)	31.00	July 1, 2005	0-19	(869-056-00192-4)	61.00	Oct. 1, 2005
60 (60.1-End)	(869-056-00143-6)	58.00	July 1, 2005	20-39	(869-056-00193-2)	46.00	Oct. 1, 2005
60 (Apps)	(869-056-00144-4)	57.00	July 1, 2005	40-69	(869-056-00194-1)	40.00	Oct. 1, 2005
61-62	(869-056-00145-2)	45.00	July 1, 2005	70-79	(869-056-00195-9)	61.00	Oct. 1, 2005
63 (63.1-63.599)	(869-056-00146-1)	58.00	July 1, 2005	80-End	(869-056-00196-7)	61.00	Oct. 1, 2005
63 (63.600-63.1199)	(869-056-00147-9)	50.00	July 1, 2005	48 Chapters:			
63 (63.1200-63.1439)	(869-056-00148-7)	50.00	July 1, 2005	1 (Parts 1-51)	(869-056-00197-5)	63.00	Oct. 1, 2005
63 (63.1440-63.6175)	(869-056-00149-5)	32.00	July 1, 2005	1 (Parts 52-99)	(869-056-00198-3)	49.00	Oct. 1, 2005
				2 (Parts 201-299)	(869-056-00199-1)	50.00	Oct. 1, 2005
				3-6	(869-056-00200-9)	34.00	Oct. 1, 2005
				7-14	(869-056-00201-7)	56.00	Oct. 1, 2005
				15-28	(869-056-00202-5)	47.00	Oct. 1, 2005

Title	Stock Number	Price	Revision Date
29-End	(869-056-00203-3)	47.00	Oct. 1, 2005
49 Parts:			
1-99	(869-056-00204-1)	60.00	Oct. 1, 2005
100-185	(869-056-00205-0)	63.00	Oct. 1, 2005
186-199	(869-056-00206-8)	23.00	Oct. 1, 2005
200-299	(869-056-00207-6)	32.00	Oct. 1, 2005
300-399	(869-056-00208-4)	32.00	Oct. 1, 2005
400-599	(869-056-00209-2)	64.00	Oct. 1, 2005
600-999	(869-056-00210-6)	19.00	Oct. 1, 2005
1000-1199	(869-056-00211-4)	28.00	Oct. 1, 2005
1200-End	(869-056-00212-2)	34.00	Oct. 1, 2005
50 Parts:			
1-16	(869-056-00213-1)	11.00	Oct. 1, 2005
17.1-17.95(b)	(869-056-00214-9)	32.00	Oct. 1, 2005
17.95(c)-end	(869-056-00215-7)	32.00	Oct. 1, 2005
17.96-17.99(h)	(869-056-00215-7)	61.00	Oct. 1, 2005
17.99(i)-end and 17.100-end	(869-056-00217-3)	47.00	Oct. 1, 2005
18-199	(869-056-00218-1)	50.00	Oct. 1, 2005
200-599	(869-056-00218-1)	45.00	Oct. 1, 2005
600-End	(869-056-00219-0)	62.00	Oct. 1, 2005
CFR Index and Findings			
Aids	(869-060-00050-0)	62.00	Jan. 1, 2006
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¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

⁵ No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2005. The CFR volume issued as of April 1, 2000 should be retained.

⁶ No amendments to this volume were promulgated during the period April 1, 2004, through April 1, 2005. The CFR volume issued as of April 1, 2004 should be retained.

⁷ No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

⁸ No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

⁹ No amendments to this volume were promulgated during the period October 1, 2004, through October 1, 2005. The CFR volume issued as of October 1, 2004 should be retained.