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# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 7 CFR Part 1423

**RIN 0560–AE50**

## Standards for Approval of Warehouses for Storage of CCC Commodities

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the regulations covering the storage of commodities owned by the Commodity Credit Corporation (CCC). For the most part, these commodities are acquired under various mandatory marketing assistance and price support programs that benefit producers. This rule will consolidate the regulations for all commodities stored by CCC into one set of regulations. In addition, this rule will revise, in some instances, the substantive provisions that are in effect under the existing regulations.

**DATES:** Effective June 22, 2006.

**FOR FURTHER INFORMATION CONTACT:** Howard Froehlich, Warehouse and Inventory Division, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., STOP 0553, Washington, DC 20250–0553, telephone (202) 720–7398, FAX (202) 690–3123, e-mail address: *Howard.Froehlich@wdc.usda.gov.* Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

### Discussion of the Final Rule

CCC acquires agricultural commodities in the administration of its programs under various circumstances. For instance, under Title I of the Farm Security and Rural Investment Act of 2002, the CCC makes marketing assistance loans to producers that can lead to forfeiture of the commodities to CCC. To provide for the storage of various commodities it acquires, CCC may enter into storage agreements with private warehouse operators. Further, section 5 of the CCC Charter Act (7 U.S.C. 714c) requires that in purchasing, selling, warehousing, transporting, or handling agricultural commodities, CCC shall use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

CCC has regulations covering commodity storage at 7 CFR 1421.5551–1421.5559, part 1423, and 1427, subpart E. A proposed rule addressing consolidation of the approval regulations at one location in the Code of Federal Regulations and other technical and clarifying changes in the wording and structure of the regulation and other substantive changes was published in the **Federal Register** on November 20, 2003 (68 FR 65412). The comment period expired January 20, 2004, but was reopened and extended until March 11, 2004.

### Comments on the Proposed Rule

Responses to the proposed rule were received from 18 interested parties as follows: Eight from cotton associations, cooperatives, merchandisers, or individuals; five from grain associations, cooperatives, warehouses, or individuals; one from a processed commodities warehouse operator; two from Federal government employees; one from a commission firm; and one from a certified public accountant (CPA). Most respondents made multiple comments. The specific comments received and the Agency response follows.

### Cotton Flow

CCC received 19 comments addressing issues of loading cotton from warehouses (cotton flow) and arbitration of disputes arising from the cotton flow standard. Seven respondents favored a minimum cotton flow standard of 4.5 percent per week of approved capacity. One respondent opposed the 4.5 percent cotton flow standard and suggests a three percent standard instead. This issue was not addressed in previous regulation; however, the cotton flow standard can have an impact on warehouse operators with a Cotton Storage Agreement (CSA). CCC has addressed this issue by including the 4.5 percent cotton flow standard and an arbitration clause in the CSA instead of in the regulations. Thus, the respondent's suggestion for a three percent standard was not adopted.

### Outside Storage of Cotton

Five respondents supported section 1423.4(d)(4), which states that commodities shall not be subject to greater than normal risk of fire, flood, or other hazards. Two respondents opposed warehouse operators being allowed to store cotton in excess of their licensed warehouse capacity. Another respondent was in favor of establishing a licensed warehouse capacity for cotton prior to a ''receiving'' season, then not permitting a reduction of that capacity during the crop year. Section 1423.4 provides general requirements for warehouse operators storing CCC-interest commodities. CCC storage agreements require storage of commodities in approved space. Establishing a warehouse capacity based on a ''receiving'' season would be cumbersome for warehouse operators and difficult for CCC to monitor. Thus, the suggestion was not adopted.

### Financial Statement Reports and Net Worth

CCC received 11 comments on removing the option of submitting a financial statement compilation report prepared by a commission or management firm. Seven comments were received supporting submission of compilation reports: four from grain warehouses or cooperatives, two from cotton associations, and one from a commission firm. One warehouse operator suggested that a report by the commission house accountant would be reliable because the commission house accountant ''is very qualified in the grain industry'' and ''is top notch.'' Other comments opposed the proposed provision and suggested that, ''cost would be a major factor for our budget,'' and ''if it isn't broke don't fix it.'' The commission firm requested that CCC continue to accept compilation reports and submitted a list of employees servicing country elevator accounts, their education and years of experience,

as well as a list of the 77 country elevators that subscribe to their reporting services.

Four comments support the requirement that warehouse operators submit an audit or review financial statement prepared by an independent CPA or independent public accountant. The four comments are from a grain warehouse, grain association, a CPA, and cotton warehouse association. The grain warehouse operator states, ''This is a great requirement. It will add credibility to grain elevator financial statements.'' The grain warehouse association supports disallowing compilation financial statements and suggests a phase-in period to provide time for warehouse operators to arrange for audit or review-level financial statements. The comments from the CPA suggested that compilation financial statements are untrustworthy because there was a ''lack of independence with these clients'' and that ''management firms have control over every facet'' of the country elevator's business. The response from the cotton warehouse association supports ''requiring financial statements be reviewed or audited by a certified public accountant or an independent public accountant.''

In response to comments received in favor of retaining the current regulation language, CCC will maintain the provisions which allow for the submission of financial reports prepared by a CPA or independent public accountant, a commission or management firm staff member. Because current regulations for the CCC storage agreements are inconsistent, § 1423.6 will be revised from the proposed regulation to allow CCC to revise its storage agreements to include language specific to each agreement.

Three respondents requested that the net worth provisions for each type of storage agreement be included in the regulations. The three comments were from cotton warehouse associations, who expressed concern that ''warehouse operators will not know their net worth requirements until they apply for a CSA and review its provisions.'' It is understandable that respondents and prospective CCC agreement holders would want to see net worth requirements in the regulations. However, because of the differences in warehousing of various commodities, having separate requirements for each agreement type in the regulations could lead to misunderstandings. When new warehouse operators request information on a CCC storage agreement, they are provided with a complete information package, which includes the regulations, storage agreement, and other related information. Therefore, CCC finds it unnecessary to include the net worth requirements in the regulations, but CCC storage agreements will be revised to include minimum net worth requirements. Two of the three respondents suggesting the net worth provisions be included in the regulations also suggest that the ''minimum net worth as stated in the current rule be continued.'' CCC's required net worth and the method of calculating net worth relate closely to the type of commodity program that each storage agreement supports and the industry served. The different methods for required net worth amounts can be more effectively dealt within in each storage agreement rather than in the regulations.

Two warehouse associations suggested that CCC include a provision in the regulation that CCC provide a 120-day public notice of changes to any provision of CCC storage agreements. Both respondents state that the 120-day time-period is similar to the time period required in the proposed rule for notice of cancellation of bonds or letters of credit. CCC disagrees with this recommendation because such a requirement would unnecessarily delay needed changes to agreements. Nonetheless, CCC acknowledges that when a major rewrite of a CCC storage agreement is planned a Notice will be published in the **Federal Register**. However, storing commodities for CCC is voluntary, and a warehouse operator always has the option of terminating the agreement.

CCC received two comments in support of the provision in the proposed rule that proposed removing the possibility of a warehouse operator obtaining legal liability insurance as an alternative to meeting minimum net worth requirements.

**Comments on Other Sections**

Two comments support the provisions regarding adequate firefighting equipment, and one comment suggested adding a provision making fire insurance mandatory for those warehouses with a CSA. Warehouse operators are not required to insure CCC-owned commodities. However, CCC storage agreements address the requirements of insuring warehouse-stored commodities pledged as collateral. Because an insurance provision is in CCC storage agreements, a provision in this regulation would be unnecessary and redundant; thus, the comment was not adopted. CCC will determine whether such insurance is needed to protect its interest as a prudent lender depending on the facts and circumstances at the time the agreements are in force.

One comment specifically addressed proposed § 1423.4(b) and the requirement to use pre-numbered warehouse receipts. The respondent suggests ''the language be further modified to state that warehouses may only use pre-assigned warehouse receipt numbers'' to reflect the practice of numbering electronic receipts. CCC agrees with this suggestion and added wording in this rule to address electronic receipt practices.

Two comments addressed section 1423.4(d)(2) regarding the 120-day cancellation notice for leases. One respondent expressed concern that ''some warehouse operators may not be able to negotiate such terms.'' Another respondent suggested that CCC ''specify in the regulations the specific lease terms which are most important to securing approval.'' The 120-day notice is a CCC requirement designed to address CCC's operational needs under the Processed Commodities Storage Agreement (PCSA). Because not all operational needs of CCC programs are the same, CCC will not require a 120-day notice for all agreements as provided in the proposed rule, but will address each agreement's operational need within the terms and conditions of each agreement.

One respondent asked that wording in section 1423.8 be amended to more closely resemble the wording from the previous regulations. The previous regulation stated, ''CCC will approve the warehouse if the warehouseman establishes that the causes for CCC's rejection of approval have been remedied.'' The wording of the proposed rule for this section stated, ''* * * CCC may reconsider a warehouse for approval when the warehouse operator establishes that the reasons for rejection have been remedied * * *''. The respondent stated, ''This change represents a shift in the requirements burden of proof in a rejection situation and also relieves the CCC from any requirement that it approve a warehouse that has remedied its deficiencies.'' It was not CCC's intent to change to a new standard for reconsideration allowing CCC to refuse to act; therefore, CCC will maintain the word ''will'' in this final rule.

One respondent asked that § 1423.2(b) more clearly address temporary storage conditions. CCC has revised this section to only state in general terms the authority to administer this section. CCC will address its requirements to hold an agreement for prompt shipment

and short term handling of commodities within the applicable agreement.

**Definitions**

Several respondents asked that specific wording associated with cotton flow (receiving period, non-receiving period, staged, and satisfactory record of performance) be defined, that qualitative items (*e.g.* good state of repair, etc.) be moved from the definition of warehouse to another section, and whether electronic documents are considered ''in writing.'' CCC has addressed the issue of cotton flow in its CSA and will not include related definitions in this regulation. CCC agrees that the qualitative items contained in the definition of a warehouse should be placed elsewhere and will now be included in section 1423.4, which will contain a more detailed requirement. And, CCC considers electronically-signed documents as if the document were signed ''in writing.''

**Executive Order 12866**

This rule has been determined to be ''Not Significant'' under Executive Order 12866 and has not, therefore, been reviewed by the Office of Management and Budget (OMB).

**Federal Assistance Programs**

The title and number of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are:

Commodity Loans and Loan Deficiency Payments, 10.051.

**Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

**Environmental Assessment**

The environmental impacts of this rule have been considered in accordance with the provisions of the national Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. To the extent these authorities may apply, CCC has concluded that this rule is categorically excluded from further environmental review as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

**Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) except as specifically stated in this rule, no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 780 must be exhausted before seeking judicial review.

**Executive Order 12372**

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

**Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of rulemaking for the subject matter of this rule. Further, this rule contains no unfunded mandates as defined in sections 202 and 205 of UMRA.

**Government Paperwork Elimination Act**

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and CCC in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for the warehousing matters covered by this rule are fully implemented for the public to conduct business with CCC electronically. Documents also may be obtained by mail or fax.

**List of Subjects in 7 CFR Part 1423**

Agricultural commodities, Approval of warehouses, Dairy products, Feed grains, Oilseeds, Price support programs, Processed commodities, Surplus agricultural commodities.

■ For the reasons set forth in the preamble, 7 CFR part 1423 is revised to read as follows:

## PART 1423—COMMODITY CREDIT CORPORATION APPROVED WAREHOUSES

Sec.
1423.1 Applicability.
1423.2 Administration.
1423.3 Definitions.
1423.4 General requirements.
1423.5 Application requirements.
1423.6 Financial information documentation requirements.
1423.7 Net worth alternatives.
1423.8 Approval or rejection.
1423.9 Examination of warehouses.
1423.10 Exceptions for United States Warehouse Act licensed warehouses.
1423.11 Reserved.
1423.12 Application, inspection, and annual agreement fees.
1423.13 Appeals, suspensions, and debarment.

**Authority:** 15 U.S.C. 714b and 714c.

### § 1423.1 Applicability.

(a) This part sets forth the terms and conditions for approval of a warehouse operator by the Commodity Credit Corporation (CCC) to store and handle CCC interest commodities, which are owned by CCC and, as may be required under parts 1421, 1427 and 1435 of this title, with respect to commodities pledged as security for a loan made by CCC. CCC may require that a warehouse enter into a storage agreement under this part to store such commodities. The execution of such a storage agreement by CCC does not constitute a commitment that CCC will use the warehouse.

(b) By entering into a storage agreement with CCC, the warehouse operator agrees to comply with the terms and conditions of the storage agreement.

### § 1423.2 Administration.

On behalf of CCC, the Farm Service Agency (FSA) will administer this part under the supervision of the Deputy Administrator for Commodity Operations (Deputy Administrator), FSA.

### § 1423.3 Definitions.

*Agreement* means agreements covering storage and handling of any such commodity CCC may determine appropriate for storage.

*KCCO* means the FSA, Kansas City Commodity Office.

*Warehouse* means a building, structure, or other protected enclosure, in good state of repair, and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity.

*Warehouse operator* means an individual, partnership, corporation, association, or other legal entity engaged

in the business of storing or handling for hire, or both, the applicable commodity.

**§ 1423.4 General requirements.**

(a) Unless otherwise provided in this part, approved warehouse operators must maintain a current and valid license for the kind of storage operation for which the warehouse operator seeks approval if such a license is required by State or local laws or regulations and maintain accurate and complete inventory and operating records.

(b) Approved warehouse operators may only use pre-numbered warehouse receipts, or pre-assigned ranges of numbers for electronic warehouse receipts as set forth in the agreement, and may only use pre-numbered scale tickets, if applicable, as CCC may approve.

(c) In addition, the warehouse operator must:

(1) Be in compliance with state and local laws regarding fire safety;

(2) Furnish a copy of any written lease agreement to CCC with the application. All leases are subject to CCC approval; and

(3) Have sufficient employees and management with technical qualifications and skills in the warehousing business regarding the commodities subject to the agreement.

(d) Unless otherwise provided in this part, each approved warehouse shall:

(1) Be maintained under the control of the warehouse operator;

(2) Be maintained in a good state of repair; and

(3) Maintain adequate equipment to receive, handle, store, preserve and deliver the applicable commodity.

**§ 1423.5 Application requirements.**

To apply for approval under this part, a warehouse operator shall submit to CCC the following:

(a) An application as prescribed by CCC for the applicable commodity storage agreement;

(b) Evidence of compliance with § 1423.4;

(c) Current financial information sufficient to meet the requirements of § 1423.6;

(d) For State licensed or non-licensed warehouse operators, a sample copy of the warehouse operator's warehouse receipts or electronic warehouse receipt record descriptor when applicable; and

(e) Such other documents or information as CCC may require to make a determination that the warehouse operator can comply with the provisions of this part.

**§ 1423.6 Financial information documentation requirements.**

To be approved under this part, a warehouse operator shall submit a current financial statement at the time of application, and annually thereafter, as provided for in the applicable storage agreement.

**§ 1423.7 Net worth alternatives.**

Warehouse operators with net worth equal to or greater than the minimum net worth required, but less than the total net worth for the commodity involved in the particular agreement, may satisfy the net worth deficiency by furnishing one of the following:

(a) A bond which:

(1) Is executed by a surety approved by the U.S. Department of the Treasury so long as the surety maintains someone authorized to accept service of legal process in the State where the warehouse is located.

(2) Is executed on either a bond form obtained from CCC, or which is furnished under State law or operational rules for non-governmental supervisory agencies, if approved by CCC, so long as CCC determines that such alternative bond:

(i) Provides adequate protection to CCC;

(ii) Has been executed by a surety approved by the U.S. Department of the Treasury or has an acceptable blanket rider and endorsement executed by such a surety with the liability of the surety under such rider or endorsement being the same as that of the surety under the original bond; and

(iii) Is effective for at least 1 year and cannot be canceled without 120 days notice to CCC. Excess coverage on a bond for one warehouse will not be accepted by CCC against insufficient bond coverage on other warehouses;

(b) Cash and negotiable securities. Any such cash or negotiable securities accepted by CCC will be returned to the warehouse operator when the period for which coverage was required has ended and CCC determines there is no liability under the storage agreement;

(c) An irrevocable letter of credit meeting CCC requirements that is effective for at least 1 year and cannot be canceled without 120 days notice to CCC. The issuing bank must be a commercial bank insured by the Federal Deposit Insurance Corporation or a financial institution subject to the Farm Credit Act, or

(d) Other alternative instruments and forms of financial assurance as the Deputy Administrator determines appropriate to secure the warehouse operator's compliance with this section.

**§ 1423.8 Approval or rejection.**

(a) CCC will notify warehouse operators approved under this part in writing. Such approval does not relieve the warehouse operator of any obligation under any agreement to CCC or any other agency of the United States, and does not obligate CCC to use the warehouse.

(b) CCC will notify the warehouse operator of rejection under this part in writing. The notification will state the cause(s) for rejection. Except for rejections due to the requirements of § 1423.4(c)(5), CCC will reconsider a warehouse for approval when the warehouse operator establishes that the reasons for rejection have been remedied or requests reconsideration of the action and presents to the Director, KCCO, in writing, information in support of such request. The warehouse operator may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing by submitting a request with the Deputy Administrator. Appeals shall be as prescribed in part 780 of this title.

**§ 1423.9 Examination of warehouses.**

Before approval, and while a storage agreement is in effect, a warehouse must be examined by a person designated by CCC periodically to determine compliance with this part. CCC or any other agency of USDA shall, at any time, have the right to inspect the warehouse storage facilities and any applicable records. Inspection or examination by CCC does not absolve the warehouse operator of any failure to comply with this part that CCC does not discover. Failure to allow access to facilities as required under this paragraph will result in rejection or revocation of approval.

**§ 1423.10 Exceptions for United States Warehouse Act licensed warehouses.**

The financial requirements, net worth alternatives and examination provisions of this part do not apply if the warehouse operator is licensed under the U.S. Warehouse Act (USWA) for such commodities, but an examination under this part will be made of such a warehouse whenever CCC determines such action is necessary to protect its interests.

**§ 1423.11 Reserved.**

**§ 1423.12 Application, inspection, and annual agreement fees.**

Each warehouse operator not licensed under USWA shall pay to CCC a fee or fees, including an application fee, inspection fee, and an annual agreement fee for each warehouse approved by

CCC or for which approval is sought. The terms and conditions of such fees will be set forth in the applicable agreement.

**§ 1423.13 Appeals, suspensions, and debarment.**

(a) After initial approval, warehouse operators may request that CCC reconsider adverse actions when the warehouse operator establishes that the reasons for the action have been remedied or requests reconsideration of the action and presents to the Director, KCCO, in writing, information in support of such request. The warehouse operator may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing by submitting a request to the Deputy Administrator. Appeals shall be as prescribed in part 780 of this title, and under such regulations the warehouse operator shall be considered as a ''participant.''

(b) Suspension and debarment actions taken under this part shall be conducted in accordance with part 1407 of this chapter. After expiration of the suspension or debarment period, a warehouse operator may, at any time, apply for approval under this part.

Signed at Washington, DC, on June 7, 2006.

**Glen L. Keppy,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. E6–9834 Filed 6–21–06; 8:45 am]

BILLING CODE 3410–05–P

## DEPARTMENT OF ENERGY

## Office of Energy Efficiency and Renewable Energy

## 10 CFR Part 440

**RIN 1904–AB56**

## Weatherization Assistance Program for Low-Income Persons

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Direct final rule.

**SUMMARY:** The Department of Energy (DOE) is issuing a direct final rule to amend the regulations for the Weatherization Assistance Program for Low-Income Persons to incorporate statutory changes resulting from the passage of the Energy Policy Act of 2005. In this direct final rule, DOE defines renewable energy systems eligible for funding in the Weatherization Assistance Program, establishes criteria for performance and quality standards for eligible renewable energy systems, establishes procedures for submission of and action on manufacturer petitions for Secretarial determinations of eligibility of renewable energy technologies and systems, and establishes a ceiling for funding of renewable energy systems in the Weatherization Assistance Program.

**DATES:** This direct final rule is effective August 21, 2006, unless adverse or critical comments are received by July 24, 2006. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** You may submit comments, identified by RIN 1904–AB56, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-Mail: Weatherization.rules@ee.doe.gov.* Include RIN 1904–AB56 in the subject line of the message.
- *Mail:* Weatherization Assistance Program, U.S. Department of Energy, Mail Stop EE–2K, 5E–066, 1000 Independence Avenue, SW., Washington, DC 20585.

You may obtain electronic copies of this rulemaking and review comments received by DOE by visiting the DOE Freedom of Information Reading Room, Department of Energy, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** John Atcheson, Weatherization Assistance Program, U.S. Department of Energy, Mail Stop EE–2K, 5E–066, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0771.

**SUPPLEMENTARY INFORMATION:**

I. Introduction
II. Amendments to the Weatherization Assistance Program
III. Final Action
IV. Procedural Requirements
V. The Catalog of Federal Domestic Assistance
VI. Approval of the Office of the Secretary

### I. Introduction

The Department of Energy (DOE) amends the program regulations for the Weatherization Assistance Program for Low-Income Persons. The program is authorized by Title IV, Part A, of the Energy Conservation and Production Act, 42 U.S.C. 6861 *et seq.* The amendments made by this direct final rule are necessitated by certain changes in the Weatherization Assistance Program mandated in the Energy Policy Act of 2005 (Pub. L. 109–58) (EPACT 2005). Specifically, section 206 of EPACT 2005 amended section 415(c) of the Energy Conservation and Production Act (42 U.S.C. 6865(c)) to provide funding to low-income persons for renewable energy systems and to set a new ceiling for funding of renewable energy systems in the Weatherization Assistance Program.

In this direct final rule, DOE defines renewable energy systems eligible for funding in the Weatherization Assistance Program, establishes criteria for performance and quality standards for eligible renewable energy systems, establishes procedures for submission of and action on manufacturer petitions for Secretarial determinations of eligibility of renewable energy technologies and systems, and establishes a ceiling for funding of renewable energy systems in the Weatherization Assistance Program.

DOE is today amending the program regulations to include specific requirements mandated by EPACT 2005. DOE is not now proposing any additions to the forms of renewable energy included in the definition of ''renewable energy system.'' Nor is DOE proposing renewable energy system performance and quality standards beyond those included in EPACT 2005. Thus, DOE views these amendments to be noncontroversial and appropriate for direct final rulemaking (see III. Final Action for information on this procedure).

### II. Amendments to the Weatherization Assistance Program

This section of the preamble provides a section-by-section description of the amendments made by this direct final rule.

*Section 440.1 (Purpose and Scope).* DOE amends 10 CFR 440.1 to explicitly state that the program's goals include the use of renewable energy systems and technologies. While DOE considered renewable energy systems and technologies to be eligible for funding under the program prior to the passage of EPACT 2005, Congress has clarified the scope and treatment of such systems by providing specific definitions and criteria to be used in assessing eligibility and by expanding funding opportunities for renewable energy systems.

*Section 440.3 (Definitions).* DOE amends 10 CFR 440.3, the definitions section, to add definitions of the terms ''biomass'' and ''renewable energy system.'' These definitions are taken from section 206 of EPACT 2005, which amends 42 U.S.C. 6865(c) to include the definitions in a new subsection (6).

*Section 440.18 (Allowable Expenditures).* DOE amends 10 CFR

440.18 to add a new paragraph (b) that incorporates the new statutory provisions addressing renewable energy systems and specifying a ceiling of $3,000 per dwelling for labor, weatherization materials, and related matters. Redesignated paragraph (c) (formerly paragraph (b)) is amended to provide that the procedure for annual adjustments to the ceiling for expenditures on a dwelling under the program applies to the $3,000 renewable energy system cap, as well as to the $2,500 cap that applies to other eligible weatherization expenditures under the program. This amendment applies prospectively; DOE will not apply the $3,000 cap retroactively to recalculate weatherization assistance awarded since 2000. Rather, the amendment is intended only to implement the new statutory ceiling applicable to renewable energy systems, and to clarify that the formula used for increasing the ceiling specified in 2000 also applies to the cap for renewable energy technologies and systems.

*Section 440.21 (Weatherization materials, standards and energy audit procedures).* DOE amends 10 CFR 440.21 to incorporate criteria for defining and evaluating what is an acceptable renewable energy technology or system for funding under the Weatherization Assistance Program. A new paragraph (c)(1) in this section specifies performance and quality standards criteria for renewable energy systems. These criteria are taken from amendments to the Energy Conservation and Production Act made by EPACT 2005, specifically 42 U.S.C. 6865(c)(5)(D) and (6)(A)(iii) and (iv). New paragraph (c)(2) establishes a procedure for submission of and action on petitions by manufacturers requesting the Secretary of Energy to certify a new technology or system as an eligible renewable energy system. This amendment implements 42 U.S.C. 6865(c)(5)(A)(ii) and (B), added to the Energy Conservation and Production Act by EPACT 2005. In applying these requirements, DOE will build upon the approaches used now for energy efficiency materials and procedures.

## III. Final Action

DOE is publishing this direct final rule without prior proposal because DOE views these amendments as noncontroversial and anticipates no significant adverse comments. However, in the event that significant adverse or critical comments are filed, DOE has prepared a notice of proposed rulemaking (NOPR) proposing the same amendments. This NOPR is published as a separate document in this **Federal Register** publication. The direct final rule will be effective August 21, 2006, unless significant adverse or critical comments are received by July 24, 2006. If DOE receives significant adverse or critical comments, the revisions to 10 CFR part 440 in this direct final rule will be withdrawn before the effective date. In the case of withdrawal of this action, the withdrawal will be announced by a subsequent **Federal Register** document. All public comments will then be addressed in a separate final rule based on the proposed rule that is also issued today. DOE will not implement a second comment period on this action. Any persons interested in commenting on this rule should do so at this time.

## IV. Procedural Requirements

### *A. Review Under Executive Order 12866*

Today's direct final rule has been determined not to be ''a significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

### *B. National Environmental Policy Act*

DOE has determined that promulgation of this direct final rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this direct final rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.5 of appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings that interpret or amend an existing regulation without changing the environmental effect of the regulation. 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 at *http://www.gc.doe.gov.*

DOE has reviewed today's direct final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The direct final rule amends DOE's Weatherization Assistance Program regulations to incorporate statutory changes made to the grant program. These amendments do not independently have any economic impact on small entities. Moreover, the EPACT 2005 changes expand the benefits available under the program for grant recipients; the statutory changes cause no adverse impact on any recipient. On the basis of the foregoing, DOE certifies that the amendments will 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 direct final rule will not impose any new collection of information subject to review and approval by OMB under the Paperwork Reduction Act, 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.

This direct final rule will not impose a Federal mandate on State, local or tribal governments, and it will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. 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. Today's direct final rule will 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 pre-empt 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 direct final rule and has determined that it would not pre-empt 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. The review required by sections 3(a) and 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the pre-emptive 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 sections 3(a) and 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, this direct final rule meets 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.

*J. Executive Order 13211*

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of Office of Information and Regulatory Affairs (OIRA) as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

*K. Congressional Notification*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

## V. The Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the Weatherization Assistance Program for Low-Income Persons is 81.042.

## VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's direct final rule, as well as the accompanying notice of proposed rulemaking.

## List of Subjects 10 CFR Part 440

Administrative practice and procedure, Aged, Energy conservation, Grant programs—energy, Grant programs—housing and community development, Housing standards, Indians, Individuals with disabilities, Reporting and recordkeeping requirements, Weatherization.

Issued in Washington, DC, on June 9, 2006.

**Douglas L. Faulkner,**

*Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.*

■ For the reasons set forth in the preamble, DOE amends part 440 of chapter II of title 10, Code of Federal Regulations, to read as follows:

## PART 440—WEATHERIZATION ASSISTANCE PROGRAM FOR LOW-INCOME PERSONS

■ 1. The authority citation for part 440 continues to read as follows:

**Authority:** 42 U.S.C. 6861 *et seq.*; 42 U.S.C. 7101 *et seq.*

### § 440.1 [Amended]

■ 2. Section 440.1 is amended by adding the words ''or to provide such persons renewable energy systems or technologies'' after the words ''low-income persons,'' where they are first used.

■ 3. Section 440.3 is amended by adding in alphabetical order definitions of ''biomass'' and ''renewable energy system'' to read as follows:

### § 440.3 Definitions.

* * * * *

*Biomass* means any organic matter that is available on a renewable or recurring basis, including agricultural crops and trees, wood and wood wastes and residues, plants (including aquatic plants), grasses, residues, fibers, and animal wastes, municipal wastes, and other waste materials.

* * * * *

*Renewable energy system* means a system which when installed in connection with a dwelling—

(1) Transmits or uses solar energy, energy derived from geothermal deposits, energy derived from biomass (or any other form of renewable energy which DOE subsequently specifies through an amendment of this part) for the purpose of heating or cooling such dwelling or providing hot water or electricity for use within such dwelling; or wind energy for nonbusiness residential purposes; and

(2) Which meets the performance and quality standards prescribed in § 440.21 (c) of this part.

* * * * *

■ 4. Section 440.18 is amended by:

■ a. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f);

■ b. Adding a new paragraph (b);

■ c. Amending redesignated paragraph (c) by adding the phrase ''($3,000 for renewable energy systems)'' after the words ''The $2,500 average'' in the introductory sentence.

The additions read as follows:

### § 440.18 Allowable expenditures.

* * * * *

(b) The expenditure of financial assistance provided under this part for labor, weatherization materials, and related matters for a renewable energy system, shall not exceed an average of $3,000 per dwelling unit.

* * * * *

■ 5. Section 440.21 is amended by:

■ a. Revising paragraph (a);

■ b. Redesignating paragraphs (c) through (h) as paragraphs (d) through (i);

■ c. Adding a new paragraph (c);

■ d. Amending the introductory sentence of redesignated paragraph (e) by removing the words ''paragraph (c)'' and adding in their place the words ''paragraph (d)''; and, in redesignated paragraph (e)(2), by removing the words ''paragraph (d)(1)'' and adding in their place the words ''paragraph (e)(1)''; and

■ e. Amending redesignated paragraph (g) by removing the words ''paragraphs (b) through (e)'' and adding in their place the words ''paragraphs (b) through (f)''.

The revisions and additions read as follows:

### § 440.21 Weatherization materials standards and energy audit procedures.

(a) Paragraph (b) of this section describes the required standards for weatherization materials. Paragraph (c)(1) of this section describes the performance and quality standards for renewable energy systems. Paragraph (c)(2) of this section specifies the procedures and criteria that are used for considering a petition from a manufacturer requesting the Secretary to certify an item as a renewable energy system. Paragraphs (d) and (e) of this section describe the cost-effectiveness tests that weatherization materials must pass before they may be installed in an eligible dwelling unit. Paragraph (f) of this section lists the other energy audit requirements that do not pertain to cost-effectiveness tests of weatherization materials. Paragraphs (g) and (h) of this section describe the use of priority lists and presumptively cost-effective general heat waste reduction materials as part of a State's energy audit procedures. Paragraph (i) of this section explains that a State's energy audit procedures and priority lists must be re-approved by DOE every five years.

* * * * *

(c)(1) A system or technology shall not be considered by DOE to be a renewable energy system under this part unless:

(i) It will result in a reduction in oil or natural gas consumption;

(ii) It will not result in an increased use of any item which is known to be, or reasonably expected to be, environmentally hazardous or a threat to public health or safety;

(iii) Available Federal subsidies do not make such a specification unnecessary or inappropriate (in light of the most advantageous allocation of economic resources); and

(iv) If a combustion rated system, it has a thermal efficiency rating of at least 75 percent; or, in the case of a solar system, it has a thermal efficiency rating of at least 15 percent.

(2) Any manufacturer may submit a petition to DOE requesting the Secretary to certify an item as a renewable energy system.

(i) Petitions should be submitted to: Weatherization Assistance Program, Office of Energy Efficiency and Renewable, Mail Stop EE–2K, 1000 Independence Avenue, SW., Washington, DC 20585.

(ii) A petition for certification of an item as a renewable energy system must be accompanied by information demonstrating that the item meets the criteria in paragraph (c)(1) of this section.

(iii) DOE may publish a document in the **Federal Register** that invites public comment on a petition.

(iv) DOE shall notify the petitioner of the Secretary's action on the request within one year after the filing of a complete petition, and shall publish notice of approvals and denials in the **Federal Register**.

* * * * *

[FR Doc. E6–9858 Filed 6–21–06; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2006–24090; Directorate Identifier 2006–CE–16–AD; Amendment 39–14664; AD 2006–13–11]**

**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:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) that supersedes AD 2002–21–08, which applies to certain Pilatus Aircraft Ltd (Pilatus) Model PC–6 airplanes. AD 2002–21–08 currently requires you to inspect the aileron assembly for correct

configuration and modify as necessary. Since we issued AD 2002–21–08, the FAA determined the action should also apply to all the models of the PC–6 airplanes listed in the type certificate data sheet of Type Certificate (TC) No. 7A15 that were 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). In addition, the intent of the applicability of AD 2002–21–08 was to apply to all the affected serial numbers of the airplane models listed in TC No. 7A15. This AD retains all the actions of AD 2002–21–08, adds those Fairchild Republic Company airplanes to the applicability of this AD, and lists the individual specific airplane models. We are issuing this AD to correct improper aileron assembly configuration, which could result in failure of the aileron mass balance weight. Such failure could lead to loss of control of the airplane.

**DATES:** This AD becomes effective on August 7, 2006.

As of December 6, 2002 (67 FR 64520, October 21, 2002), the Director of the Federal Register previously approved the incorporation by reference of Pilatus Service Bulletin No. 62B, dated May 1967, and Pilatus Service Bulletin No. 57–001, dated December 20, 2001, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

**ADDRESSES:** For service information identified 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 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2006–24090; Directorate Identifier 2006–CE–16–AD.

**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:**

## Discussion

On April 17, 2006, 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 the models of the PC–6 airplanes listed in the type certificate data sheet of TC No. 7A15 that are 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) airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 21, 2006 (71 FR 20597). The NPRM proposed to supersede AD 2002–21–08, Amendment 39–12914 (67 FR 64520, October 21, 2002), add those Fairchild Republic Company airplanes to the applicability of this proposed AD, and list the individual specific airplane models. The NPRM proposed to retain all the actions of AD 2002–21–08 for inspecting and modifying the aileron assembly.

## Comments

We provided the public the opportunity to participate in developing this AD. We received one comment in favor of the proposed AD.

## Conclusion

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

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

## Costs of Compliance

We estimate that this AD affects 49 airplanes in the U.S. registry.

We estimate the following costs to do the 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 | 49 × $80 = $3,920. |

We estimate the following costs to do any necessary modifications that would be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such modification:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 16 work-hours × $80 per hour = $1,280 | $419 | $1,280 + $419 = $1,699. |

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''Docket No. FAA–2006–24090; Directorate Identifier 2006–CE–16–AD'' in your request.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–21–08, Amendment 39–12914 (67 FR 64520, October 21, 2002), and by adding the following new AD:

**2006–13–11 Pilatus Aircraft Ltd.:** Amendment 39–14664; Docket No. FAA–2006–24090; Directorate Identifier 2006–CE–16–AD.

**Effective Date**

(a) This AD becomes effective on August 7, 2006.

**Affected ADs**

(b) This AD supersedes AD 2002–21–08, Amendment 39–12914.

**Applicability**

(c) This AD affects the following 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 and serial numbers that are certificated in any category:

(1) Group 1 (maintains the actions from AD 2002–21–08): All manufacturer serial numbers (MSN) up to and including 939.

(2) Group 2: MSN 2001 through 2092.

**Note:** These airplanes are also identified as Fairchild Republic Company PC–6 airplanes, Fairchild Heli Porter PC–6 airplanes, or Fairchild-Hiller Corporation PC–6 airplanes.

**Unsafe Condition**

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland that requires the actions of AD 2002–21–08 for the added MSN 2001 through 2092 for all the models of the PC–6 airplanes listed in the type certificate data sheet of Type Certificate (TC) No. 7A15. We are issuing this AD to correct improper aileron assembly configuration, which could result in failure of the aileron mass balance weight. Such failure could lead to loss of control of the airplane.

**Compliance**

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Inspect the aileron assembly for proper configuration. | (i) For Group 1 Airplanes: Within the next 30 days after December 6, 2002 (the effective date of AD 2002–21–08), unless already done.<br>(ii) For Group 2 Airplanes: Within the next 30 days after August 7, 2006 (the effective date of this AD), unless already done. | Follow Pilatus Service Bulletin No. 62B, dated May 1967, as specified in Pilatus PC–6 Service Bulletin No. 57–001, dated December 20, 2001. |
| (2) If the aileron assembly configuration incorporates aileron part number (P/N) 6106.10.xxx or P/N 6106.0010.xxx, modify the assembly following Pilatus Service Bulletin No. 62B, dated May 1967, and install a placard. | *For All Airplanes:* Before further flight after the inspection required in paragraph (e)(1) of this AD, unless already done. | Follow Pilatus Service Bulletin No. 62B, dated May 1967, as specified in Pilatus PC–6 Service Bulletin No. 57–001, dated December 20, 2001. |
| (3) If the aileron assembly configuration differs from that specified in Pilatus Service Bulletin No. 62B, dated May 1967, or if the part numbers are missing and cannot be verified:<br>(i) Obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD; and<br>(ii) Incorporate this repair scheme. | *For All Airplanes:* Before further flight after the inspection required in paragraph (e)(1) of this AD, unless already done. | Follow Pilatus PC–6 Service Bulletin No. 57–001, dated December 20, 2001. |
| (4) Do not install any aileron assembly unless the inspection, modification, placard, and repair requirements (as applicable) of paragraphs (e)(1), (e)(2), (e)(3), (e)(3)(i), and (e)(3)(ii) of this AD are done. | (i) For Group 1 Airplanes: As of December 6, 2002 (the effective date of AD 2002–21–08).<br>(ii) For Group 2 Airplanes: As of August 7, 2006 (the effective date of this AD).. | Follow Pilatus PC–6 Service Bulletin No. 57–001, dated December 20, 2001. |

**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 AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(g) AMOCs approved for AD 2002–21–08 are approved for this AD.

**Related Information**

(h) Swiss Airworthiness Directive Number HB 2005–289, effective date August 23, 2005, also addresses the subject of this AD.

**Material Incorporated by Reference**

(i) You must do the actions required by this AD following the instructions in Pilatus Service Bulletin No. 62B, dated May 1967, and Pilatus Service Bulletin No. 57–001, dated December 20, 2001.

(1) As of December 6, 2002 (67 FR 64520, October 21, 2002), the Director of the Federal Register previously approved the incorporation by reference of Pilatus Service Bulletin No. 62B, dated May 1967, and Pilatus Service Bulletin No. 57–001, dated December 20, 2001, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) To get a copy of this service information, contact Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2006–24090; Directorate Identifier 2006–CE–16–AD.

Issued in Kansas City, Missouri, on June 13, 2006.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 06–5587 Filed 6–21–06; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2006–25102; Directorate Identifier 2006–NM–117–AD; Amendment 39–14666; AD 2006–13–13]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737 Airplanes

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 737 airplanes. This AD requires revising the airplane flight manual to advise the flightcrew of improved procedures for pre-flight setup of the cabin pressurization system, as well as improved procedures for interpreting and responding to the cabin altitude/configuration warning horn. This AD results from reports that airplanes have failed to pressurize, and that the flightcrews failed to react properly to the cabin altitude warning horn. We are issuing this AD to prevent failure of the airplane to pressurize and subsequent failure of the flightcrew to recognize and react to a valid cabin altitude warning horn, which could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in body) and consequent loss of airplane control.

**DATES:** This AD becomes effective July 7, 2006.

We must receive comments on this AD by August 21, 2006.

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

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

**FOR FURTHER INFORMATION CONTACT:** Gregg Nesemeier, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6479; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We have received a report indicating that during the investigation by the Air Accident Investigation and Aviation Safety Board of Greece into the August 14, 2005, Helios Airways accident near Athens, Greece, it was found that the Boeing Model 737–300 series airplane was not pressurized during the climb from the departure airport, and the flightcrew subsequently became incapacitated. It appears that the pressurization mode selector was improperly set for flight, and that the flightcrew subsequently misinterpreted the cabin altitude warning horn as a takeoff configuration warning horn. This misinterpretation may have occurred because the same warning horn provides both warning functions on Model 737 airplanes.

In addition, the FAA has become aware of a number of other incidents involving Model 737 airplanes where the flightcrew reaction to a valid cabin altitude warning horn was delayed, either because the flightcrew misinterpreted the horn as a takeoff configuration warning horn, or because they did not immediately don their oxygen masks. Crew reaction may have been delayed because the cabin altitude warning system on Model 737 airplanes provides only the warning horn; no associated cabin altitude warning light is installed that activates concurrently with the warning horn.

Failure of the airplane to pressurize and subsequent failure of the flightcrew to recognize and react to a valid cabin altitude warning horn, if not corrected, could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in body) and consequent loss of airplane control.

### Related Rulemaking

We have previously issued two ADs to address similar unsafe conditions.

On December 22, 2003, we issued AD 2003–03–15 R1, amendment 39–13366 (68 FR 64802, November 17, 2003), to require revising the AFM to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning occurs. That AD is applicable to various Boeing and McDonnell Douglas transport category airplanes, including Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes.

On July 14, 2003, we issued AD 2003–14–08, amendment 39–13227 (68 FR 41519, July 7, 2003), to require revising the AFM to require the same actions on various Boeing transport category airplanes, including Boeing 737–600, –700, –700C, –800, and –900 series airplanes.

In paragraph (a) of those ADs, a part of the revised text that we required to be placed in the AFMs of Model 737 airplanes reads ''If the cabin altitude warning horn sounds: * * *'' or ''Condition: The cabin altitude warning horn sounds: * * *'', as applicable. Boeing has advised us that in light of the information given in the Discussion section above, it has updated the AFM phrase to read ''If the intermittent cabin altitude/configuration warning horn sounds in flight: * * *'' We have approved this new phrase in the AD as acceptable for compliance with the requirements of paragraph (a) of ADs 2003–14–08 and 2003–03–15 R1.

### FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to prevent failure of the airplane to pressurize and subsequent failure of the flightcrew to recognize and react to a valid cabin altitude warning horn, which could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in body) and consequent loss of airplane control. This AD requires revising the airplane flight manual (AFM) to advise the flightcrew of

improved procedures for pre-flight setup of the cabin pressurization system, as well as improved procedures for interpreting and responding to the cabin altitude/configuration warning horn.

### Interim Action

Revisions to the Emergency or Non-Normal Procedures sections of the AFM are considered to be interim action. The manufacturer has advised that it currently is developing a design change in the cabin altitude warning system that will address the unsafe condition addressed by this AD. Once this design change is developed, approved, and available, the FAA may consider additional rulemaking.

### FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists to make this AD effective in less than 30 days.

### Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2006–25102; Directorate Identifier 2006–NM–117–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

### Examining the Docket

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

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

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

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

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2006–13–13 Boeing:** Amendment 39–14666. Docket No. FAA–2006–25102; Directorate Identifier 2006–NM–117–AD.

#### Effective Date

(a) This AD becomes effective July 7, 2006.

#### Affected ADs

(b) This AD is related to paragraph (a) of AD 2003–03–15 R1, amendment 39–13366, and paragraph (a) of AD 2003–14–08, amendment 39–13227. This AD does not supersede the requirements of AD 2003–03–15 R1 or AD 2003–14–08.

#### Applicability

(c) This AD applies to all Boeing Model 737–100, –200, –200C, –300, –400, –500, –600, –700, –700C, –800 and –900 series airplanes, certificated in any category.

#### Unsafe Condition

(d) This AD results from reports that airplanes have failed to pressurize, and that the flightcrews failed to react properly to the cabin altitude warning horn. We are issuing this AD to prevent failure of the airplane to pressurize and subsequent failure of the flightcrew to recognize and react to a valid cabin altitude warning horn, which could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in body) and consequent loss of airplane control.

#### Compliance

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

#### Revising the Airplane Flight Manuals (AFMs)

(f) Within 60 days after the effective date of this AD, revise the Cabin Pressurization procedures in the Normal Procedures section of the AFMs for Model 737–100, –200, –200C, –300, –400, –500, –600, –700, –700C, –800, and –900 series airplanes to include the following procedure:

''For normal operations, the pressurization mode selector should be in AUTO prior to takeoff.''

(g) Within 60 days after the effective date of this AD, revise the Emergency Procedures section of the AFMs for Model 737–100, –200, –200C, –300, –400, and –500 series

airplanes, or the Non-Normal Procedures section of the AFMs for Model 737–600, –700, –700C, –800, and –900 series airplanes, as applicable, to include the following procedure:

**"Warning Horn—Cabin Altitude or Configuration Recall**

Condition: An intermittent or steady warning horn sounds:

- In flight an intermittent horn indicates the cabin altitude is at or above 10,000 feet
- On the ground an intermittent horn indicates an improper takeoff configuration when advancing thrust levers to takeoff thrust
- In flight a steady horn indicates an improper landing configuration.

If an intermittent horn sounds in flight:

| | |
|---|---|
| Oxygen Masks and Regulators | on, 100% |
| Crew Communications ..... | Establish |
| Do the Cabin Altitude Warning or Rapid Depressurization checklist. | |

If an intermittent horn sounds on the ground: Assure proper airplane takeoff configuration.

If a steady horn sounds in flight: Assure proper airplane landing configuration."

**Optional Action for Certain Requirements of AD 2003–03–15 R1 and AD 2003–14–08**

(h) For Model 737–100, –200, –200C, –300, –400, and –500 series airplanes: Using the phrase, "If the intermittent cabin altitude/configuration warning horn sounds in flight:" in place of the phrase, "If the cabin altitude warning horn sounds:", in the revisions to the "Cabin Altitude Warning or Rapid Depressurization" procedure specified in Figures 2 and 3 of AD 2003–03–15 R1, is acceptable for compliance with the requirements of paragraph (a) of AD 2003–03–15 R1. All other requirements of AD 2003–03–15 R1 remain unchanged.

(i) For Model 737–600, –700, –700C, –800, and –900 series airplanes: Using the phrase, "If the intermittent cabin altitude/configuration warning horn sounds in flight:" in place of the phrase, "Condition: The cabin altitude warning horn sounds:", in the revisions to the "Cabin Altitude Warning or Rapid Depressurization" procedure specified in Figure 1 of AD 2003–14–08, is acceptable for compliance with the requirements of paragraph (a) of AD 2003–14–08. All other requirements of AD 2003–14–08 remain unchanged.

**Alternative Method To Revising the AFM**

(j) The AFM revisions specified in paragraphs (f) and (g) of this AD may be done by inserting a copy of this AD into the AFM.

(k) When statements identical to those specified in paragraphs (f) and (g) of this AD have been included in general revisions of the AFM, then the general revision(s) may be inserted into the AFM, and the copy of the AD may be removed from the applicable revised sections of the AFM.

**Alternative Methods of Compliance (AMOCs)**

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

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

**Material Incorporated by Reference**

(m) None.

Issued in Renton, Washington, on June 15, 2006.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 06–5585 Filed 6–21–06; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2006–24091; Directorate Identifier 2006–CE–17–AD; Amendment 39–14665; AD 2006–13–12]**

**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), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) that supersedes AD 98–12–01, which applies to certain Pilatus Aircraft Ltd (Pilatus) Models PC–6, PC–6/A, PC–6/B, and PC–6/C series airplanes equipped with turbo-prop engines. Since we issued AD 98–12–01, the FAA determined the action should also apply to all the models of the PC–6 airplanes listed in the type certificate data sheet of Type Certificate (TC) No. 7A15 that were 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). In addition, the intent of the applicability of AD 98–12–01 was to apply to all the affected serial numbers of the airplane models listed in TC No. 7A15. This AD retains all the actions of AD 98–12–01, adds those Fairchild Republic Company airplanes to the applicability of this AD, and lists the individual specific airplane models. We are issuing this AD to prevent engine fuel starvation during maximum climb and descent caused by poor fuel tank venting with low fuel levels, which could result in a loss of engine power during critical phases of flight.

**DATES:** This AD becomes effective on August 7, 2006.

As of July 13, 1998 (63 FR 30370, June 4, 1998), the Director of the Federal Register previously approved the incorporation by reference of Pilatus Service Bulletin No. PC–6–SB–171, dated October 18, 1995, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

**ADDRESSES:** To get the service information identified 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, S.W., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2006–24091; Directorate Identifier 2006–CE–17–AD.

**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:**

### Discussion

On April 17, 2006, 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 the models of the PC–6 airplanes listed in the type certificate data sheet of TC No. 7A15 that are 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) airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 21, 2006 (71 FR 20595). The NPRM proposed to supersede AD 98–12–01, Amendment 39–10558 (63 FR 30370, June 4, 1998), add those Fairchild Republic Company airplanes to the applicability of this proposed AD, and list the individual specific airplane models. The NPRM proposed to retain all the actions of AD 2002–21–08 for modifying the fuel system.

### Comments

We provided the public the opportunity to participate in developing

this AD. We received one comment in favor of the proposed AD.

### Conclusion

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

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

### Costs of Compliance

We estimate that this AD affects 43 airplanes in the U.S. registry.

We estimate the following costs to do the modification of the fuel system to improve venting between the collector tank, the main wing tanks, and the engine:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 10 work-hours × $80 per hour = $800 | $614 | $1,414 | $1,414 × 43 = $60,802. |

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''Docket No. FAA–2006–24091; Directorate Identifier 2006–CE–17–AD'' in your request.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–12–01, Amendment 39–10558 (63 FR 30370, June 4, 1998), and by adding the following new AD:

**2006–13–12 Pilatus Aircraft Ltd.:** Amendment 39–14665; Docket No. FAA–2006–24091; Directorate Identifier 2006–CE–17–AD.

#### Effective Date

(a) This AD becomes effective on August 7, 2006.

#### Affected ADs

(b) This AD supersedes AD 98–12–01, Amendment 39–10558.

#### Applicability

(c) This AD affects the following 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 that are equipped with turbo-prop engines and certificated in any category:

(1) Group 1 (maintains the actions from AD 98–12–01): All manufacturer serial numbers (MSN) up to and including 915.

(2) Group 2: MSN 2001 through 2092.

**Note:** These airplanes are also identified as Fairchild Republic Company PC–6 airplanes, Fairchild Heli Porter PC–6 airplanes, or Fairchild-Hiller Corporation PC–6 airplanes.

#### Unsafe Condition

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland that requires the actions of AD 98–12–01 for the added MSN 2001 through 2092 for all the models of the PC–6 airplanes listed in the type certificate data sheet of Type Certificate (TC) No. 7A15. We are issuing this AD to prevent engine fuel starvation during maximum climb and descent caused by poor fuel tank venting with low fuel levels, which could result in a loss of engine power during critical phases of flight.

#### Compliance

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Modify the fuel system to improve the venting between the collector tank, the main wing tanks, and the engine. | (i) For Group 1 Airplanes: Within the next 3 calendar months after July 13, 1998 (the effective date of AD 98–12–01), unless already done.<br>(ii) For Group 2 Airplanes: Within the next 3 calendar months after August 7, 2006 (the effective date of this AD, unless already done. | Follow Pilatus PC–6 Service Bulletin No. PC–6–SB–171, dated October 18, 1995. |
| (2) Do not install any collector tank or fuel vent system unless the modification requirements of paragraph (e)(1) are done. | For all airplanes: As of August 7, 2006 (the effective date of this AD). | Follow Pilatus PC–6 Service Bulletin No. PC–6–SB–171, dated October 18, 1995. |

**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 AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(g) AMOCs approved for AD 98–12–01 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.

**Material Incorporated by Reference**

(i) You must do the actions required by this AD following the instructions in Pilatus PC–6 Service Bulletin No. PC–6–SB–171, dated October 18, 1995.

(1) As of July 13, 1998 (63 FR 30370, June 4, 1998), the Director of the Federal Register previously approved the incorporation by reference of Pilatus Service Bulletin No. PC–6–SB–171, dated October 18, 1995, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) To get a copy of this service information, contact Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2006–24091; Directorate Identifier 2006–CE–17–AD.

Issued in Kansas City, Missouri, on June 14, 2006.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 06–5583 Filed 6–21–06; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2005–22557; Directorate Identifier 2005–NM–147–AD; Amendment 39–14660; AD 2006–13–07]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD) that applies to certain McDonnell Douglas Model MD–11 and MD–11F airplanes. That AD currently requires replacement of the upper and lower reading lights in the forward crew rest area with a redesigned light fixture. This new AD adds airplanes to the applicability of the existing AD. This AD results from a report of the old reading lights being inadvertently sent to an additional ten airplanes. We are issuing this AD to prevent a possible flammable condition, which could result in smoke and fire in the forward crew rest area.

**DATES:** This AD becomes effective July 27, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 27, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in the AD as of August 23, 2000 (65 FR 44672, July 19, 2000).

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

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:** Ken Sujishi, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5353; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Examining the Docket

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

### Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2000–14–12, amendment 39–11822 (65 FR 44672, July 19, 2000). The existing AD applies to certain McDonnell Douglas MD–11 series airplanes. That NPRM was published in the **Federal Register** on September 30, 2005 (70 FR 57219). That NPRM proposed to continue to require replacement of the upper and lower reading lights in the forward crew rest area with a redesigned light fixture.

That NPRM also proposed to add airplanes to the applicability of the existing AD.

**Comments**

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

**Request for Clarification of Parts Installation Paragraph**

The Modification and Replacement Parts Association (MARPA) asks whether the prohibition in the Parts Installation paragraph is against the combination of reading lamp and light fixture, or are both parts being prohibited independent of each other.

From this comment, we infer that MARPA would like us to clarify the Parts Installation paragraph regarding the prohibition of the subject reading lamp and light fixture. We agree that clarification is necessary. It is the combination of the lamp and light fixture that is prohibited. The design of the subject lamp and light fixture could allow articles, such as a blanket, to become embedded in the fixture assembly, which could result in a possible fire. The new design has a much smaller lamp and the fixture assembly has ventilation holes. The lamp, part number (P/N) 2232, is used in other areas of the airplane without causing any safety issues. We have revised paragraph (h) of this AD to clarify the intent of that paragraph.

**Request to Reference Parts Manufacturer Approval (PMA) Parts**

MARPA also asks what lamp is to be used in place of lamp P/N 2232 and requests that the language in the NPRM be changed to permit installation of PMA equivalent parts. MARPA states that the mandated installation of a certain P/N in the NPRM ''would appear to not meet the requirements of 14 CFR Section 21.303.'' To avoid these conflicting requirements, MARPA suggests appending the phrase ''or other FAA-approved equivalent part'' to any mandated part installation.

We infer that MARPA would like the AD to permit installation of any equivalent PMA parts so that it is not necessary for an operator to request approval of an alternative method of compliance (AMOC) in order to install an ''equivalent'' PMA part. Whether an alternative part is ''equivalent'' in adequately resolving the unsafe condition can only be determined on a case-by-case basis based on a complete understanding of the unsafe condition. Our policy is that, in order for operators to replace a part with one that is not specified in the AD, they must request an AMOC. This is necessary so that we can make a specific determination that an alternative part is or is not susceptible to the same unsafe condition. Therefore, we also do not agree to add the qualifying statement ''or other FAA approved part.''

The AD provides a means of compliance for operators to ensure that the identified unsafe condition is addressed appropriately. For an unsafe condition attributable to a part, the AD normally identifies the replacement parts necessary to obtain that compliance. As stated in section 39.7 of the Federal Aviation Regulations (14 CFR 39.7), ''Anyone who operates a product that does not meet the requirements of an applicable airworthiness directive is in violation of this section.'' Unless an operator obtains approval for an AMOC, replacing a part with one not specified by the AD would make the operator subject to an enforcement action and result in a civil penalty. We acknowledge that there may be other ways of addressing this issue. Once we have thoroughly examined all aspects of this issue, including input from industry, and have made a final determination, we will consider whether our policy regarding PMA parts in ADs needs to be revised. However, we consider that to delay this AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change to the AD is necessary in this regard.

In response to the MARPA's statement regarding a deviation from FAR 21.303, under which the FAA issues PMAs, this statement appears to reflect a misunderstanding of the relationship between ADs and the certification procedural regulations of part 21 of the Federal Aviation Regulations (14 CFR part 21). Those regulations, including § 21.303 of the Federal Aviation Regulations (14 CFR 21.203), are intended to ensure that aeronautical products comply with the applicable airworthiness standards. But ADs are issued when, notwithstanding those procedures, we become aware of unsafe conditions in these products or parts. Therefore, an AD takes precedence over design approvals when we identify an unsafe condition, and mandating installation of a certain P/N in an AD is not at variance with § 21.303.

**Request To Address Defective PMA Parts**

MARPA also requests that the NPRM be revised to cover possible defective PMA alternative parts, rather than just a single P/N, so that those defective PMA parts also are subject to the proposed AD. MARPA notes that there are known PMA parts with different P/Ns for a reading lamp with P/N 2232, and requests that the NPRM account for any PMA parts that might contain the same deficiencies as the OEM part and be installed in its place.

We agree with MARPA's general request that, if we know that an unsafe condition also exists in PMA parts, the AD should address those parts, as well as the original parts. The commenter's remarks are timely in that the Transport Airplane Directorate currently is in the process of reviewing this issue as it applies to transport category airplanes. We acknowledge that there may be other ways of addressing this issue to ensure that unsafe PMA parts are identified and addressed. Once we have thoroughly examined all aspects of this issue, including input from industry, and have made a final determination, we will consider whether our policy regarding addressing PMA parts in ADs needs to be revised. We consider that to delay this AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. No change to the AD is necessary in this regard.

**Request To Consider Broader Aspects of an Identified Problem**

MARPA admonishes the FAA for ''simply echoing the requirements of manufacturer service documents and believes that it is the ''obligation of AD writers to look more deeply.'' MARPA concludes that simply adopting the manufacturers' service bulletins could result in a commercial advantage to one manufacturer over another, even though both manufacturers produce approved parts.

Although MARPA's remarks above do not specifically request a change to this AD, we would like to clarify that we do use service bulletins as starting points for our research into the development of an AD, when they are available, because of the original equipment manufacturer (OEM's) expertise and broad knowledge of the product. Often, service information may not even be available that addresses a particular identified unsafe condition. In all cases, we may also consult with other aeronautical experts, specialists, and vendors, and

we may research databases, reports, testing results, etc., to ensure that the unsafe condition is addressed in an appropriate and timely manner. No change has been made to the AD as a result of MARPA's remarks in the previous paragraph.

### Explanation of Change to Service Bulletin Citation

We have revised the citation of Alert Service Bulletin MD11–25A233, Revision 1, dated May 10, 2005, throughout the AD to reflect the current manufacturer name, Boeing, instead of McDonnell Douglas. This change reflects the information published in the most recent type certificate data sheet for the affected models.

### Conclusion

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

### Costs of Compliance

There are about 81 airplanes of the affected design in the worldwide fleet. The existing AD affects about 14 airplanes of U.S. registry. This AD affects an additional 10 airplanes of U.S. registry.

The actions that are required by AD 2000–14–12 and retained in this AD take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Required parts cost about $933 per airplane. Based on these figures, the estimated cost of the currently required actions is $998 per airplane.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

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

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

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–11822 (65 FR 44672, July 19, 2000) and by adding the following new airworthiness directive (AD):

**2006–13–07 McDonnell Douglas:** Amendment 39–14660. Docket No. FAA–2005–22557; Directorate Identifier 2005–NM–147–AD.

**Effective Date**

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

**Affected ADs**

(b) This AD supersedes AD 2000–14–12.

**Applicability**

(c) This AD applies to McDonnell Douglas Model MD–11 and MD–11F airplanes, certificated in any category, as identified Boeing Alert Service Bulletin MD11–25A233, Revision 1, dated May 10, 2005.

**Unsafe Condition**

(d) This AD results from reports of burning and smoldering blankets in the forward crew rest area due to a reading light fixture that came into contact with the blankets after the light was inadvertently left on. We are issuing this AD to prevent a possible flammable condition, which could result in smoke and fire in the forward crew rest area.

**Compliance**

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

**Restatement of the Requirements of AD 2000–14–12**

*Replacement*

(f) For airplanes identified in McDonnell Douglas Alert Service Bulletin MD11–25A233, dated June 9, 1999: Within 6 months after August 23, 2000 (the effective date of AD 2000–14–12), replace the upper and lower reading lights in the forward crew rest area with a redesigned light fixture, in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A233, dated June 9, 1999; or Boeing Alert Service Bulletin MD11–25A233, Revision 1, dated May 10, 2005. After the effective date of this AD, do the replacement in accordance with Boeing Alert Service Bulletin MD11–25A233, Revision 1, dated May 10, 2005.

**Note 1:** McDonnell Douglas Alert Service Bulletin MD11–25A233 refers to AIM Aviation Service Incorporated Service Bulletin AIM–MD11–25–2, Revision C, dated March 8, 1999; and Revision D, dated March 16, 2005; as additional sources of service information for replacing the upper and lower reading lights in the forward crew rest area.

**New Requirements of This AD**

*Replacement*

(g) For all airplanes except those identified in paragraph (f) of this AD: Within 6 months after the effective date of this AD, do the replacement specified in paragraph (f) of this AD.

*Parts Installation*

(h) As of the effective date of this AD, no person may install, on any airplane, a reading lamp, part number (P/N) 2232, in combination with light fixture, P/N 0200500–001.

*Alternative Methods of Compliance (AMOCs)*

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

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify

the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) AMOCs approved previously in accordance with AD 2000–14–12, amendment 39–11822, are approved as AMOCs for the corresponding provisions of this AD.

*Material Incorporated by Reference*

(j) You must use McDonnell Douglas Alert Service Bulletin MD11–25A233, dated June 9, 1999; or Boeing Alert Service Bulletin MD11–25A233, Revision 1, dated May 10, 2005, as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin MD11–25A233, Revision 1, dated May 10, 2005, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On August 23, 2000 (65 FR 44672, July 19, 2000), the Director of the Federal Register approved the incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–25A233, dated June 9, 1999.

(3) Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 14, 2006.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 06–5550 Filed 6–21–06; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2006–24121; Directorate Identifier 2005–NM–248–AD; Amendment 39–14662; AD 2006–13–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747–400 and 747–400D Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 747–400 and 747–400D series airplanes. This AD requires replacing specified tie rods of the center overhead stowage bins. This AD results from manufacturer analysis of the overhead storage bin support structure that demonstrated that the capability of certain existing tie rods does not meet emergency landing load requirements. We are issuing this AD to prevent detachment of the center overhead stowage bins during an extreme forward load event, which could cause injury to passengers and hinder emergency evacuation procedures.

**DATES:** This AD becomes effective July 27, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 27, 2006.

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

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

**FOR FURTHER INFORMATION CONTACT:** Patrick Gillespie, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6429; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Examining the Docket

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

### Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 747–400 and 747–400D series airplanes. That NPRM was published in the **Federal Register** on March 14, 2006 (71 FR 13060). That NPRM proposed to require replacing specified tie rods of the center overhead stowage bins.

### Comments

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

### Support for the NPRM

Boeing expresses support for the NPRM.

### Request To Revise Costs of Compliance

The Air Transport Association (ATA), on behalf of its member Northwest Airlines (NWA), requests that we revise the costs of compliance shown in the NPRM. NWA states that the cost of the parts kit has increased from $1,090 to $2,301.

We agree with this request. We have confirmed that the cost of the parts kit has increased as specified and have revised the costs of compliance of this AD accordingly.

### Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed. We have determined that the changes in cost will not significantly increase the economic burden on any operator.

### Costs of Compliance

There are about 380 airplanes of the affected design in the worldwide fleet. This AD will affect about 62 airplanes of U.S. registry. The required actions, depending on whether an airplane has tie rods on both sides or one side only, will take between 2 and 3 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $2,301 per tie rod replacement kit (one kit per side). Based on these figures, the estimated cost of the AD for U.S. operators is between $150,722 and $297,414, or between $2,431 and $4,797 per airplane.

### Authority for This Rulemaking

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

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

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

### Regulatory Findings

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

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

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

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

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2006–13–09 Boeing:** Amendment 39–14662. Docket No. FAA–2006–24121; Directorate Identifier 2005–NM–248–AD.

**Effective Date**

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

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 747–400 and 747–400D series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 747–25–3371, dated July 28, 2005; equipped with center overhead stowage bins.

**Unsafe Condition**

(d) This AD results from a manufacturer analysis of the overhead storage bin support structure that demonstrated that the capability of certain existing tie rods does not meet emergency landing load requirements. We are issuing this AD to prevent detachment of the center overhead stowage bins during an extreme forward load event, which could cause injury to passengers and hinder evacuation emergency procedures.

**Compliance**

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

**Replace Tie Rods**

(f) Within 60 months after the effective date of this AD, replace specified tie rods of the center overhead stowage bins with new, improved tie rods that meet emergency landing load requirements, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–25–3371, dated July 28, 2005.

**Alternative Methods of Compliance (AMOCs)**

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

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

**Material Incorporated by Reference**

(h) You must use Boeing Special Attention Service Bulletin 747–25–3371, dated July 28, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, WA 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, WA, on June 14, 2006.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 06–5549 Filed 6–21–06; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2006–24246; Directorate Identifier 2005–NM–115–AD; Amendment 39–14661; AD 2006–13–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A330–200, A330–300, A340–200, and A340–300 Series Airplanes; and Model A340–541 and A340–642 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes; and Model A340–541 and A340–642 airplanes. This AD requires an inspection for anti-fretting material contamination of the Halon filters and plumbing parts of the flow metering system (FMS) and flow metering compact unit (FMCU) in the lower deck cargo compartment (LDCC) and bulk crew rest compartment (BCRC), as applicable; other specified actions; and corrective actions if necessary. This AD results from a report that the FMS and FMCU of the fire extinguishing system may be blocked by anti-fretting material contamination. We are issuing this AD to prevent such anti-fretting material contamination, which could reduce the effectiveness of the fire extinguisher system to discharge fire extinguishing agents and to lower the concentration of Halon gas in the LDCC or BCRC in a timely manner. An ineffective fire extinguisher system in the event of a fire could result in an uncontrollable fire in the LDCC or BCRC.

**DATES:** This AD becomes effective July 27, 2006.

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

**ADDRESSES:** You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street,

SW., Nassif Building, Room PL–401, Washington, DC.

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

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

## Examining the Docket

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

## Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes; and Model A340–541 and A340–642 airplanes. That NPRM was published in the **Federal Register** on March 28, 2006 (71 FR 15354). That NPRM proposed to require an inspection for anti-fretting material contamination of the Halon filters and plumbing parts of the flow metering system (FMS) and flow metering compact unit (FMCU) in the lower deck cargo compartment (LDCC) and bulk crew rest compartment (BCRC), as applicable; other specified actions; and corrective actions if necessary.

## Comments

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

## Request To Revise the Applicability

Airbus requests that Model A330–302 and –303 airplanes be included in the applicability of paragraph (c)(2) of the NPRM. Airbus states that those airplanes are in the process of being U.S. type certificated.

We agree. We have determined that Model A330–302 and –303 airplanes are subject to the identified unsafe condition of this AD. Therefore, we have revised the applicability of paragraph (c)(2) and Table 2 and 3 of this AD to include those airplanes to ensure that the identified unsafe condition is addressed if any of those affected airplanes are imported and placed on the U.S. Register in the future.

## Request To Refer To Correct Modification Number

Airbus requests that Airbus modification ''49316'' specified in paragraph (i)(1) of Table 4 of the NPRM be changed to ''49136.'' Airbus states Airbus modification 49316 addresses the landing gear and hydraulic hoses, which are not addressed by the NPRM, whereas Airbus modification 49136 addresses the BCRC, which is addressed by the NPRM.

We agree and have revised paragraph (i)(1) of Table 4 of the AD accordingly.

## Conclusion

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

## Costs of Compliance

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

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| Inspection and restoration. | Between 7 and 9 depending on airplane configuration. | $65 | None | Between $455 and $585 depending on airplane configuration. | 25 | Between $11,375 and $14,625 depending on airplane configuration. |

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2006–13–08 Airbus:** Amendment 39–14661. Docket No. FAA–2006–24246; Directorate Identifier 2005–NM–115–AD.

**Effective Date**

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

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to the airplanes in table 1 of this AD; certificated in any category.

TABLE 1.—AFFECTED AIRPLANES

| |
|---|
| (1) A330–201, –202, –203, –223, and –243 airplanes. |
| (2) A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes. |
| (3) A340–211, –212, and –213 airplanes. |
| (4) A340–311, –312, and –313 airplanes. |
| (5) A340–541 airplanes. |
| (6) A340–642 airplanes. |

**Unsafe Condition**

(d) This AD results from a report that the flow metering system (FMS) and the flow metering compact unit (FMCU) of the fire extinguishing system may be blocked by anti-fretting material contamination. We are issuing this AD to prevent such anti-fretting material contamination, which could reduce the effectiveness of the fire extinguisher system to discharge fire extinguishing agents and to lower the concentration of Halon gas in the lower deck cargo compartment (LDCC) and bulk crew rest compartment (BCRC) in a timely manner. An ineffective fire extinguisher system in the event of a fire could result in an uncontrollable fire in the LDCC or BCRC.

**Compliance**

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

**Restoration**

(f) After the effective date of this AD, after any activation of the fire extinguishing system, before further flight, restore the fire extinguishing system in the LDCC and in the BCRC, as applicable, in accordance with a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (or its delegated agent). The applicable airplane maintenance manual (AMM) in table 2 of this AD is one approved method, provided that the following caution note is included in the work instructions of that AMM:

''CAUTION: APPLY A SMALL QUANTITY OF THE CORRECT GREASE TO THE MALE THREADS OF THE CONNECTIONS. THIS WILL PREVENT DAMAGE TO THE THREADS. MAKE SURE THAT THE GREASE DOES NOT GO INTO THE PIPES. GREASE IN THE PIPES CAN CAUSE A MALFUNCTION OF THE SYSTEM.''

TABLE 2.—AMMS

| For Model— | Page Block— | Of— |
|---|---|---|
| (1) A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes. | 201 | Chapter 26–23–00 of Airbus A330 AMM (LDCC–FMS). |
| (2) A340–311, –312, and –313 airplanes | 201 | Chapter 26–28–00 of Airbus A340 AMM (BCRC–FMS). |
| (3) A340–541 and –642 airplanes | 201 | Chapter 26–28–00 of Airbus A340–500/–600 AMM (BCRC–FMS). |
| (4) A340–642 airplanes | 201 | Chapter 26–23–00 of Airbus A340–600 AMM (LDCC–FMCU). |
| (5) A340–211, –212, and –213 airplanes, and A340–311, –312, and –313 airplanes. | 201 | Chapter 26–23–00 of Airbus A340 AMM (LDCC–FMS). |
| (6) A340–541 and –642 airplanes | 201 | Chapter 26–23–00 of Airbus A340–500/–600 AMM (LDCC–FMS). |

**Inspections of FMS in the LDCC**

(g) For airplanes identified in paragraphs (c)(1) through (c)(5) of this AD inclusive, on which the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness is before October 2, 2004: Except as provided by paragraph (j) of this AD, within 2,400 flight hours after the effective date of this AD, do a one-time general visual inspection for anti-fretting material contamination of the Halon filters and plumbing parts of the FMS in the LDCC, do applicable corrective actions if necessary; and related investigative and other specified actions; in accordance with the Accomplishment Instructions of the applicable service bulletin in Table 3 of this AD. The applicable corrective and related investigative and other specified actions must be done before further flight.

TABLE 3.—SERVICE BULLETINS FOR INSPECTING FMS IN THE LDCC

| For Model— | Airbus Service Bulletin— |
|---|---|
| (1) A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes. | A330–26–3031, Revision 02, dated February 1, 2005. |
| (2) A340–211, –212, –213, –311, –312, and –313 airplanes | A340–26–4031, Revision 02, dated February 1, 2005. |
| (3) A340–541 airplanes | A340–26–5007, dated January 31, 2005. |

**Note 1:** For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

**Inspection of FMCU in LDCC**

(h) For airplanes identified in paragraph (c)(6) of this AD, on which the date of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness is before October 2, 2004: Except as provided by paragraph (j) of this AD, within 2,400 flight hours after the effective date of this AD, do a one-time general visual inspection for anti-fretting material contamination of the plumbing parts of the FMCU in the LDCC, and do applicable corrective and other specified actions. The

actions must be done in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–26–5008, dated January 31, 2005. The applicable corrective and other specified actions must be done before further flight.

**Inspection of the FMS in the BCRC**

(i) For airplanes identified in Table 4 of this AD, on which the date of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness is before October 2, 2004: Except as provided by paragraph (j) of this AD, within 2,400 flight hours after the effective date of this AD, do a one-time general visual inspection for anti-fretting material contamination of the Halon filters and plumbing parts of the FMS in the BCRC, do applicable corrective actions if necessary; and related investigative and other specified actions. The actions must be done in accordance with the applicable service bulletin in table 4 of this AD. The applicable corrective and related investigative and other specified actions must be done before further flight.

TABLE 4.—SERVICE BULLETINS FOR INSPECTING FMS IN THE BCRC

| For airplanes identified in— | On which— | Do the actions in accordance with the Accomplishment Instructions of— |
|---|---|---|
| (1) Paragraphs (c)(5) and (c)(6) of this AD | The BCRC was incorporated in production in accordance with any Airbus modification 47198, 47884, 48895, 48710, 49136, 50107, 50900, or 51320. | Airbus Service Bulletin A340–26–5009, dated January 31, 2005. |
| (2) Paragraph (c)(4) of this AD | The BCRC was incorporated in production in accordance with Airbus modification 50901. | Airbus Service Bulletin A340–26–4035, dated February 22, 2005. |

**Compliance Time Extension for Paragraphs (g), (h), and (i) of this AD**

(j) The inspection required by paragraphs (g), (h), and (i) of this AD may be done within 6,600 flight hours after the effective date of this AD, provided that you can conclusively determine from reviewing the airplane maintenance records that the fire extinguishing system has never been activated before the effective date of this AD. A log book entry is not acceptable for determining if a fire extinguishing bottle has been activated.

**Alternative Methods of Compliance (AMOCs)**

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

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

**Related Information**

(l) French airworthiness directives F–2005–019 R1 (for Model A330–200 and A330–300 series airplanes) and F–2005–020 R1 (for Model A340–200 and A340–300 series airplanes, and Model A340–541 and A340–642 airplanes), both issued May 11, 2005, also address the subject of this AD.

**Material Incorporated by Reference**

(m) You must use the service information specified in Table 5 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

TABLE 5.—MATERIAL INCORPORATED BY REFERENCE

| Airbus Service Bulletin | Revision level | Date |
|---|---|---|
| A330–26–3031 | 02 | February 1, 2005. |
| A340–26–4031 | 02 | February 1, 2005. |
| A340–26–4035 | Original | February 22, 2005. |
| A340–26–5007 | Original | January 31, 2005. |
| A340–26–5008 | Original | January 31, 2005. |
| A340–26–5009 | Original | January 31, 2005. |

Issued in Renton, Washington, on June 13, 2006.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 06–5548 Filed 6–21–06; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 558

## New Animal Drugs For Use in Animal Feeds

*CFR Correction*

In Title 21 of the Code of Federal Regulations, Parts 500 to 599, revised as of April 1, 2006, on page 391, in § 558.76, paragraphs (a), (b), and (d)(1) are corrected to read as follows:

**§ 558.76 Bacitracin methylene disalicylate.**

(a) *Approvals.* Type A medicated articles: 10, 25, 30, 40, 50, 60, or 75 grams per pound to 046573 in § 510.600(c) of this chapter.

(b) *Special considerations.* The quantities of antibiotics are expressed in terms of the equivalent amount of antibiotic standard.

* * * * *

(d) *Conditions of use.* (1) It is used as follows:

| Bacitracin methylene disalicylate in grams per ton | Combination in grams per ton | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| (i) 4 to 50 | | Chickens, turkeys, and pheasants; increased rate of weight gain and improved feed efficiency [1]. | | 046573 |
| (ii) 5 to 20 | | Quail not over 5 weeks of age; increased rate of weight gain and improved feed efficiency [1]. | | 046573 |
| (iii) 10 to 25 | | Chickens; for increased egg production and improved feed efficiency for egg production. | For first 7 months of production | 046573 |
| (iv) 10 to 30 | | Swine: for increased rate of weight gain and improved feed efficiency. | For growing and finishing swine | 046573 |
| | Chlortetracycline approximately 400, varying with body weight and food consumption to provide 10 milligrams per pound of body weight per day. | Swine; for increased rate of weight gain and improved feed efficiency; for treatment of bacterial enteritis caused by *Escherichia coli* and *Salmonella choleraesuis* and bacterial pneumonia caused by *Pasteurella multocida* susceptible to chlortetracycline. | Feed for not more than 14 days; bacitracin methylene disalicylate provided by No. 046573; chlortetracycline provided by Nos. 046573 and 048164 in § 510.600(c) of this chapter. | 046573<br>048164 |
| | | Swine; for control of porcine proliferative enteropathies (ileitis) caused by *Lawsonia intracellularis* susceptible to chlortetracycline. | Feed for not more than 14 days; chlortetracycline and BMD as provided by 046573 in § 510.600(c) of this chapter. | 046573 |
| (v) [Reserved] | | | | |
| (vi) 50 | | Broiler chickens; as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium spp.* or other organisms susceptible to bacitracin. | | 046573 |
| | | Replacement chickens; as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin. | Feed continuously as sole ration | 046573 |
| (vii)–(viii) [Reserved] | | | | |
| (ix) 100 to 200 | | Broiler chickens; as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin. | | 046573 |
| | | Replacement chickens; as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin. | Feed continuously as sole ration. Start at first clinical signs of disease, vary dosage based on severity of infection, administer continuously for 5 to 7 days or as long as clinical signs persist, then reduce medication to prevention level (50 g/t). | 046573 |
| (x) 200 | | Turkeys; as an aid in the control of transmissible enteritis in growing turkeys complicated by organisms susceptible to bacitracin methylene disalicylate. | | 046573 |
| | | Quail; for the prevention of ulcerative enteritis in growing quail due to *Clostridium colinum* susceptible to bacitracin methylene disalicylate. | From Type A medicated articles containing 25, 40, or 50 grams of bacitracin methylene disalicylate. Feed continuously as the sole ration. | 046573 |
| (xi) 250 | | 1. Growing/Finishing Swine: For control of swine dysentery associated with *Treponema hyodysenteriae* on premises with a history of swine dysentery but where signs of the disease have not yet occurred; or following an approved treatment of the disease condition. | As the sole ration. Not for use in swine weighing more than 250 pounds. Diagnosis should be confirmed by a veterinarian when results are not satisfactory. | 046573 |
| | | 2. Pregnant sows: For control of clostridial enteritis caused by *C. perfringens* in suckling piglets. | As the sole ration. Feed to sows from 14 days before through 21 days after farrowing on premises with a history of clostridial scours. Diagnosis should be confirmed by a veterinarian when results are not satisfactory. | |

[1] These conditions are NAS/NRC reviewed and found effective. Applications for these uses may not require effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

* * * * *

[FR Doc. 06–55520 Filed 6–21–06; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD09–06–054]**

**RIN 1625–AA00**

## Safety Zone; Seneca River Days Fireworks, Baldwinsville, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone encompassing the navigable waters of the Seneca River in Baldwinsville, NY on July 7, 2006. This safety zone is necessary to ensure the safety of spectators and vessels from the hazards associated with firework displays. This safety zone restricts vessel traffic from a portion of the Seneca River in Baldwinsville, NY.

**DATES:** This rule is in effect from 9:30 p.m. (local) until 10:30 p.m. (local) on July 7, 2006.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of the docket [CGD09–06–054], and are available for inspection or copying at U.S. Coast Guard Sector Buffalo, 1 Fuhrmann Blvd., Buffalo, New York 14203 between 8 a.m. and 4 p.m. (local), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Tracy Wirth, U.S. Coast Guard Sector Buffalo, at (716) 843–9573.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This safety zone is temporary in nature and limited time existed for an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be impracticable and contrary to public interest since immediate action is needed to minimize potential danger to the public during the fireworks demonstration.

### Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with firework displays. Based on recent accidents that have occurred in other Captain of the Port zones and the explosive hazard of fireworks, the Captain of the Port Buffalo has determined firework launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone consists of all navigable waters of the Seneca River in a 600-foot radius around a point at approximate position: 43°09′25″ N, 076°20′21″ W (NAD 1983) in Baldwinsville, NY. The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated on-scene representative. The designated on-scene representative will be the patrol commander. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

### Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone, and the zone is in areas where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation.

### Small Entities

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

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

This rule would affect the following entities, some of which might be small entities: the owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: This safety zone is only in effect from 9:30 p.m. (local) until 10:30 p.m. (local) on July 7, 2006. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact U.S. Coast Guard Sector Buffalo (see **ADDRESSES**).

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

**Collection of Information**

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

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone therefore paragraph (34)(g) of the Instruction applies.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add new temporary § 165.T09–054 to read as follows:

**§ 165.T09–054 Safety Zone; Seneca River Days Fireworks, Baldwinsville, NY.**

(a) *Location.* The following area is a temporary safety zone: all navigable waters of the Seneca River in a 600-foot radius around a point at approximate position: 43°09′25″ N, 076°20′21″ W (NAD 1983) in Baldwinsville, NY. All Geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Definitions.* The following definitions apply to this section:

*Designated on-scene representative* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP), Buffalo, New York, in the enforcement of regulated navigation areas and safety and security zones.

(c) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Buffalo.

(2) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo, or his designated on-scene representative.

(d) *Effective time and date.* This section is effective from 9:30 p.m. (local) until 10:30 p.m. (local) on July 7, 2006.

Dated: June 13, 2006.

**S.J. Furguson,**

*Commander, U.S. Coast Guard, Captain of the Port Buffalo.*

[FR Doc. E6–9863 Filed 6–21–06; 8:45 am]

BILLING CODE 4910–15–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[CGD09–06–055]**

**RIN 1625–AA00**

## Safety Zone; Seneca River Days, Baldwinsville, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone encompassing the navigable waters of the Seneca River in Baldwinsville, NY on July 8, 2006. This safety zone is necessary to control vessel traffic within the immediate location of the Seneca River Days site to ensure the safety of life and property during the event. This safety zone restricts vessel traffic from a portion of the Seneca River in Baldwinsville, NY.

**DATES:** This rule is in effect from 10 a.m. (local) until 5 p.m. (local) on July 8, 2006.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of the docket [CGD09–06–055], and are available for inspection or copying at U.S. Coast Guard Sector Buffalo, 1 Fuhrmann Blvd., Buffalo, New York 14203 between 8 a.m. and 4 p.m. (local), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Tracy Wirth, U.S. Coast Guard Sector Buffalo, at (716) 843–9573.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This safety zone is temporary in nature and limited time existed for an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be impracticable and contrary to public interest since immediate action is needed to ensure the safety of life and property during the event.

### Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with high speed boat demonstrations. Based on recent accidents that have occurred in other Captain of the Port zones, and the hazards of high speed boat demonstrations, the Captain of the Port Buffalo has determined high speed boat demonstrations in close proximity to spectators pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, and alcohol use could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the locations of the demonstration course will help ensure the safety of persons and property at these events and help minimize the associated risk.

The temporary safety zone will encompass all navigable waters of the Seneca River in a 600-foot radius around a point at approximate position: 43°09′25″ N, 076°20′21″ W (NAD 1983) in Baldwinsville, NY. The size of this proposed zone was determined using the Captain of the Port approval of the race course including local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated on-scene representative. The designated on-scene representative will be the patrol commander. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

### Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone, and the zone is in areas where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation.

### Small Entities

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

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

This rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: This safety zone is only in effect from 10 a.m. (local) until 5 p.m. (local) on July 8, 2006. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact U.S. Coast Guard Sector Buffalo (see **ADDRESSES**.)

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

### Collection of Information

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

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone, therefore paragraph (34)(g) of the Instruction applies.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add new temporary § 165.T09–055 to read as follows:

**§ 165.T09–055 Safety Zone; Seneca River Days, Baldwinsville, NY.**

(a) *Location.* The following area is a temporary safety zone: All navigable waters of the Seneca River in a 600-foot radius around a point at approximate position: 43°09′25″ N, 076°20′21″ W (NAD 1983) in Baldwinsville, NY. All Geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Definitions.* The following definitions apply to this section: *Designated on-scene representative* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port (COTP), Buffalo, New York, in the enforcement of regulated navigation areas and safety and security zones.

(c) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Buffalo.

(2) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo, or his designated on-scene representative.

(d) *Effective time and date.* This section is effective from 10 a.m. (local) until 5 p.m. (local) on July 8, 2006.

Dated: June 13, 2006.

**S.J. Furguson,**

*Commander, U.S. Coast Guard, Captain of the Port Buffalo.*

[FR Doc. E6–9866 Filed 6–21–06; 8:45 am]

BILLING CODE 4910–15–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[CGD09–06–038]**

**RIN 1625–AA00**

## Safety Zone; Rochester Harbor and Carousel Festival, Rochester, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone encompassing the navigable waters of Lake Ontario in Rochester, NY. This safety zone is necessary to ensure the safety of spectators and vessels from the hazards associated with firework displays. This safety zone restricts vessel traffic from a portion of Lake Ontario in Rochester, NY.

**DATES:** This rule is in effect from 9:30 p.m. (local) until 10:30 p.m. (local) on June 24, 2006.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of the docket [CGD09–06–038], and are available for inspection or copying at U.S. Coast Guard Sector Buffalo, 1 Fuhrmann Blvd., Buffalo, New York 14203 between 8 a.m. and 4 p.m. (local), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Tracy Wirth, U.S. Coast Guard Sector Buffalo, at (716) 843–9573.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This safety zone is temporary in nature and limited time existed for an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be impracticable and contrary to public interest since immediate action is needed to minimize potential danger to the public during the fireworks demonstration.

### Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with firework displays. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Buffalo has determined firework launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone consists of all navigable waters of Oneida Lake in a 500-foot radius around a point at approximate position: 43°15′47″ N, 077°36′00″ W (NAD 1983) in Rochester, NY. The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated on-scene representative. The designated on-scene representative will be the patrol commander. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

### Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone, and the zone is in areas where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation.

### Small Entities

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

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

This rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: This safety zone is only in effect from 9:30 p.m. (local) until 10:30 p.m. (local) on June 24, 2006.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact U.S. Coast Guard Sector Buffalo (see **ADDRESSES**.)

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

### Collection of Information

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

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Division 5100.0, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add new temporary § 165.T09–038 to read as follows:

### § 165.T09–038 Safety Zone; Rochester Harbor and Carousel Festival, Rochester, NY.

(a) *Location.* The following area is a temporary safety zone: All navigable waters of Lake Ontario in a 500-foot radius around a point at approximate position: 43°15′47″ N, 077°36′00″ W (NAD 1983) in Rochester, NY. All Geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Definitions.* The following definitions apply to this section:

*Designated representative* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port (COTP), Buffalo, New York, in the enforcement of regulated navigation areas and safety and security zones.

(c) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Buffalo.

(2) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo, or his designated on-scene representative.

(d) *Effective time and date.* This section is effective from 9:30 p.m. (local) until 10:30 p.m. (local) on June 24, 2006.

Dated: June 7, 2006.

**P.R. Dowden,**

*Commander, U.S. Coast Guard, Captain of the Port Buffalo—Acting.*

[FR Doc. E6–9868 Filed 6–21–06; 8:45 am]

BILLING CODE 4910–15–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[COTP Charleston 06–110]**

**RIN 1625–AA00**

## Fireworks Safety Zone; Shelter Cove, Hilton Head, SC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of Shelter Cove for a fireworks display. The temporary safety zone extends 800 feet in all directions from a barge located in Shelter Cove, Hilton Head, South Carolina in approximate position 32°11.009′ N 080°43.695′ W. This rule prohibits entry, anchoring, mooring or transiting within the safety zone without the permission of the Captain of the Port Charleston or his designated representative. This regulation is necessary to protect life and property on the navigable waters of Shelter Cove due to the hazards associated with the launching of fireworks

**DATES:** The rule is effective from June 6, 2006 through August 22, 2006. Fireworks displays will be held from 8:30 p.m. to 10 p.m. on each Tuesday between those dates.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [COTP Charleston 06–110] and are available for inspection or copying at Coast Guard Sector Charleston (WWM), 196 Tradd Street, Charleston, South Carolina 29401 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chief Warrant Officer James J. McHugh, Sector Charleston Office of Waterways Management, at (843) 723–7647.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM, which would incorporate a comment period before a final rule could be issued and delay the effective date, would be contrary to the public interest because immediate action is needed to protect the public and waters of the United States.

For the same reason, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

### Background and Purpose

During the tourist season, between June and August, the Shelter Cover Marina, on Hilton Head Island S.C., will host Harbour Fest each Tuesday between 6 p.m. and 9:30 p.m., featuring a fireworks display at the end of the evening. These fireworks will be launched from a barge in the Harbor, and this safety zone is necessary to ensure the safety of vessels and persons in this area.

### Discussion of Rule

This rule creates a temporary safety zone 800 feet around a fireworks barge on Upper Broad Creek, Hilton Head, S.C., in approximate position 32°11.009′ N 080°43.695′ W. This safety zone will be in effect from 8:30 p.m. on June 6, 2006, through 10 p.m. on August 22, 2006. However, the safety zone will only be enforced from 8:30 p.m. until 10 p.m. each Tuesday from June 6 through August 22, 2006. A Safety patrol vessel will be on scene for the duration of the effective period to notify mariners of the restrictions. Persons and vessels will be prohibited from entering, anchoring, mooring or transiting within the safety zone without the permission of the Captain of the Port Charleston or a designated representative. Any concerned traffic may request permission to pass through the safety zone from the COTP or a designated representative on VHF–FM channel 16 or via phone at (843) 724–7616.

### Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The regulation will only be in effect for a short duration, the impact on routine navigation is expected to be minimal, marine traffic will still be able to safely transit around the temporary safety zone and vessels may be allowed to enter the zone with the permission of the COTP or his designated representative.

### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The owners and operators of vessels navigating in the vicinity of the Upper Cooper River may be impacted by this rule. This impact will not be significant because the regulation will only be in effect for a short duration, the impact on routine navigation is expected to be minimal, marine traffic will still be able to safely transit around the temporary safety zone and vessels may be allowed to enter the zone with the permission of the COTP or his designated representative.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking.

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

### Collection of Information

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

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have

determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T07–110 is added to read as follows:

**§ 165.T07–110 Fireworks Safety Zone; Shelter Cove, Hilton Head, SC.**

(a) *Regulated area:* The Coast Guard is establishing a temporary safety zone on the navigable waters of the Upper Broad Creek for a fireworks display. The temporary safety zone covers all waters from surface to bottom and extends 800 feet in all directions from the fireworks launch barges located on the Upper Broad Creek, Hilton Head, SC in approximate position 32°11.009′ N 080°43.695′ W.

(b) *Definitions.* The following definitions apply to this section:

*Designated representative* means Coast Guard Patrol Commanders including Coat Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port Charleston (COTP) in the enforcement of the regulated area.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited, except as provided for herein, or unless authorized by the Coast Guard Captain of the Port Charleston, South Carolina or his designated representative. Persons and vessels may request permission to enter the safety zone on VHF–FM channel 16 or via phone at (843) 724–7616.

(d) *Enforcement Period.* This regulated area will be enforced from 8:30 p.m. until 10 p.m. each Tuesday between June 6 and August 22, 2006.

(e) *Dates.* This rule is effective from 8:30 p.m. on June 6 until 10 p.m. on August 22, 2006.

Dated: May 23, 2006.

**John E. Cameron,**

*Captain, U.S. Coast Guard, Captain of the Port Charleston, SC.*

[FR Doc. E6–9867 Filed 6–21–06; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2006–0376–200611a; FRL–8187–1]**

## Approval and Promulgation of Implementation Plans Alabama: Open Burning Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the Alabama State Implementation Plan (SIP), submitted by the Alabama Department of Environmental Management (ADEM) on March 9, 2006. The revisions include modifications to Alabama's open burning rules found at Alabama Administrative Code (AAC) Chapter 335–3–3–.01. These revisions are part of Alabama's strategy to meet the national ambient air quality standards (NAAQS) for fine particulates (PM2.5) and ozone. Open burning creates smoke that contains fine particles, volatile organic compounds and nitrogen oxides, precursors to ozone. ADEM has found that elevated levels of PM2.5 mirror the months when ozone levels are highest (May–September), and that PM2.5 levels remain elevated into October. These rules are intended to help control levels of PM2.5 and ozone precursors that contribute to high ozone and PM2.5 levels. This action is being taken pursuant to section 110 of the Clean Air Act (CAA).

**DATES:** This direct final rule is effective August 21, 2006 without further notice, unless EPA receives adverse comment by July 24, 2006. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number, ''EPA–R04–OAR–2006–0376,'' by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. E-mail: *difrank.stacy@epa.gov.*
3. Fax: 404–562–9019.
4. Mail: ''EPA–R04–OAR–2006–0376,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. Hand Delivery or Courier: Stacy DiFrank, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. 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 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID Number, ''EPA–R04–OAR–2006–0376.'' 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'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person 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 a.m. to 4:30 p.m. excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Stacy DiFrank, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9042. Ms. DiFrank can also be reached via electronic mail at *difrank.stacy@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Today's Action

On March 9, 2006, ADEM submitted to EPA proposed SIP revisions for review and approval into the Alabama SIP. The proposed revisions include changes made by the State of Alabama to its open burning regulations, found at AAC Chapter 335–3–3–.01. These rules became state effective on April 4, 2006.

In summary, the revisions submitted by ADEM include changes to the duration and location of open burning, and add other specific requirements for open burning for 2006 only. The original provisions that were part of Chapter 335–3–3–.01(2) still exist, with the exception of subpart (d), which was modified to include the month of October and four additional counties. These requirements include expansion of the seasonal May, June, July, August and September ban on open burning to now include the month of October, and the additional counties of DeKalb, Etowah, Russell, and Talladega. In addition, a new provision, 335–3–3–.01(2)(e) was added. The new provision also describes additional requirements for open burning during 2006 only, which allows open burning during the months of May, June, July, August, September and October in DeKalb, Etowah, Russell, and Talladega Counties, provided an air curtain incinerator is used to conduct the open burning. The proposed revisions summarized above are approvable pursuant to section 110 of the CAA.

## II. Final Action

EPA is now taking direct final action to approve the proposed revisions, specifically, AAC Chapter 335–3–3–.01, into the Alabama SIP. This revision was submitted by ADEM on March 9, 2006. These revisions include the entirety of Alabama's open burning rules and are part of the State's strategy to meet the NAAQS by reducing emissions of volatile organic compounds, fine particulates and nitrogen oxides.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse

comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 21, 2006 without further notice unless the Agency receives adverse comments by July 24, 2006.

If EPA receives such comments, EPA will then publish a document withdrawing the direct final rule and informing the public that such 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. 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 August 21, 2006 and no further action will be taken on the proposed rule.

## III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, U.S.C. section 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 21, 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 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 12, 2006.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

■ 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

## Subpart B—Alabama

■ 2. Section 52.50(c) is amended by revising the entry for ''Section 335–3–3.01'' to read as follows:

### § 52.50 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED ALABAMA REGULATIONS

| State citation | Title/subject | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| Chapter 335–3–3 | Control of Open Burning and Incineration | | | |

EPA APPROVED ALABAMA REGULATIONS—Continued

| State citation | Title/subject | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * * * | * | * | * |
| Section 335–3–3–.01 | Open Burning | 04/04/2006 | 06/22/2006 [Insert citation of publication] | |
| * | * * * | * | * | * |

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[FR Doc. 06–5598 Filed 6–21–06; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2005–KY–0002–200531(c); FRL–8187–4]**

### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Kentucky; Redesignation of the Boyd County $SO_2$ Nonattainment Area; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule; correction.

**SUMMARY:** On May 24, 2006 (71 FR 29786), EPA published a direct final document redesignating the Boyd County, Kentucky area to attainment for $SO_2$. The Federal Docket Management System (FDMS) docket number was incorrectly referenced. This document corrects the docket number.

**DATES:** This action is effective June 22, 2006.

**ADDRESSES:** Copies of the documentation used in the action being corrected are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Stacy DiFrank, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9042. Ms. DiFrank can also be reached via electronic mail at *difrank.stacy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA is making a correction to the document published on May 24, 2006, (71 FR 29786), approving a Kentucky SIP revision which redesignated the Boyd County Area to attainment for $SO_2$. The FDMS docket number ''R04–OAR–2005–KY–0002'' was inadvertently stated in the May 24, 2006, document. The FDMS docket number in the heading and the **ADDRESSES** section on page 29786 (in columns one and two) of the final rule should read as follows: ''EPA–R04–OAR–2005–KY–0002.''

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 12, 2006.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 06–5602 Filed 6–21–06; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 55

**[OAR–2004–0091; FRL–8052–3]**

### Outer Continental Shelf Air Regulations; Consistency Update for California

**AGENCY:** Environmental Protection Agency (''EPA'').

**ACTION:** Final rule—consistency update.

**SUMMARY:** EPA is finalizing the updates of the Outer Continental Shelf (''OCS'') Air Regulations proposed in the **Federal Register** on December 1, 2005 and July 6, 2005. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act Amendments of 1990 (''the Act''). The portions of the OCS air regulations that are being updated pertain to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District, South Coast Air Quality Management District, State of California and Ventura County Air Pollution Control District are the designated COAs. The intended effect of approving the requirements contained in ''Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources'' (February, 2006), ''South Coast Air Quality Management District Requirements Applicable to OCS Sources'' (Parts I, II and III) (February, 2006), ''State of California Requirements Applicable to OCS Sources'' (February, 2006), and ''Ventura County Air Pollution Control District Requirements Applicable to OCS Sources'' (February, 2006) is to regulate emissions from OCS sources in accordance with the requirements onshore.

**DATES:** *Effective Date:* This rule is effective on July 24, 2006.

The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of July 24, 2006.

**ADDRESSES:** EPA has established docket number OAR–2006–0091 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Allen, Air Division, U.S. EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to U.S. EPA.

On July 6, 2005 (70 FR 38840), EPA proposed to approve requirements into the OCS Air Regulations pertaining to Santa Barbara County APCD and Ventura County APCD. On December 1, 2005 (70 FR 72094), EPA proposed to approve requirements into the OCS Air Regulations pertaining to South Coast AQMD and the State of California. These requirements are being promulgated in response to the submittal of rules from these California air pollution control agencies. EPA has evaluated the proposed requirements to ensure that they are rationally related to the attainment or maintenance of Federal or state ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

## II. Public Comments and EPA Responses

EPA's proposed actions provided 30-day public comment periods. During these periods, we received no comments on the proposed actions. We received late comments to our December proposal from one party, the Western States Petroleum Association (WSPA), which submitted comments by letter dated January 31, 2006, over three weeks after the deadline. While EPA is not obligated to consider late comments, EPA has elected to do so in this instance. WSPA objects to the proposed promulgation of California's Airborne Toxic Control Measure for Stationary Compression Ignition Engines (''ATCM'') under 40 CFR part 55. Our responses to WSPA's specific comments are provided below.

*Comment:* WSPA had the understanding that the California Air Resources Board (CARB) did not intend to submit the ATCM to EPA for promulgation under the OCS regulations at 40 CFR part 55.

*Response:* We checked with CARB representatives who confirmed their intention to include the ATCM in the package of rules submitted to EPA for promulgation under 40 CFR part 55.

*Comment:* WSPA contends that promulgation of the ATCM under 40 CFR part 55 is unnecessary because the ATCM was developed to protect public health of receptors near the vicinity of stationary diesel engines and no such receptors are located in the vicinities of the platforms in the OCS.

*Response:* We recognize that the primary purpose of the ATCM is to reduce the general public's exposure to diesel particulate matter (PM) from stationary diesel-fueled engines and that exposure of the general public to emissions from engines located on OCS platforms is minimal. However, we understand that CARB accounted for this relative lack of impact on nearby receptor locations by providing an exemption from operating requirements and emission standards for stationary diesel-fueled engines used solely on OCS platforms. See section 93115(c)(10) of title 17, California Code of Regulations. Also, we recognize, based on CARB's *Staff Report: Initial Statement of Reasons for Proposed Rulemaking* (September 2003), that the ATCM serves other regulatory and planning purposes as well, such as establishing a record of where stationary compression-ignition (CI) engines are located, what fuel they use, and how they are operated and requiring new and in-use stationary CI engines to meet specified fuel requirements. Thus, the relative lack of impact on nearby receptor locations does not make promulgation of the ATCM under 40 CFR part 55 unnecessary or inappropriate.

*Comment:* WSPA contends that promulgation of the ATCM under 40 CFR part 55 is unnecessary because diesel engines operated on OCS platforms are exempt from the emissions control requirements of the ATCM.

*Response:* WSPA is correct that the ATCM exempts stationary diesel-fueled engines used solely on OCS platforms from operating requirements and emission standards (see section 93115(c)(10) of title 17, California Code of Regulations). However, such engines are not exempt from the fuels requirements of the ATCM nor are they exempt from the recordkeeping, reporting and monitoring requirements of the rule. Such requirements further legitimate air quality regulatory and planning purposes and thus the exemption for OCS sources from operating requirements and emission standards does not make promulgation of the ATCM under 40 CFR part 55 unnecessary or inappropriate.

*Comment:* WSPA contends that promulgation of the ATCM under 40 CFR part 55 is unnecessary because the ATCM would establish requirements related to fuel specifications and usage, engine operations, and administrative recordkeeping and monitoring that have already been addressed in local air district rules or under federally enforceable permit conditions.

*Response:* We may reasonably presume based on the fact that CARB submitted the ATCM to EPA for promulgation under 40 CFR part 55 that the ATCM is not entirely duplicative of local air district rules or federally-enforceable permit conditions. Even if all OCS sources currently voluntarily comply with the ATCM fuel and recordkeeping requirements (which WSPA has not demonstrated), it would still be reasonable to assure compliance continues by incorporating the requirements into part 55.

*Comment:* WSPA contends that, depending upon how Santa Barbara County Air Pollution Control District (SBCAPCD) implements the ATCM, promulgation of the ATCM under 40 CFR part 55 could preclude the ability of companies to conduct normal business projects by imposing permit and offset requirements on engines that are used for drilling operations in the OCS and that are currently exempt from such requirements.

*Response:* Today's action, *i.e.*, promulgation of the ATCM under 40 CFR part 55, does not result in any changes to permit exemptions or offset requirements as they relate to OCS sources. If SBCAPCD decides to modify the local rules and regulations so as to extend permitting and offset applicability to engines used in off-shore drilling operations that are currently exempt, the modifications in the rules will not apply to OCS sources

until the rules are submitted and approved by EPA in a future part 55 rulemaking. The mere hypothetical possibility of purported adverse consequences for future off-shore drilling operations in the OCS in the wake of one possible regulatory response by SBCAPCD provides us with no basis upon which to decline to promulgate the ATCM under 40 CFR part 55.

## III. EPA Action

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. No changes were made to the proposed actions. EPA is approving the proposed actions under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore.

## IV. Administrative Requirements

### *A. Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

### *B. Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

As was stated in the final OCS regulation, the OCS rule does not apply to any small entities, and the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the rule.

The EPA certifies that this notice of final rulemaking will not have a significant impact on a substantial number of small entities.

### *D. Unfunded Mandates Reform Act*

Under sections 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 costs to State, local, or tribal governments in the aggregate; or to the 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 costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

### *E. Executive Order 13132, Federalism*

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule 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, because it merely approves a state rule implementing a state or federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

### *F. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It 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. Thus, Executive Order 13175 does not apply to this rule.

### *G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

*Protection of Children From Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve

decisions intended to mitigate environmental health or safety risks.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

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.

*I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

*J. Congressional Review Act*

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective July 24, 2006.

*K. 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 August 21, 2006. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action 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 55**

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

**Editorial Note:** This document was received at the Office of the Federal Register on June 16, 2006.

Dated: March 21, 2006.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

■ Title 40, Chapter I of the Code of Federal Regulations, is to be amended as follows:

## PART 55—[AMENDED]

■ 1. The authority citation for part 55 continues to read as follows:

**Authority:** Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising paragraphs (e)(3)(i)(A), (e)(3)(ii)(F), (e)(3)(ii)(G), and (e)(3)(ii)(H) to read as follows:

**§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.**

* * * * *

(e) * * *

(3) * * *

(i) * * *

(A) *State of California Requirements Applicable to OCS Sources*, February 2006.

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources*, February 2006.

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I, II and Part III), February 2006.

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*, February 2006.

* * * * *

■ 3. Appendix A to CFR part 55 is amended by revising paragraphs (a)(1) and (b)(6), (7), and (8) under the heading ''California'' to read as follows:

**Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State**

* * * * *

**California**

(a) * * * (1) The following requirements are contained in *State of California Requirements Applicable to OCS Sources*, February 2006:

Barclays California Code of Regulations

The following sections of Title 17 Subchapter 6:

17 § 92000—Definitions (Adopted 5/31/91)
17 § 92100—Scope and Policy (Adopted 5/31/91)
17 § 92200—Visible Emission Standards (Adopted 5/31/91)
17 § 92210—Nuisance Prohibition (Adopted 5/31/91)
17 § 92220—Compliance with Performance Standards (Adopted 5/31/91)
17 § 92400—Visible Evaluation Techniques (Adopted 5/31/91)
17 § 92500—General Provisions (Adopted 5/31/91)
17 § 92510—Pavement Marking (Adopted 5/31/91)
17 § 92520—Stucco and Concrete (Adopted 5/31/91)
17 § 92530—Certified Abrasive (Adopted 5/31/91)
17 § 92540—Stucco and Concrete (Adopted 5/31/91)
17 § 93115—Airborne Toxic Control Measure for Stationary Compression Ignition Engines (Adopted 2/26/04)

Health and Safety Code

The following section of Division 26, Part 4, Chapter 4, Article 1:

Health and Safety Code § 42301.13 of *seq.* Stationary sources: demolition or removal (chaptered 7/25/96)

(b) * * *

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources*, February 2006:

Rule 102—Definitions—(Adopted 01/20/05)
Rule 103—Severability—(Adopted 10/23/78)
Rule 106—Notice to Comply for Minor Violations—(Adopted 07/15/99)
Rule 107—Emergencies—(Adopted 04/19/01)
Rule 201—Permits Required—(Adopted 04/17/97)
Rule 202—Exemptions to Rule 201—(Adopted 03/17/05)
Rule 203—Transfer—(Adopted 04/17/97)
Rule 204—Applications—(Adopted 04/17/97)
Rule 205—Standards for Granting Permits—(Adopted 04/17/97)
Rule 206—Conditional Approval of Authority to Construct or Permit to Operate—(Adopted 10/15/91)
Rule 207—Denial of Application—(Adopted 10/23/78)
Rule 210—Fees—(Adopted 03/17/05)
Rule 212—Emission Statements—(Adopted 10/20/92)
Rule 301—Circumvention—(Adopted 10/23/78)
Rule 302—Visible Emissions—(Adopted 10/23/78)
Rule 304—Particulate Matter–Northern Zone—(Adopted 10/23/78)
Rule 305—Particulate Matter Concentration–Southern Zone—(Adopted 10/23/78) —
Rule 306—Dust and Fumes–Northern Zone—(Adopted 10/23/78)

Rule 307—Particulate Matter Emission Weight Rate–Southern Zone—(Adopted 10/23/78)
Rule 308—Incinerator Burning—(Adopted 10/23/78)
Rule 309—Specific Contaminants—(Adopted 10/23/78)
Rule 310—Odorous Organic Sulfides—(Adopted 10/23/78)
Rule 311—Sulfur Content of Fuels—(Adopted 10/23/78)
Rule 312—Open Fires—(Adopted 10/02/90)
Rule 316—Storage and Transfer of Gasoline—(Adopted 04/17/97)
Rule 317—Organic Solvents—(Adopted 10/23/78)
Rule 318—Vacuum Producing Devices or Systems–Southern Zone—(Adopted 10/23/78)
Rule 321—Solvent Cleaning Operations—(Adopted 09/18/97)
Rule 322—Metal Surface Coating Thinner and Reducer—(Adopted 10/23/78)
Rule 323—Architectural Coatings—(Adopted 11/15/01)
Rule 324—Disposal and Evaporation of Solvents—(Adopted 10/23/78)
Rule 325—Crude Oil Production and Separation—(Adopted 07/19/01)
Rule 326—Storage of Reactive Organic Compound Liquids—(Adopted 01/18/01)
Rule 327—Organic Liquid Cargo Tank Vessel Loading—(Adopted 12/16/85)
Rule 328—Continuous Emission Monitoring—(Adopted 10/23/78)
Rule 330—Surface Coating of Metal Parts and Products—(Adopted 01/20/00)
Rule 331—Fugitive Emissions Inspection and Maintenance—(Adopted 12/10/91)
Rule 332—Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds—(Adopted 06/11/79)
Rule 333—Control of Emissions from Reciprocating Internal Combustion Engines—(Adopted 04/17/97)
Rule 342—Control of Oxides of Nitrogen ($NO_X$) from Boilers, Steam Generators and Process Heaters)—(Adopted 04/17/97)
Rule 343—Petroleum Storage Tank Degassing—(Adopted 12/14/93)
Rule 344—Petroleum Sumps, Pits, and Well Cellars—(Adopted 11/10/94)
Rule 346—Loading of Organic Liquid Cargo Vessels—(Adopted 01/18/01)
Rule 352—Natural Gas-Fired Fan-Type Central Furnaces and Residential Water Heaters—(Adopted 09/16/99)
Rule 353—Adhesives and Sealants—(Adopted 08/19/99)
Rule 359—Flares and Thermal Oxidizers (Adopted 06/28/94)
Rule 360—Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 10/17/02)
Rule 370—Potential to Emit—Limitations for Part 70 Sources (Adopted 06/15/95)
Rule 505—Breakdown Conditions Sections A., B.1,. and D. only (Adopted 10/23/78)
Rule 603—Emergency Episode Plans (Adopted 06/15/81)
Rule 702—General Conformity (Adopted 10/20/94)
Rule 801—New Source Review (Adopted 04/17/97)
Rule 802—Nonattainment Review (Adopted 04/17/97)
Rule 803—Prevention of Significant Deterioration (Adopted 04/17/97)
Rule 804—Emission Offsets (Adopted 04/17/97)
Rule 805—Air Quality Impact Analysis and Modeling (Adopted 04/17/97)
Rule 808—New Source Review for Major Sources of Hazardous Air Pollutants (Adopted 05/20/99)
Rule 1301—Part 70 Operating Permits—General Information (Adopted 06/19/03)
Rule 1302—Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303—Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304—Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)
Rule 1305—Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

(7) The following requirements are contained in *South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I, II and III), February 2006:

Rule 102—Definition of Terms (Adopted 12/3/04)
Rule 103—Definition of Geographical Areas (Adopted 01/9/76)
Rule 104—Reporting of Source Test Data and Analyses (Adopted 01/9/76)
Rule 108—Alternative Emission Control Plans (Adopted 04/6/90)
Rule 109—Recordkeeping for Volatile Organic Compound Emissions (Adopted 08/18/00)
Rule 112—Definition of Minor Violation and Guidelines for Issuance of Notice to Comply (Adopted 11/13/98)
Rule 118—Emergencies (Adopted 12/07/95)
Rule 201—Permit to Construct (Adopted 12/03/04)
Rule 201.1—Permit Conditions in Federally Issued Permits to Construct (Adopted 12/03/04)
Rule 202—Temporary Permit to Operate (Adopted 12/03/04)
Rule 203—Permit to Operate (Adopted 12/03/04)
Rule 204—Permit Conditions (Adopted 03/6/92)
Rule 205—Expiration of Permits to Construct (Adopted 01/05/90)
Rule 206—Posting of Permit to Operate (Adopted 01/05/90)
Rule 207—Altering or Falsifying of Permit (Adopted 01/09/76)
Rule 208—Permit and Burn Authorization for Open Burning (Adopted 12/21/01)
Rule 209—Transfer and Voiding of Permits (Adopted 01/05/90)
Rule 210—Applications (Adopted 01/05/90)
Rule 212—Standards for Approving Permits (Adopted 12/07/95) except (c)(3) and (e)
Rule 214—Denial of Permits (Adopted 01/05/90)
Rule 217—Provisions for Sampling and Testing Facilities (Adopted 01/05/90)
Rule 218—Continuous Emission Monitoring (Adopted 05/14/99)
Rule 218.1—Continuous Emission Monitoring Performance Specifications (Adopted 05/14/99)
Rule 218.1—Attachment A—Supplemental and Alternative CEMS Performance Requirements (Adopted 05/14/99)
Rule 219—Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 12/03/04)
Rule 220—Exemption—Net Increase in Emissions (Adopted 08/07/81)
Rule 221—Plans (Adopted 01/04/85)
Rule 301—Permitting and Associated Fees (Adopted 06/03/05) except (e)(7)and Table IV
Rule 304—Equipment, Materials, and Ambient Air Analyses (Adopted 06/03/05)
Rule 304.1—Analyses Fees (Adopted 06/03/05)
Rule 305—Fees for Acid Deposition (Adopted 10/04/91)
Rule 306—Plan Fees (Adopted 06/03/05)
Rule 309—Fees for Regulation XVI (Adopted 06/03/05)
Rule 401—Visible Emissions (Adopted 11/09/01)
Rule 403—Fugitive Dust (Adopted 06/03/05)
Rule 404—Particulate Matter—Concentration (Adopted 02/07/86)
Rule 405—Solid Particulate Matter—Weight (Adopted 02/07/86)
Rule 407—Liquid and Gaseous Air Contaminants (Adopted 04/02/82)
Rule 408—Circumvention (Adopted 05/07/76)
Rule 409—Combustion Contaminants (Adopted 08/07/81)
Rule 429—Start-Up and Shutdown Exemption Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430—Breakdown Provisions, (a) and (b) only (Adopted 07/12/96)
Rule 431.1—Sulfur Content of Gaseous Fuels (Adopted 06/12/98)
Rule 431.2—Sulfur Content of Liquid Fuels (Adopted 09/15/00)
Rule 431.3—Sulfur Content of Fossil Fuels (Adopted 05/7/76)
Rule 441—Research Operations (Adopted 05/7/76)
Rule 442—Usage of Solvents (Adopted 12/15/00)
Rule 444—Open Burning (Adopted 12/21/01)
Rule 463—Organic Liquid Storage (Adopted 05/06/05)
Rule 465—Refinery Vacuum-Producing Devices or Systems (Adopted 08/13/99)
Rule 468—Sulfur Recovery Units (Adopted 10/08/76)
Rule 473—Disposal of Solid and Liquid Wastes (Adopted 05/07/76)
Rule 474—Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/04/81)
Rule 475—Electric Power Generating Equipment (Adopted 08/07/78)
Rule 476—Steam Generating Equipment (Adopted 10/08/76)
Rule 480—Natural Gas Fired Control Devices (Adopted 10/07/77) Addendum to Regulation IV (Effective 1977)
Rule 518—Variance Procedures for Title V Facilities (Adopted 08/11/95)
Rule 518.1—Permit Appeal Procedures for Title V Facilities (Adopted 08/11/95)
Rule 518.2—Federal Alternative Operating Conditions (Adopted 12/21/01)
Rule 701—Air Pollution Emergency Contingency Actions (Adopted 06/13/97)

Rule 702—Definitions (Adopted 07/11/80)
Rule 708—Plans (Rescinded 09/08/95)
Regulation IX—Standard of Performance For New Stationary Sources (Adopted 05/11/01)
Reg. X—National Emission Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 05/11/01)
Rule 1105.1—Reduction of $PM_{10}$ And Ammonia Emissions From Fluid Catalytic Cracking Units (Adopted 11/07/03)
Rule 1106—Marine Coating Operations (Adopted 01/13/95)
Rule 1107—Coating of Metal Parts and Products (Adopted 11/09/01)
Rule 1109—Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 08/05/88)
Rule 1110—Emissions from Stationary Internal Combustion Engines (Demonstration) (Repealed 11/14/97)
Rule 1110.1—Emissions from Stationary Internal Combustion Engines (Rescinded 06/03/05)
Rule 1110.2—Emissions from Gaseous- and Liquid-Fueled Engines (Adopted 06/03/05)
Rule 1113—Architectural Coatings (Adopted 07/09/04)
Rule 1116.1—Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121—Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 09/03/04)
Rule 1122—Solvent Degreasers (Adopted 10/01/04)
Rule 1123—Refinery Process Turnarounds (Adopted 12/07/90)
Rule 1125—Metal Container, Closure, and Coil Coating Operations (Adopted 01/13/95)
Rule 1129—Aerosol Coatings (Adopted 03/08/96)
Rule 1132—Further Control of VOC Emissions from High-Emitting Spray Booth Facilities (Adopted 5/07/04)
Rule 1134—Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 08/08/97)
Rule 1136—Wood Products Coatings (Adopted 06/14/96)
Rule 1137—$PM_{10}$ Emission Reductions from Woodworking Operations (Adopted 02/01/02)
Rule 1140—Abrasive Blasting (Adopted 08/02/85)
Rule 1142—Marine Tank Vessel Operations (Adopted 07/19/91)
Rule 1146—Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 11/17/00)
Rule 1146.1—Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 05/13/94)
Rule 1146.2—Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 01/07/05)
Rule 1148—Thermally Enhanced Oil Recovery Wells (Adopted 11/05/82)
Rule 1149—Storage Tank Cleaning And Degassing (Adopted 07/14/95)
Rule 1162—Polyester Resin Operations (Adopted 07/09/04)
Rule 1168—Adhesive and Sealant Applications (Adopted 01/07/05)
Rule 1171—Solvent Cleaning Operations (Adopted 05/06/05)
Rule 1173—Control of Volatile Organic Compounds Leaks and Releases From Components At Petroleum Facilities and Chemical Plants (Adopted 12/06/02)
Rule 1176—VOC Emissions from Wastewater Systems (Adopted 09/13/96)
Rule 1178—Further Reductions of VOC Emissions from Storage Tanks at Petroleum Facilities (Adopted 12/21/01)
Rule 1301—General (Adopted 12/07/95)
Rule 1302—Definitions (Adopted 12/06/02)
Rule 1303—Requirements (Adopted 12/06/02)
Rule 1304—Exemptions (Adopted 06/14/96)
Rule 1306—Emission Calculations (Adopted 12/06/02)
Rule 1313—Permits to Operate (Adopted 12/07/95)
Rule 1403—Asbestos Emissions from Demolition/Renovation Activities (Adopted 04/08/94)
Rule 1470—Requirements for Stationary Diesel-Fueled Internal Combustion and Other Compression Ignition Engines (Adopted 03/04/05)
Rule 1605—Credits for the Voluntary Repair of On-Road Motor Vehicles Identified Through Remote Sensing Devices (Adopted 10/11/96)
Rule 1610—Old-Vehicle Scrapping (Adopted 2/12/99)
Rule 1612—Credits for Clean On-Road Vehicles (Adopted 07/10/98)
Rule 1612.1 Mobile Source Credit Generation Pilot Program (Adopted 03/16/01)
Rule 1620—Credits for Clean Off-Road Mobile Equipment (Adopted 07/10/98)
Rule 1701—General (Adopted 08/13/99)
Rule 1702—Definitions (Adopted 08/13/99)
Rule 1703—PSD Analysis (Adopted 10/07/88)
Rule 1704—Exemptions (Adopted 08/13/99)
Rule 1706—Emission Calculations (Adopted 08/13/99)
Rule 1713—Source Obligation (Adopted 10/07/88)
Regulation XVII—Appendix (effective 1977)
Rule 1901—General Conformity (Adopted 09/09/94)
Regulation XX—Regional Clean Air Incentives Market (Reclaim)
Rule 2000—General (Adopted 05/06/05)
Rule 2001—Applicability (Adopted 05/06/05)
Rule 2002—Allocations for Oxides of Nitrogen ($NO_X$) and Oxides of Sulfur (SOx) (Adopted 01/07/05)
Rule 2004—Requirements (Adopted 05/11/01) except (l)
Rule 2005—New Source Review for RECLAIM (Adopted 05/06/05) except (i)
Rule 2006—Permits (Adopted 05/11/01)
Rule 2007—Trading Requirements (Adopted 05/06/05)
Rule 2008—Mobile Source Credits (Adopted 10/15/93)
Rule 2009—Compliance Plan for Power Producing Facilities (Adopted 01/07/05)
Rule 2010—Administrative Remedies and Sanctions (Adopted 01/07/05)
Rule 2011—Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SOx) Emissions (Adopted 05/06/05)
Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 05/06/05)
Rule 2012—Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen ($NO_X$) Emissions (Adopted 05/06/05)
Appendix A—Volume V—(Protocol for oxides of nitrogen) (Adopted 05/06/05)
Rule 2015—Backstop Provisions (Adopted 06/04/04) except (b)(1)(G) and (b)(3)(B)
Rule 2020—RECLAIM Reserve (Adopted 05/11/01)
Rule 2100—Registration of Portable Equipment (Adopted 07/11/97)
Rule 2506—Area Source Credits for $NO_X$ and $SO_X$ (Adopted 12/10/99)
XXX—Title V Permits
Rule 3000—General (Adopted 11/14/97)
Rule 3001—Applicability (Adopted 11/14/97)
Rule 3002—Requirements (Adopted 11/14/97)
Rule 3003—Applications (Adopted 03/16/01)
Rule 3004—Permit Types and Content (Adopted 12/12/97)
Rule 3005—Permit Revisions (Adopted 03/16/01)
Rule 3006—Public Participation (Adopted 11/14/97)
Rule 3007—Effect of Permit (Adopted 10/08/93)
Rule 3008—Potential To Emit Limitations (Adopted 03/16/01)
XXXI—Acid Rain Permit Program (Adopted 02/10/95)

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources,* February 2006:

Rule 2—Definitions (Adopted 04/13/04)
Rule 5—Effective Date (Adopted 04/13/04)
Rule 6—Severability (Adopted 11/21/78)
Rule 7—Zone Boundaries (Adopted 06/14/77)
Rule 10—Permits Required (Adopted 04/13/04)
Rule 11—Definition for Regulation II (Adopted 06/13/95)
Rule 12—Applications for Permits (Adopted 06/13/95)
Rule 13—Action on Applications for an Authority to Construct (Adopted 06/13/95)
Rule 14—Action on Applications for a Permit to Operate (Adopted 06/13/95)
Rule 15.1—Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16—BACT Certification (Adopted 06/13/95)
Rule 19—Posting of Permits (Adopted 05/23/72)
Rule 20—Transfer of Permit (Adopted 05/23/72)
Rule 23—Exemptions from Permits (Adopted 10/12/04)
Rule 24— Source Recordkeeping, Reporting, and Emission Statements (Adopted 09/15/92)
Rule 26—New Source Review—General (Adopted 10/22/91)
Rule 26.1—New Source Review—Definitions (Adopted 05/14/02)
Rule 26.2—New Source Review—Requirements (Adopted 05/14/02)

Rule 26.3—New Source Review—Exemptions (Adopted 05/14/02)
Rule 26.6—New Source Review—Calculations (Adopted 05/14/02)
Rule 26.8—New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10—New Source Review—PSD (Adopted 01/13/98)
Rule 26.11—New Source Review—ERC Evaluation At Time of Use (Adopted 05/14/02)
Rule 28—Revocation of Permits (Adopted 07/18/72)
Rule 29—Conditions on Permits (Adopted 10/22/91)
Rule 30—Permit Renewal (Adopted 04/13/04)
Rule 32—Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 02/20/79)
Rule 33—Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1—Part 70 Permits—Definitions (Adopted 04/10/01)
Rule 33.2—Part 70 Permits—Application Contents (Adopted 04/10/01)
Rule 33.3—Part 70 Permits—Permit Content (Adopted 04/10/01)
Rule 33.4—Part 70 Permits—Operational Flexibility (Adopted 04/10/01)
Rule 33.5—Part 70 Permits—Time frames for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6—Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7—Part 70 Permits—Notification (Adopted 04/10/01)
Rule 33.8—Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9—Part 70 Permits—Compliance Provisions (Adopted 04/10/01)
Rule 33.10—Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34—Acid Deposition Control (Adopted 03/14/95)
Rule 35—Elective Emission Limits (Adopted 11/12/96)
Rule 36—New Source Review—Hazardous Air Pollutants (Adopted 10/06/98)
Rule 42—Permit Fees (Adopted 04/13/04)
Rule 44—Exemption Evaluation Fee (Adopted 09/10/96)
Rule 45—Plan Fees (Adopted 06/19/90)
Rule 45.2—Asbestos Removal Fees (Adopted 08/04/92)
Rule 47—Source Test, Emission Monitor, and Call-Back Fees (Adopted 06/22/99)
Rule 50—Opacity (Adopted 04/13/04)
Rule 52—Particulate Matter-Concentration (Grain Loading)(Adopted 04/13/04)
Rule 53—Particulate Matter-Process Weight (Adopted 04/13/04)
Rule 54—Sulfur Compounds (Adopted 06/14/94)
Rule 56—Open Burning (Adopted 11/11/03)
Rule 57—Incinerators (Adopted 01/11/05)
Rule 57.1—Particulate Matter Emissions from Fuel Burning Equipment (Adopted 01/11/05)
Rule 62.7—Asbestos—Demolition and Renovation (Adopted 09/01/92)
Rule 63—Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64—Sulfur Content of Fuels (Adopted 04/13/99)
Rule 67—Vacuum Producing Devices (Adopted 07/05/83)
Rule 68—Carbon Monoxide (Adopted 04/13/04)
Rule 71—Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1—Crude Oil Production and Separation (Adopted 06/16/92)
Rule 71.2—Storage of Reactive Organic Compound Liquids (Adopted 09/26/89)
Rule 71.3—Transfer of Reactive Organic Compound Liquids (Adopted 06/16/92)
Rule 71.4—Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 06/08/93)
Rule 71.5—Glycol Dehydrators (Adopted 12/13/94)
Rule 72—New Source Performance Standards (NSPS) (Adopted 04/10/01)
Rule 73—National Emission Standards for Hazardous Air Pollutants (NESHAPS (Adopted 04/10/01)
Rule 74—Specific Source Standards (Adopted 07/06/76)
Rule 74.1—Abrasive Blasting (Adopted 11/12/91)
Rule 74.2—Architectural Coatings (Adopted 11/13/01)
Rule 74.6—Surface Cleaning and Degreasing (Adopted 11/11/03—effective 07/01/04)
Rule 74.6.1—Batch Loaded Vapor Degreasers (Adopted 11/11/03—effective 07/01/04)
Rule 74.7—Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8—Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 07/05/83)
Rule 74.9—Stationary Internal Combustion Engines (Adopted 11/14/00)
Rule 74.10—Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 03/10/98)
Rule 74.11—Natural Gas-Fired Residential Water Heaters-Control of $NO_X$ (Adopted 04/09/85)
Rule 74.11.1—Large Water Heaters and Small Boilers (Adopted 09/14/99)
Rule 74.12—Surface Coating of Metal Parts and Products (Adopted 11/11/03)
Rule 74.15—Boilers, Steam Generators and Process Heaters (Adopted 11/08/94)
Rule 74.15.1—Boilers, Steam Generators and Process Heaters (Adopted 06/13/00)
Rule 74.16—Oil Field Drilling Operations (Adopted 01/08/91)
Rule 74.20—Adhesives and Sealants (Adopted 01/11/05)
Rule 74.23—Stationary Gas Turbines (Adopted 1/08/02)
Rule 74.24—Marine Coating Operations (Adopted 11/11/03)
Rule 74.24.1—Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 01/08/02)
Rule 74.26—Crude Oil Storage Tank Degassing Operations (Adopted 11/08/94)
Rule 74.27—Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/08/94)
Rule 74.28—Asphalt Roofing Operations (Adopted 05/10/94)
Rule 74.30—Wood Products Coatings (Adopted 11/11/03)
Rule 75—Circumvention (Adopted 11/27/78)
Rule 101—Sampling and Testing Facilities (Adopted 05/23/72)
Rule 102—Source Tests (Adopted 04/13/04)
Rule 103—Continuous Monitoring Systems (Adopted 02/09/99)
Rule 154—Stage 1 Episode Actions (Adopted 09/17/91)
Rule 155—Stage 2 Episode Actions (Adopted 09/17/91)
Rule 156—Stage 3 Episode Actions (Adopted 09/17/91)
Rule 158—Source Abatement Plans (Adopted 09/17/91)
Rule 159—Traffic Abatement Procedures (Adopted 09/17/91)
Rule 220—General Conformity (Adopted 05/09/95)
Rule 230—Notice to Comply (Adopted 11/09/99)

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[FR Doc. E6–9746 Filed 6–21–06; 8:45 am]
BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

**[FRL–8186–7]**

## National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List Update

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final notice of deletion of the Dixie Oil Processors, Inc. Superfund Site from the National Priorities List.

**SUMMARY:** The United States Environmental Protection Agency (EPA) Region 6 is publishing a direct final notice of deletion of the Dixie Oil Processors, Inc. Superfund Site (Site), located in Friendswood, Texas, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA with the concurrence of the State of Texas, through the Texas Commission on Environmental Quality (TCEQ), because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

**DATES:** This direct final notice of deletion will be effective August 21, 2006 unless EPA receives adverse comments by July 24, 2006. If adverse comments are received, EPA will publish a timely withdrawal of the

direct final notice of deletion in the **Federal Register** informing the public that the deletion will not take effect.

**ADDRESSES:** Comments may be mailed to: Donn Walters, Community Outreach Team, U.S. EPA Region 6 (6SF–PO), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–6483 or 1–800–533–3508 (*walters.donn@epa.gov*).

*Information Repositories:* Comprehensive information about the Site is available for viewing and copying during central standard time at the Site information repositories located at: U.S. EPA Region 6 Library, 7th Floor, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, (214) 665–6424, Monday through Friday 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.; San Jacinto College, South Campus Library, 13735 Beamer Road, Houston, Texas 77089, (281) 992–3416, Monday through Thursday 8 a.m. to 9 p.m.; Friday 8 a.m. to 3 p.m.; Saturday 10 a.m. to 1 p.m.; Texas Commission on Environmental Quality (TCEQ), Central File Room Customer Service Center, Building E, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239–2900, Monday through Friday 8 a.m. to 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** John C. Meyer, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–LP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–6742 or 1–800–533–3508 (*meyer.john@epa.gov*).

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

## I. Introduction

The EPA Region 6 office is publishing this direct final notice of deletion of the Dixie Oil Processors, Inc. Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective August 21, 2006 unless EPA receives adverse comments by July 24, 2006 on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and the deletion will not take effect. The EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Dixie Oil Processors, Inc. Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

## II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c), requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

## III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with TCEQ on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) TCEQ concurred with deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the ''Proposed Rules'' section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate Federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

## IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting this Site from the NPL.

*Site Location*

The Dixie Oil Processors (DOP) Site is located approximately 20 miles southeast of Houston, Texas, in Harris County. The Site occupies approximately 26.6 acres. Portions of the Site occur both north and south of Dixie Farm Road and are designated as DOP North and DOP South. DOP North covers 19.0 acres and DOP South covers 7.6 acres.

Mud Gully, a flood control ditch and local tributary of Clear Creek, runs along the eastern boundary of DOP North and

the western boundary of DOP South. The Brio Refining Superfund Site borders DOP to the northeast and an abandoned athletic field borders DOP North to the southwest.

*Site History*

Over the years, several companies conducted operations at the DOP site. Intercoastal Chemical Company (ICC) operated a copper recovery and hydrocarbon washing facility on the DOP North site from 1969 to 1978. A total of six surface impoundments were used by ICC to store wastewater containing copper prior to recovery and to treat wastewater prior to discharge. Wastewaters from the hydrocarbon washing operations were also discharged into one of the impoundments. During a two year period between 1975 and 1977, the impoundments were closed and decommissioned.

In 1978, DOP began operations on the south side of the site. Activities occurring on the site included regeneration of cuprous chloride catalyst; hydrocarbon washing to produce ethylbenzene, toluene, aromatic solvents, and styrene pitch; oil recovery; and blending and distilling residues from local chemical plants and refineries (mainly phenolic tank bottom tars and glycol cutter stock) to produce various petroleum products including fuel oil, creosote extender, and a molybdenum concentrate catalyst.

Active operations on the DOP site stopped in 1986. Approximately 6,000 cubic yards of contaminated soils were excavated in 1984 and disposed off-site.

*Remedial Investigation and Feasibility Study (RI/FS)*

A remedial investigation conducted by the potentially responsible parties (PRPs) began at the site in 1986. This investigation identified three potential sources of contamination: the contents of drums and tanks comprising the process facility, soils associated with the onsite waste pits (now closed-out), and contaminated groundwater. The investigation found approximately 107,351 cubic yards of contaminated soils and subsoils on the site, associated with six different pits. The contaminants of concern included ethylbenzene, hexachlorobenzene, and copper.

The risk assessment concluded that the site potentially poses four major risks to human health and the environment: ingestion of on-site soils, direct contact with on-site soils, inhalation of dust from the site, and ingestion of shallow ground water from the site.

*Record of Decision*

A Record of Decision (ROD) was issued for the DOP site by the EPA on March 31, 1988 selecting limited action and monitoring, including fluids stabilization and a site cover with institutional controls. In accordance with the requirements of the Unilateral Administrative Order, Docket Number 6–23–91, signed by the EPA on July 10, 1991, a group of PRPs known as the DOP Task Force was directed to design and implement the remedial action as specified in the ROD.

*Response Actions*

The remedy was broken into two phases for implementation. The Phase I activities included:

- Removal of surface contamination;
- Improvement of surface water controls;
- Reconstruction of Mud Gully;
- Revegetation and installation of security fencing.

Phase II activities included:

- Removal and off-site disposal of tank residuals;
- Dismantlement of the process tanks and drums;
- Disposal of process equipment.

Phase I field activities began on March 26, 1992. Surficial deposits of contamination were removed, stored in roll-off containers and sent off-site for disposal. Approximately 1750 tons of contaminated soils and sludges from storage tanks were sent off-site for disposal. All off-site facilities were in compliance with EPA's Off-Site Disposal Policy.

Phase II activities began in August 1992. This phase entailed removal of liquids and sludges stored in process vessels left on the site. Approximately 250,000 gallons of material were removed from the vessels and sent off-site for disposal. The vessels were removed and sent to a smelting facility.

The DOP Task Force notified EPA that Phase I and Phase II activities were completed on March 27, 1993. A pre-certification inspection was conducted by EPA on April 20, 1993. The DOP Task Force certified that the Remedial Action was complete in a letter dated April 27, 1993. The DOP Task Force prepared a Remedial Action Report that contained a certification by a Texas Professional Engineer that all the requirements of the Remedial Design were met. EPA approved the report on August 6, 1993.

*Operation and Maintenance (O&M)*

In July 1993, the DOP Task Force submitted a Monitoring, Operation and Maintenance (MO&M) Plan for the DOP site. The plan was revised in January 1999. The purpose of the MO&M Plan is to document procedures to be used to assess the long-term success of the site remedy while minimizing adverse natural or man-made impacts on the DOP site. The plan requires (i) monthly inspections and maintenance, (ii) a five-year review as required by the EPA, and (iii) semi-annual monitoring of the environmental media (soil, ground water, and air).

The DOP Task Force conducts monthly site inspections to identify any damage to the site facilities, and monitors the general health and integrity of the soil cover.

Since monitoring began in May 1993, the DOP Task Force has kept records of site activities and submitted them to the EPA on an annual basis. The reports include specific maintenance activities completed during the past year, dates that maintenance activities were performed, names of people and companies performing the maintenance activities, and any replacements or redesigns of deficient materials or equipment.

The institutional control plan for the Site was revised in February 2006 and included deed restrictions filed by the landowner in 2005. The deed restrictions provide long-term assurance of the protectiveness of the remedy by limiting the future uses of the site.

*Five-Year Review*

Consistent with section 121(c) of CERCLA and requirements of the OSWER Directive 9355.7–03B–P (''*Comprehensive Five-Year Review Guidance*'', June 2001), a five-year review is required at the Site. The Directive requires EPA to conduct statutory five-year reviews at sites where, upon attainment of ROD cleanup levels, hazardous substances remaining within restricted areas onsite do not allow unlimited use of the entire site.

Since hazardous substances remain onsite, this Site is subject to five-year reviews to ensure the continued protectiveness of the remedy. Based on the five-year results, EPA will determine whether human health and the environment continues to be adequately protected by the implemented remedy. Five-year reviews were completed on September 24, 1998 and September 4, 2003. The reviews found that the remedy remains protective of human health and the environment. The MO&M plan was revised in January 1999, and continues to be implemented by the DOP Task Force to ensure the remedy remains protective.

*Community Involvement*

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

**V. Deletion Action**

The EPA, with concurrence of the State of Texas, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions under CERCLA, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective August 21, 2006 unless EPA receives adverse comments by July 24, 2006. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect. The EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: May 5, 2006.

**Lawrence E. Starfield,**

*Deputy Regional Administrator, Region 6.*

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

## PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

**Appendix B—[Amended]**

■ 2. Table 1 of Appendix B to Part 300 is amended under Texas (''TX'') by removing the entry for ''Dixie Oil Processors, Inc.''.

[FR Doc. E6–9748 Filed 6–21–06; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

**[EPA–R04–SFUND–2006–0228; FRL–8188–1]**

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final notice of deletion of Davie Landfill Superfund Site from the National Priorities list.

**SUMMARY:** EPA Region 4 is publishing a direct final notice of deletion of the Davie Landfill, Superfund Site (Site), located in Davie, Florida, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA with the concurrence of the State of Florida, through the Florida Department of Environmental Protection (FDEP) because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

**DATES:** This direct final notice is effective August 21, 2006 without further notice, unless EPA receives adverse comment by July 24, 2006. If adverse comment is received, EPA will publish a timely withdrawal of the direct final notice in the **Federal Register** and inform the public that the notice will not take effect.

**ADDRESSES:** Submit your comments, identified by EPA–R04–SFUND–2006–0228, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. E-mail: *martin.scott@epa.gov*
3. Fax: (404) 562–8896.
4. Mail: ''EPA–R04–SFUND–2006–0228'', Superfund Remedial Section C, Superfund Remedial & Technical Services Branch, Waste Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. Hand Delivery or Courier: Scott M. Martin, Remedial Project Manager, Superfund Remedial Section C, Superfund Remedial & Technical Services Branch, Waste Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. 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 Federal holidays.

*Instructions:* Direct your comments to EPA–R04–SFUND–2006–0228. 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'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

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

Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Superfund Remedial Section C, Superfund Remedial & Technical Services Branch, Waste Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person 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.

Comprehensive information on this Site is available through the Region 4 public docket, which is available for viewing at the Davie Landfill Site information repositories at two locations. Locations, contacts, phone numbers and viewing hours are:

Davie Landfill Site Repository, Broward County Main Public Library, 100 S. Andrews Ave., Level 5, Ft. Lauderdale, Florida 33301.

U.S. EPA Record Center, attn: Ms. Debbie Jourdan, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, Phone: (404) 562–8862, Hours 8 a.m. to 4 p.m., Monday through Friday by appointment only.

**FOR FURTHER INFORMATION CONTACT:** Scott M. Martin, Remedial Project Manager, Superfund Remedial Section C, Superfund Remedial & Technical Services Branch, Waste Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8916. Mr. Martin can also be reached via electronic mail at *martin.scott@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

## I. Introduction

EPA Region 4 is publishing this direct final notice of deletion of the Davie Landfill Superfund Site from the NPL.

The EPA identifies Sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those Sites. As described in the Section 300.425(e)(3) of the NCP, Sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted Site warrant such action.

Section II of this document explains the criteria for deleting Sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Davie Landfill Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

## II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a Site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a Site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted Site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the Site be conducted at least every five years after the initiation of the remedial action at the deleted Site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a Site deleted from the NPL, the deleted Site may be restored to the NPL without application of the hazard ranking system.

## III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with the State of Florida on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) Florida concurred with deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the ''Proposed Rules'' section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a Site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a Site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

## IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

*Site Location*

Davie Landfill Superfund Site, 4001 SW. 142nd Avenue, Broward County, Davie, Florida 33314. EPA ID: FLD980602288.

*Site History*

The Davie Landfill Site, located at 4001 SW. 142nd Avenue in Davie, Florida, is a 209 acre parcel of land that includes a 48 acre Class I landfill (north mound) and a 68 acre Class III landfill (south mound). The Site is situated in an area that previously has been mainly rural and agricultural but is quickly being developed into a residential area. The landfill began operation in 1964 with the startup of the county's garbage incinerator. Ash from the incinerator, construction debris, and demolition debris, were placed in the landfill. In 1975, the incinerator was closed because its emissions failed to meet new air regulations. At that time, a sanitary landfill was constructed for disposal of municipal solid waste. The sanitary landfill also accepted construction

debris, tires, and other wastes. Between 1971 and 1981, a basin area at the landfill was used for the disposal of grease trap material, septic tank sludge and treated municipal sludge. The Site was proposed for the NPL on December 30, 1982. A portion of the Site (approximately 160 acres) was converted to a Broward County regional park, known as Vista View Park, which opened to the public on July 12, 2003.

*Remedial Investigation and Feasibility Study (RI/FS)*

Operable Unit (OU) 1

The initial Remedial Investigation (RI) was conducted between January 1983 and September 1985, and focused mainly on the sludge disposal area. The RI report confirmed that cyanide and sulfide were present in the sludge in the basin area. All landfill activities ceased in December 1987, and Broward County began the closeout of the landfill. EPA then released a Feasibility Study (FS) which concluded that the Site could pose a potential health threat to the public through dermal contact with the contaminated soil in the sludge disposal area. No activities using removal authority were conducted at this Site.

Operable Unit 2

In 1988, the Broward County Public Health Unit found vinyl chloride contamination in private wells south of the Site. In the early 1990's, further sampling by Broward County confirmed that vinyl chloride and antimony had contaminated the groundwater in the area. Therefore, another RI was conducted at the Site between March 1992 and August 1994. Antimony and vinyl chloride were detected at levels above their respective drinking water standards. The final RI report summarized all Site analyses results. EPA released an FS which concluded that the Site could pose a potential health threat to the public through ingestion of groundwater contaminated with antimony and vinyl chloride. The FS provided a detailed analysis of monitored natural attenuation and pump and treat remedial alternatives.

*Record of Decision Findings*

Operable Unit 1

On September 30, 1985, EPA issued a Record of Decision (ROD) which selected excavation of all contaminated soil in the sludge disposal area, on-Site treatment of the contaminated soil via stabilization, and then disposal of the stabilized soil in Cell Number 14 of the landfill.

Operable Unit 2

On August 11, 1994, EPA issued a ROD which selected monitored natural attenuation to address the antimony and vinyl chloride contamination in the groundwater. In addition, the ROD required the monitoring of area residential wells to determine the impact of Site related groundwater contamination and the extension of public water supply connections to residents whose private wells had been impacted. The State of Florida's drinking water standards for antimony and vinyl chloride were selected as the cleanup standards.

*Response Actions*

Operable Unit 1

On June 30, 1988, a Cooperative Agreement was awarded to the Broward County Board of Commissioners for partial funding of the remediation of the sludge lagoon portion of the Site. Pursuant to the ROD and the Cooperative Agreement, Broward County performed the remediation of the sludge lagoon, which was completed in July 1989.

The excavation, dewatering and stabilization of the lagoon sludge began on April 15, 1989. Dry and wet sludge materials were mixed to create a uniform mixture for stabilization. Type I Portland cement was then added to the mixture, as necessary, to stabilize the material and to remove any remaining free moisture. The stabilized material was loaded onto dump trucks and hauled to Cell Number 14 of the sanitary landfill for disposal. A total of 82,158 cubic yards of sludge were excavated, stabilized and disposed. Sludge was also encountered and removed from the eastern slope of the trash landfill and the dike areas and concrete off-loading ramp associated with the sludge lagoon. Sludge removal and stabilization activities were completed in May 1989.

Excavation of unsuitable material around the sludge lagoon was performed concurrently with the sludge excavation activities. These materials included trash, construction materials and other debris used in the construction of the dike surrounding the sludge lagoon. A total of 57,626 cubic yards of unsuitable material were excavated from the area. These materials were disposed of in either Cell Number 14 or the sanitary landfill or the trash landfill, as required. Excavation of the unsuitable material was completed in July 1989.

Final grading of the sludge lagoon occurred in June 1989. This included the creation of a water channel connecting the newly excavated nature pond (former sludge lagoon) and Borrow Pit Number 2. The nature pond was created during the excavation and removal of the foundation material. Based on the satisfactory analytical results of compoSite surface water samples collected from the newly constructed nature pond, excavation of the connecting channel between the new nature pond and Borrow Pit Number 2 was completed in July 1989.

Construction of the final cover for Cell Number 14 of the sanitary landfill began on July 25, 1989, and was completed on August 8, 1989. A total of 31,969 tons of limerock were used as landfill cover material. Two lifts of material, 1-foot thick, were spread and compacted to an in-place density of at least 98%. The final cover was sloped at a 2% grade towards the southwest corner of the sanitary landfill.

Operable Unit 2

In 1988, Broward County extended public water lines to the area of Sunshine Ranches between Griffin Road and Palomino Drive (north and south boundaries) and between Volunteer Road and Hancock Road (west and east boundaries). In 1994, the water line was extended 300 feet east of Hancock Road on East Palomino Drive.

EPA determined that the groundwater sampling data collected as part of the FDEP landfill closure permit would provide all information necessary to monitor the progress of natural attenuation. This required the semiannual monitoring of seven groundwater monitoring well clusters. Therefore, because execution of the remedial design for groundwater did not require any major construction activities, the remedial action at the Site was determined to be operational and functional on October 18, 1995.

*Cleanup Standards*

Operable Unit 1

As part of the 1985 ROD, residual soil cleanup goals were established for lead, chromium, cadmium, arsenic and mercury. In May 1989, thirty-nine foundation material samples from seven sampling Sites were obtained and submitted for analysis to determine the effectiveness of the sludge lagoon cleanup activities. The result of the analysis indicated that all but two sample locations revealed concentrations below the soil cleanup goals. The two said sample locations revealed marginal exceedances of the soil cleanup goals for arsenic. The areas surrounding these sampling locations were further excavated. Surface scraping of the lagoon area was performed along

with the excavation of the foundation materials. A total of 23,400 cubic yards of material were excavated and disposed of in Cell Number 14 of the sanitary landfill. These activities were completed in June 1989.

Operable Unit 2

The natural attenuation monitoring plan required the semiannual monitoring of seven groundwater monitoring well clusters. The ROD requires one year of meeting cleanup standards to demonstrate completion. From September 2000 until September 2003, groundwater data indicated that groundwater cleanup standards for vinyl chloride and antimony had been achieved.

*Operation and Maintenance*

Broward County will conduct all the Operation and Maintenance (O&M) activities at the Site. Since the Site is an officially closed landfill, the operation and maintenance requirements of the Post-Closure landfill closure permit will require the continued monitoring of the seven groundwater monitoring well clusters, maintenance of the landfill cover, stormwater/surface water management, biweekly inspection of the leachate liner, and maintenance of the sanitary landfill gas collection and control system. Additionally, the Site has been converted into a Broward County park and will be maintained accordingly. The current estimated annual operations and maintenance cost is $250,000.

*Five-Year Review*

This Site meets all the Site completion requirements as specified in Office of Solid Waste and Emergency Response (OSWER) Directive 9320.2–09–A–P, *Close Out Procedures for National Priorities List Sites.* Specifically, confirmatory sampling verifies that the Site has achieved the ROD cleanup standards specified in both the OU1 and OU2 RODs, and that all cleanup actions specified in the ROD have been implemented. The only remaining activity to be performed is O&M that Broward County will conduct.

Because hazardous materials remain at the Site inside the landfill above levels that allow for unlimited use and unrestricted exposure, Section 121 of CERCLA requires ongoing statutory review to be conducted no less than every five years from the start of remedial actions. The first five-year review was conducted in March 1994, and the second was conducted in May 2000. These reviews concluded that the selected remedy remains protective of human health and the environment.

*Community Involvement*

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

All basic requirements for public participation under CERCLA were met in both remedy selection processes. Because the Site is located in a residential area, community relations activities were focused on communication between the residents in the affected community and the government agencies. Special attention was directed toward keeping the community informed of all study results. Meetings were held with the Town of Davie officials and availability sessions were held with the community. Because the area is rapidly changing from small horse farms and agricultural to more high density residential, EPA continues to provide active community relations by publishing fact sheets and answering calls and e-mails from people who are considering purchasing a new home in the area.

**V. Deletion Action**

The EPA, with concurrence of the State of Florida, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective August 21, 2006 unless EPA receives adverse comments by July 24, 2006. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect and, EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Chemicals, Hazardous waste, Hazardous substances, Superfund, Water pollution control, Water supply.

Dated: June 8, 2006.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

■ 40 CFR part 300 is amended as follows:

## PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

**Appendix B—[Amended]**

■ 2. Table 1 of Appendix B to part 300 is amended by removing the Site Davie Landfill, Davie, Florida.

[FR Doc. 06–5595 Filed 6–21–06; 8:45 am]

BILLING CODE 6560–50–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 46 CFR Part 1

**[USCG–2006–24520]**

**RIN 1625–AB03**

## Coast Guard Organization; Activities Europe

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule makes non-substantive changes in Coast Guard regulations that describe the agency's organization for marine safety functions, and how decisions can be appealed within the agency. The changes are necessitated by a recent organizational change that placed Activities Europe under the operational and administrative control of the Coast Guard's Atlantic Area Command. This rule will have no substantive effect on the regulated public.

**DATES:** This final rule is effective June 22, 2006.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2006–24520 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Mr. D. Skewes, Coast Guard, telephone 202–267–0418 or e-mail *DSkewes@comdt.uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

**SUPPLEMENTARY INFORMATION:**

## Regulatory Information

We did not publish a Notice of Proposed Rulemaking (NPRM) for this regulation. Under both 5 U.S.C. 553(b)(A) and (b)(B), the Coast Guard finds that this rule is exempt from notice and comment rulemaking requirements of the Administrative Procedure Act because the changes it makes involve agency organization, procedure, and practice, and are non-substantive. This rule consists only of organizational and conforming amendments. These changes will have no substantive effect on the public; therefore, it is unnecessary to publish an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

## Discussion of the Rule

A recent organizational change transferred operational and administrative control of Coast Guard Activities Europe from the Coast Guard's Fifth District to its Atlantic Area Command and deleted ''Marine Inspection Office'' from the unit's name. The only impact on the public is to change the route for appeals from decisions or actions of Activities Europe, from the Fifth District Commander to the Atlantic Area Commander. Existing Coast Guard marine safety regulations describe the agency's organization and appeals process, but uses language that presupposes that all marine inspection offices are under district office control. This rule amends the regulatory language to take into account Activities Europe's new chain of command.

## Regulatory Evaluation

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

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not require a general NPRM and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities. This rule will have no substantive effect on the regulated public. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

## Collection of Information

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

## Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

## Unfunded Mandates Reform Act

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

## Taking of Private Property

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

## Civil Justice Reform

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

## Protection of Children

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

## Indian Tribal Governments

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

## Energy Effects

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

## Technical Standards

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

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

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraphs (34)(a) and (b), of the Instruction from further environmental documentation because this rule involves editorial, procedural, and internal agency functions. An ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 46 CFR Part 1**

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 1 as follows:

## PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

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

**Authority:** 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 46 U.S.C. Chapter 93; Public Law 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1; § 1.01–35 also issued under the authority of 44 U.S.C. 3507.

■ 2. Amend § 1.01–05 by adding paragraph (c) to read as follows:

**§ 1.01–05 Definitions of terms used in this part.**

* * * * *

(c) The term *Area Commander* means an officer of the Coast Guard designated as such by the Commandant to command all Coast Guard activities within an Area.

■ 3. Amend § 1.01–10 by revising paragraph (b) introductory text to read as follows:

**§ 1.01–10 Organization.**

* * * * *

(b) To carry out the regulatory and enforcement aspects of marine safety, the staff officers designated in this paragraph are assigned to the Commandant. The chain of military command is directly from the Commandant to the District Commanders, except for marine safety regulatory and enforcement matters within the area of responsibility of Coast Guard Activities Europe. For Activities Europe, the chain of command is from the Commandant to the Atlantic Area Commander. The staff officers at Headquarters act only on the basis of the Commandant's authority and direction.

* * * * *

**§ 1.01–15 [Amended]**

■ 4. Amend § 1.01–15 as follows:

■ a. Revise paragraph (a); and

■ b. Revise the first sentence in paragraph (b) to read as follows:

**§ 1.01–15 Organization; areas and districts.**

(a) To assist the District Commander, and the Atlantic Area Commander with respect to Activities Europe, in carrying out the regulatory and enforcement aspects of marine safety, there is assigned to each District Commander and to the Atlantic Area Commander a staff officer designated as Chief, Marine Safety Division. The chain of military command is from the District Commander to each Officer in Charge, Marine Inspection, within the district and from the Atlantic Area Commander to the Officer in Charge, Activities Europe. The Chief of the Marine Safety Division is a staff officer assigned to the District Commanders and Atlantic Area Commander, and acts only on the basis of the authority and direction of the District Commanders, and the Atlantic Area Commanders with respect to Activities Europe.

* * * * *

(b) The Officers in Charge, Marine Inspection, in the Coast Guard districts, under the supervision of the District Commanders, and the Officer in Charge, Activities Europe, under the supervision of the Atlantic Area Commander are in charge of the marine inspection offices in the various ports and have command responsibilities with assigned marine safety zones for the performance of duties with respect to the inspection, enforcement and administration of navigation and vessel inspection laws, and rules and regulations governing marine safety. * * *

* * * * *

■ 5. Amend § 1.01–25 by revising paragraph (b) to read as follows:

**§ 1.01–25 General flow of functions.**

* * * * *

(b)(1) The general course and method by which the functions (other than those dealing with suspension and revocation of licenses, certificates or documents described in paragraph (c) of this section) concerning marine safety activities are channeled, begins with the Officer in Charge, Marine Inspection, at the local Marine Safety Office. From this Officer the course is to the Chief, Marine Safety Division, on the staff of the District Commander, and then to the District Commander. From the District Commander, the course is to the Chief of one of the offices with Marine Safety and Environmental Protection at Headquarters.

(2) For Activities Europe, the course is from the Officer in Charge, Activities Europe to the staff of the Atlantic Area Commander, then to the Atlantic Area Commander, and then to the Chief of one of the offices with Marine Safety and Environmental Protection at Headquarters.

* * * * *

■ 6. Section 1.03–20 is revised to read as follows:

**§ 1.03–20 Appeals from decisions or actions of an OCMI.**

Any person directly affected by a decision or action of an OCMI may, after requesting reconsideration of the decision or action by the cognizant OCMI, make a formal appeal of that decision or action, via the office of the cognizant OCMI, to the District Commander of the district in which the office of the cognizant OCMI is located, or in the case of the Officer in Charge, Activities Europe, to the Atlantic Area Commander, in accordance with the procedures contained in § 1.03–15 of this subpart.

Dated: June 16, 2006.

**S.G. Venckus,**

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

[FR Doc. E6–9864 Filed 6–21–06; 8:45 am]

BILLING CODE 4910–15–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 393**

**[Docket No. FMCSA–2006–21259]**

**RIN 2126–AA88**

## Parts and Accessories Necessary for Safe Operation: Protection Against Shifting and Falling Cargo

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** FMCSA amends its September 27, 2002, final rule concerning protection against shifting and falling cargo for commercial motor vehicles (CMVs) operated in interstate commerce in response to petitions for rulemaking from the American Trucking Association (ATA), Forest Products Association of Canada (FPAC), Georgia-Pacific Corporation (Georgia-Pacific) and Weyerhaeuser, and in response to issues raised by the Canadian Council of Motor Transport Administrators (CCMTA), the Forest Resources Association, Inc. (FRA), the Washington Contract Loggers Association and the Washington Log Truckers Conference (WCLA/WLTC), and the Timber Producers Association of Michigan and Wisconsin (TPA). The amendments make the final rule more consistent with the December 18, 2000, notice of proposed rulemaking (NPRM) to adopt the North American Cargo Securement Standard Model Regulations. This final rule also includes several editorial revisions to the 2002 final rule.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

*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 (65 FR 19477) or you may visit *http://dms.dot.gov*.

**DATES:** The rule is effective July 24, 2006. The publication incorporated by reference in this final rule is approved by the Director of the Office of the Federal Register as of July 24, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Huntley, Chief of the Vehicle and Roadside Operations Division, Federal Motor Carrier Safety Administration, 202–366–4009.

**SUPPLEMENTARY INFORMATION:** This notice is organized as follows:

I. Legal Basis for the Rulemaking
II. Background
III. Discussion of Comments to the NPRM
IV. Regulatory Analyses and Notices

### I. Legal Basis for the Rulemaking

This rulemaking is based on the authority of the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984.

The Motor Carrier Act of 1935, as amended, provides that ''[t]he Secretary of Transportation may prescribe requirements for: (1) Qualifications and maximum hours-of-service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours-of-service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation'' (49 U.S.C. 31502(b)).

This final rule amends regulations concerning protection against shifting and falling cargo (cargo securement), applicable to motor carriers of property, which were promulgated by FMCSA on September 27, 2002 (67 FR 61212). The cargo securement regulations deal directly with the ''safety of operation and equipment of * * * a motor carrier'' (sec. 31502(b)(1)) and the ''standards of equipment of, a motor private carrier when needed to promote safety of operation'' (sec. 31502(b)(2)). The adoption and enforcement of such rules is specifically authorized by the Motor Carrier Act of 1935. This final rule rests squarely on that authority.

The Motor Carrier Safety Act of 1984 provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to ''prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that: (1) Commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators'' (49 U.S.C. 31136(a)).

This final rule deals with cargo securement. It is based primarily on sec. 31136(a)(1) and (2), and secondarily on sec. 31136(a)(4). This rulemaking would ensure CMVs are maintained, equipped, loaded, and operated safely by requiring that cargo be secured in a manner that prevents it from shifting upon a CMV to such an extent that the vehicle's stability or maneuverability is adversely affected, or falling from the commercial motor vehicle and striking another vehicle. Compliance with the cargo securement regulations is necessary to ensure vehicles are equipped with appropriate cargo securement devices, loads are properly positioned on the vehicle, and vehicles are operated safely without the risk of shifting or falling cargo.

Finally, the rulemaking would ensure the operation of CMVs does not have a deleterious effect on the physical condition of the operators of vehicles by preventing articles of cargo from shifting forward into the driver's compartment, or shifting upon the vehicle to such an extent that the vehicle's stability or maneuverability is adversely affected and likely to cause a crash.

Therefore, FMCSA considers the requirements of 49 U.S.C. 31136(a)(1), (2) and (4) to be applicable to this rulemaking action. The rulemaking would amend regulations concerning commercial vehicle equipment, loading and operations, prescribe regulations applicable to the responsibilities frequently imposed upon drivers to ensure their ability to operate safely is not impaired, and help to prevent serious injuries to CMV drivers that could result from improperly secured loads.

With regard to 49 U.S.C. 31136(a)(3), FMCSA does not believe this provision concerning the physical condition of drivers is applicable because this rulemaking does not concern the establishment of driver qualifications standards. This final rule addresses safety requirements applicable to the cargo securement methods used by drivers who are often assigned the responsibility for ensuring that freight is restrained to prevent shifting upon or falling from the CMV, but it does not include issues related to the physical qualifications or physical capabilities of drivers who must complete such tasks.

However, before prescribing any such regulations, FMCSA must consider the ''costs and benefits'' of any proposal (49 U.S.C. 31136(c)(2)(A) and 31502(d)).

## II. Background

On September 27, 2002 (67 FR 61212), FMCSA published a final rule revising its regulations concerning protection against shifting and falling cargo for CMVs operated in interstate commerce. The final rule is based on the North American Cargo Securement Standard Model Regulations, reflecting the results of a multi-year comprehensive research program to evaluate the then-current U.S. and Canadian cargo securement regulations; the motor carrier industry's best practices; and recommendations presented during a series of public meetings involving U.S. and Canadian industry experts, Federal, State and Provincial enforcement officials, and other interested parties. The Agency indicated that the intent of the rulemaking is to reduce the number of crashes caused by cargo shifting on or within, or falling from, CMVs operating in interstate commerce, and to harmonize to the greatest extent practicable U.S., Canadian and Mexican cargo securement regulations. Motor carriers were given until January 1, 2004, to comply with the new regulations.

FMCSA received separate petitions for reconsideration of the final rule from the FPAC, Georgia-Pacific, Weyerhauser, and the ATA. A copy of each petition is included in the Docket No. FMCSA–2005–21259. Although each of the Petitioners considered its request to be a petition for reconsideration of the final rule, each of the requests was submitted after the deadline provided in 49 CFR 389.35 (*i.e.*, petitions for reconsideration must be submitted no later than 30 days after publication of the final rule in the **Federal Register**). Therefore, the petitions were treated as petitions for rulemaking in accordance with 49 CFR 389.35. Additionally, FMCSA received comments from the CCMTA, FRA, WCLA/WLTC, and the TPA. Copies of these comments are also in Docket No. FMCSA–2005–21259.

On June 8, 2005, FMCSA published an NPRM which addressed each of the petitions and associated comments received in response to the September 27, 2002, final rule identified above (70 FR 33430). The proposed amendments were intended to make the final rule more consistent with the December 18, 2000, NPRM on the same subject and The North American Cargo Securement Standard Model Regulations that the new regulations are based upon. In response to inquiries and requests for guidance regarding enforcement of the cargo securement regulations, the agency also proposed amendments regarding manufacturing standards for tiedowns, and cargo securement requirements for dressed lumber, metal coils, paper rolls, intermodal containers and flattened cars. The NPRM also included several editorial corrections to the September 2002 final rule. A full discussion of the proposed amendments is included in the NPRM.

## III. Discussion of Comments to the NPRM

The agency received 31 comments in response to the NPRM. The commenters included: The Allegheny Industrial Associates (Allegheny), American Road and Transportation Builders Association (ARTBA), ATA, Association of Equipment Manufacturers (AEM), Jerry R. Berenz, CCMTA, Canadian Trucking Alliance (CTA), Coastal Transport, Inc., Colorado Rural Electric Association (CREA), the DACAR Group (DACAR), Department of Energy (DOE), East Manufacturing Corporation (EMC), EdgeWorks, Inc. (EdgeWorks), FRA, FPAC, Georgia-Pacific, Greg G. Miller, Iowa Department of Transportation (Iowa DOT), Kinedyne Corporation (Kinedyne), New York State DOT (NY DOT), North Carolina Forestry Association, Ohio State Patrol (OSP), Onyx Environmental Services LLC, Paper & Forest Industry Transportation Committee (PFITC), Rayonier, Inc. (Rayonier), Joseph Takacs, Jr., WCLA, Washington Trucking Associations (WTA), Dana M. Willaford, Wisconsin Transportation Builders Association (WTBA), and Verizon Services Corporation (Verizon).

The majority of the commenters supported the proposed amendments. Several, however, suggested minor enhancements or modifications to the specific wording proposed by the Agency, to improve the clarity and to enhance the enforceability of the requirements. A discussion of each of the proposed amendments, including the comments received and the Agency position on each, is provided below.

1. *NPRM Proposal:* FMCSA proposed to amend § 393.5 to include definitions of ''crib-type trailer,'' and ''metal coil''. (70 FR 33438)

*Comments:* CCMTA stated that it does not support the addition of the proposed definition of ''crib-type log trailer'' in the Canadian standard at this time, as it has concerns with the prospect of logs being transported in trailers that are not restrained by any tiedowns.

DACAR suggested that ''coiled rod'' be added to the definition of metal coil as this term is used in the industry and market place, and recommended that consideration should also be given to including ''coated metal'' in the definition of metal coil. OSP agreed with the FMCSA decision to include a definition of ''metal coil,'' but commented that rubber or plastic encased wire on a spool should also be included in the definition of metal coil. Iowa DOT believes the proposed definition of metal coil should be expanded, as some enforcement jurisdictions are requiring compliance with this section when the load consists of wooden or metal spools or reels of wire, cable, tubing, plastic pipe, or other materials. Iowa DOT believes that spools and reels can be adequately secured by following the general cargo securement rules, including the use of blocks, wedges, or racks to keep the round spools and reels from rolling. CCMTA does not support the proposed definition of metal coils. CCMTA believes further assessment of the implications of including coils of wire and other metal products in this definition is needed, and proposed that metal wire which is not packaged on a spool should not be included in this definition, but rather should be secured in accordance with the general cargo securement requirements. Verizon stated rolls of telephone cable do not present the same risks as metal coils that meet the proposed definition and, therefore, should fall under the general cargo securement regulations.

*FMCSA Response:* FMCSA proposed a definition of ''crib-type log trailer'' in response to an inquiry from the Timber Producers Association of Michigan and Wisconsin, which expressed an interest in using a crib-type system for transporting logs and pulpwood. Such systems are typically based, in whole or in part, upon a patented design ''Apparatus for Constraining the Position of Logs on a Truck Trailer'' (Patent No. U.S. 6,572,314 B2). These systems use stakes, bunks, a front-end structure, and a rear structure to restrain logs on trailers. The stakes prevent movement of the logs from side to side on the vehicle while the front-end and rear structures prevent movement of the logs from front to back on the vehicle. The intent of such systems is to enable motor carriers to transport logs without the use of wrapper chains or straps to secure the load, thereby expediting the loading and unloading process.

FMCSA's proposed definition of ''crib-type log trailer'' is based directly on the description of the trailer design provided in the patent described above. The Agency believes that the proposed definition accurately reflects the specific provisions of the patent regarding the components of the trailer design (*i.e.*, the presence of stakes, bunks, a front-end structure, and a rear

structure) necessary to ensure the safe transport of logs without the use of additional safety wrapper chains or straps.[1] The crib-type trailers provide adequate restraint against lateral and longitudinal movement. While no restraint against vertical movement is provided, FMCSA does not believe tiedowns are necessary, because there are no readily apparent circumstances under which the cargo would bounce or blow over the top of the bunks, or front or rear structures. The logs would be fully contained within structures of adequate strength thereby satisfying the intent of the standard. Therefore, FMCSA continues to believe it is appropriate to add the definition of ''crib-type log trailer'' as proposed in the NPRM. It is noted that the commodity specific rule for securing logs, § 393.116, is also being amended to allow the use of crib type trailers. This is discussed in detail later in this document.

FMCSA does not agree with DACAR's request to add the additional qualifier of ''coated metal'' to the definition of metal coil, as the Agency's definition covers metal in various surface conditions such as coated or oiled. However, FMCSA agrees with the suggested addition of ''coiled rod'' to the definition of metal coil because the term describes a different type of metal product than the drawn wire or sheet metal listed in the proposed definition. FMCSA agrees with Iowa DOT and OSP that spools or reels of wire, cable and telephone cable should fall under the general definition of metal coil. Contrary to Verizon's contention that telephone cable be explicitly exempted, the Agency believes that plastic or rubber coated wire on cable spools or reels exceeding the 2,208 Kg (5,000 lbs) threshold specified in the commodity specific requirements for metal coils in § 393.120 presents the same type of risks if not properly secured. Therefore, FMCSA adds ''rod'' to the definition of metal coil, and expands the definition to include ''plastic or rubber coated electrical wire and communications cable.''

2. *NPRM Proposal:* FMCSA proposed to amend § 393.7(b)(19) by replacing ''November 15, 1999'' with ''April 26, 2003''. (70 FR 33438)

*Comments:* FMCSA received no comments regarding this amendment, which proposed to incorporate by reference a more up-to-date version of the National Association of Chain Manufacturers (NACM) publication titled ''Welded Steel Chain Specifications.'' At the time the NPRM was published, the publication dated April 26, 2003, was the most up-to-date version of this publication. However, shortly after the NPRM was published, NACM issued an updated version of the subject publication that was adopted by its members on September 28, 2005. FMCSA has compared the April 2003 and the September 2005 versions of the NACM publication, and found that only minor amendments to the material composition specifications for certain chain types have been adopted. FMCSA has determined that these minor changes will not have any affect on the provisions of this final rule. Because the change from the April 2003 to the September 2005 version simply reflects a more up-to-date version of the referenced NACM publication, FMCSA incorporates by reference the 2005 NACM standards. In addition, FMCSA similarly amends Section 2 of the table to § 393.104(e) to maintain consistency.

3. *NPRM Proposal:* FMCSA proposed to amend § 393.102 by revising paragraphs (c) and (d). (70 FR 33438)

*Comments:* PFITC, FPAC, Rayonier, Georgia Pacific, Allegheny, and EdgeWorks proposed to revise § 393.102(c)(1) regarding breaking strength to replace the wording ''Cargo securement devices and systems'' to the more specific ''Tiedowns, tiedown systems, straps, and strapping systems.'' These commenters contend that this change will ensure § 393.102(c)(1) applies only to tiedown and strapping systems, thereby not unintentionally ruling out the use of many effective securement devices, such as wood blocking, nails, air bags, friction mats, friction between the cargo and the floor or other cargo, and shoring bars that are all examples of cargo securement devices and components of systems that do not have or need breaking strengths assigned by manufacturers.

Similarly, and for the same reasons, these commenters also proposed that § 393.102(c)(2) regarding working load limits be amended to only apply to tiedowns and strapping systems by revising § 393.102(c)(2) by replacing the wording ''Cargo securement devices and systems'' to the more specific ''Tiedowns, tiedown systems, straps, and strapping systems.''

In addition, these commenters proposed a change in the wording of § 393.102(d)(2) from ''Fills a sided vehicle'' to ''Transported in a sided vehicle'' to clarify that this amendment will not be interpreted to mean a vehicle must be completely filled from top to bottom, side to side, and from end to end to qualify for this alternative.

OSP commented that the term ''immobilized'' in § 393.102(d) and in § 393.100(c) creates confusion, and appears to contradict the remainder of 393.100(c), which permits some shifting of cargo upon or within the vehicle, provided that the vehicle's stability or maneuverability is not adversely affected. Similarly, NY–DOT recommended amending the proposed language in § 393.102(d) to clarify that cargo that shifts or tips, but does not affect the vehicle's stability and safe operation is not in violation. NY–DOT also noted that it appears that the word ''of'' has been mistakenly omitted from the phrase ''articles of cargo'' in § 393.102(d).

OSP supported FMCSA's position concerning the need to reduce the g-force deceleration requirements to more realistically reflect the normal demands on cargo securement systems. OSP believes the enforcement community is primarily concerned that the criterion is enforceable and understandable to enforcement officers and CMV drivers. OSP states that it will be impossible for an enforcement officer inspecting a CMV to determine whether that particular vehicle would be capable of meeting the specified g-force requirements. OSP's experience with cargo securement enforcement suggests that drivers fail to use a sufficient number of tie-downs to meet the minimum requirements (aggregate working load limit (WLL) greater than or equal to ½ the weight of cargo), and the tiedowns are poorly positioned or damaged. OSP believes the WLL formula is enforceable and fair, and supports the proposed change in performance standards while keeping the current aggregate WLL formula.

PFITC, FPAC, Rayonier, Georgia Pacific, Allegheny, and EdgeWorks recommended that default breaking strength tables be added to the regulation if there is a ''prohibition on exceeding breaking strength ratings,'' regardless of whether the prohibition is related to all securement materials or just tiedowns and strapping systems. They contend that the addition of breaking strength tables will provide users, enforcement, and legal system personnel a necessary tool to determine the breaking strength of unmarked devices. The commenters noted that they did not have the necessary expertise to recommend the specifics of these tables.

Kinedyne believes that the re-introduction of ''breaking strength'' into the FMCSR will reintroduce confusion that was eliminated in 1994, when 49

[1] FMCSA is also revising § 393.116(b)(3) to include an exception to the regulation requiring tiedowns to enable motor carriers to use crib-type trailers, without tiedowns, provided specific conditions are satisfied. This issue is discussed later in this final rule in the section addressing the specific requirements of § 393.116.

CFR Part 393 was revised to (1) remove all references to breaking strength ratings, and (2) specify that load securement devices only be rated by the WLL. Kinedyne recommended that FMCSA retain the 0.8 g deceleration in the forward direction, 0.5 g in the rearward and lateral directions, and that cargo securement devices should not exceed the WLL at these conditions. Kinedyne acknowledged that these are the extreme conditions of normal operations, but believes that cargo securement systems should be designed to restrain the cargo in exactly these extreme conditions. Mr. Joseph Takacs Jr. noted that breaking strength is a value for brand new cargo securement products used to establish the WLL, and does not take into consideration aging, cuts and wear.

CCMTA stated that it believes there was consensus among all parties who participated in the development of the North American Cargo Securement Standard that ''Cargo being transported on the highway must remain secured on or within the transporting vehicle under all conditions expected to occur in normal driving situations and when a driver is responding to emergency situations, short of a crash.'' CCMTA believes these debates concluded successfully with consensus among representatives from governments and industry on performance criteria of 0.8 g deceleration in the forward direction and 0.5 g in the lateral and rearwards directions. These criteria are similar to those adopted in Great Britain, Europe, Australia and New Zealand. CCMTA acknowledges that heavy braking applications which generate 0.8 g deceleration are relatively rare occurrences, however, CCMTA notes that there appears to be little dispute that this performance is within the capability of most vehicles. It is CCMTA's view that ensuring the cargo securement system is robust enough to match the capabilities of the transport vehicle is not only critical to highway safety, but is entirely consistent with the fundamental statement of public policy interest outlined previously.

CCMTA notes that in the preamble to the NPRM, FMCSA suggests that there should be a distinction between normal driving conditions and emergency situations, short of a crash from the perspective of the strength requirements of cargo securement systems. CCMTA does not support this view, and firmly believes the WLL of cargo securement systems should never be exceeded when subjected to forces resulting from both normal driving situations and when a driver is responding to emergency situations, short of a crash.

CCMTA states that most manufacturers of cargo securement equipment advise users that the WLL of their equipment should never be exceeded. CCMTA refers to Section 10 of the ''Welded Steel Chain Specifications'' of the National Association of Chain Manufacturers, which includes the warning, ''Manufacturers do not accept any liability for injury or damage which may result from dynamic or static loads in excess of the working load limit or used in a manner contrary to the manufacturer's instructions or recommendations.''

CCMTA does not support the approach proposed by FMCSA which acknowledges that the WLL of securement equipment would likely be exceeded whenever a driver encounters ''emergency situations short of a crash.'' CCMTA states that under those conditions, FMCSA is prepared to assume that the additional capacity required to restrain the cargo in emergency situations can be found in safety factors, and consequently the breaking strength of the equipment would not likely be exceeded. CCMTA disagrees with this approach, and notes that safety factors present for new equipment erode over time due to minor damage through normal usage, exposure to the environment, and aging.

CCMTA strongly urged the FMCSA to retain the approach and wording contained in its current regulation, and stated that it is not prepared to adopt the proposed change in Canada's National Safety Code.

WTBA and ARTBA request that FMCSA continue to clarify and emphasize that the performance criteria contained in § 393.102(a) are not applicable if the provisions of the rule referenced in § 393.102(d) are followed. WTBA notes that there is confusion regarding the specified performance criteria in § 393.102(a) which are not measurable in the field, and that there are alternative means to meet the rule by the requirements in §§ 393.104 through 393.136.

*FMCSA Response:* FMCSA agrees with PFITC, FPAC, Rayonier, Georgia Pacific, Allegheny, and EdgeWorks that § 393.102(c) should be reworded so as not to discount the use of devices such as wood blocking, nails, air bags, friction mats, friction between the cargo and the floor or other cargo, and shoring bars simply because these examples of cargo securement devices and components of cargo securement systems typically do not have a WLL or breaking strength assigned by manufacturers. FMCSA notes that § 393.104(d) requires that material used as dunnage or dunnage bags, chocks, cradles, shoring bars, or used for blocking or bracing, must not have damage or defects which would compromise the effectiveness of the securement system. However, while commenters suggested replacing the wording ''Cargo securement devices and systems'' with the more specific ''Tiedowns, tiedown systems, straps, and strapping systems,'' the Agency amends the language to be consistent with language currently specified in § 393.104(e) regarding manufacturing standards for tiedown assemblies. Specifically, the term ''cargo securement devices and systems'' in § 393.102(a)(i)–(ii) will be replaced with ''Tiedown assemblies (including chains, wire rope, steel strapping, synthetic webbing, and cordage) and other attachment or fastening devices used to secure articles of cargo to, or in, commercial motor vehicles.''

While FMCSA does not believe that the proposed amendment to § 393.102(c)(2) would have resulted in confusion to enforcement personnel as to whether the vehicle needs to be completely filled to meet the criteria, the Agency amends the wording as suggested to ''Is transported in'' to ensure clarity of the requirement.

FMCSA agrees with OSP and NY–DOT that use of the term ''immobilized'' as proposed in § 393.102(d)(1) could be misinterpreted to mean that shifting of cargo is not permitted under any circumstances, which (1) the Agency acknowledges is impracticable under real-world operating conditions, and (2) conflicts with the current language in § 393.100(c) which states that ''cargo must be contained, immobilized or secured * * * to prevent shifting upon or within the vehicle *to such an extent that the vehicle's stability or maneuverability is adversely affected.*'' (Emphasis added) To avoid interpretation of the term ''immobilized'' as an absolute, and to maintain consistency with other sections of the regulatory text, FMCSA has added the qualifying language currently in § 393.100(c), as stated above, to §§ 393.102(c)(1) and (2).

FMCSA agrees with the comment by NY–DOT that the Agency should revise § 393.102(d) to replace the NPRM's ''articles cargo'' with ''articles of cargo.'' This is an editorial correction and the final rule includes this change.

FMCSA does not agree with Kinedyne that the introduction of breaking strength into § 393.102(a) will create confusion. Breaking strength is readily available information included in product literature from tiedown manufacturers and in the publications

incorporated by reference under § 393.104. The Agency notes that Kinedyne provides both working load limit and breaking strength for their tiedown products on its website. In most instances, the breaking strength would only be used by technical personnel responsible for designing a securement system. These individuals would not have difficulty looking up the information and applying it in an appropriate manner. However, from a practical standpoint, it is unlikely that drivers and roadside enforcement personnel would attempt to assess compliance with the performance criteria under § 393.102. Generally, motor carriers are not required to conduct testing of cargo securement systems to determine compliance with the performance requirements of § 393.102(a) and/or § 393.102(c), and § 393.102 explicitly states that cargo that is immobilized or secured in accordance with general rules regarding cargo securement systems, or the commodity-specific rules, is considered to meet the performance criteria.

FMCSA agrees with the comment by Mr. Takacs that the working load limit is based on the breaking strength of a cargo securement device. Mr. Takacs expressed concern that references to a cargo securement product's breaking strength will be confusing or misinterpreted because persons may not be aware that the breaking strength is a value for new products, and does not take into consideration the effects of aging, cuts, and wear. As noted above, FMCSA does not believe that this language will be confusing, and the Agency notes that § 393.104(c) states that ''vehicle structures, floors, walls, decks, tiedown anchor points, headerboards, bulkheads, stakes, posts, and associated mounting pockets used to contain or secure articles of cargo must be strong enough to meet the performance criteria of § 393.102, with no damaged or weakened components such as, but not limited to, cracks or cuts that will adversely affect their performance for cargo securement purposes, including reducing the working load limit.'' As such, any components of a cargo securement system exhibiting these defects must be removed from service.

While numerous commenters opposed FMCSA's proposed amendments to § 393.102 to distinguish between the performance requirements for cargo securement systems using both working load limit (under ''normal'' operating conditions) and breaking strength (under the most extreme operating conditions short of a crash), the Agency continues to believe that these amendments (1) are needed to resolve an existing internal inconsistency in the regulatory language, and (2) do not result in a reduced level of safety with respect to cargo securement systems. Working load limit is defined in § 393.5 as the maximum load that may be applied to a component of a cargo securement system *during normal service* (emphasis added). However, § 393.102(c) currently requires that cargo securement devices and systems be designed, installed, and maintained to ensure that the maximum forces acting on the devices or systems do not exceed the working load limit for the devices under a (1) 0.8 g deceleration in the forward direction, (2) 0.5 acceleration in the rearward direction, and (3) 0.5 acceleration in the lateral direction, all applied separately. FMCSA continues to believe that 0.8 g deceleration in the forward direction and 0.5 g acceleration in the lateral direction do not represent ''normal'' operating conditions. The conditions described above more closely align with the most extreme operating conditions a vehicle may experience short of a crash, and real-world studies have shown these conditions occur infrequently. The discussion that follows presents the Agency's rationale for determining that the conditions listed above do not represent ''normal'' operating conditions.

The North American Cargo Securement Standard Model Regulation is based on work conducted under the North American Load Security Research Project, initiated in the early 1990s to develop an understanding of the mechanics of cargo securement on heavy trucks. The research was intended to provide a sound technical basis for development of the Model Regulations. Tests were conducted to examine the fundamental issues of anchor points, tiedowns, blocking and friction, and issues related to securement of dressed lumber, large metal coils, concrete pipe, intermodal containers, and other commodities.

In an effort to address the concerns raised by commenters regarding the distinction between ''normal'' operating conditions and the most extreme operating conditions short of a crash, FMCSA revisited the findings presented in a Summary Report that was prepared at the conclusion of the Load Security Research Project described above. Section 2 of the Summary Report, Definition of Terms, defines ''Normal Driving'' as ''the maximum acceleration that a driver might expect *from hard braking* or a turning maneuver (emphasis added).'' The Summary Report also noted that an understanding of the performance of vehicles within the highway system was necessary to be able to place the research findings in context, and provided the following discussion:

> About 85% of all brake applications for heavy vehicles occur *during normal driving*, and result in decelerations under 0.19 g. *A deceleration above 0.3 g is quite a hard stop*. Only about 0.11% of all brake applications exceed 0.4 g. (Emphasis added)

The discussion above, as presented in the Load Security Summary Report, comes from the National Highway Traffic Safety Administration's (NHTSA) report ''An In-Service Evaluation of the Reliability, Maintainability, and Durability of Antilock Braking Systems (ABS) for Heavy Truck Tractors,'' DOT HS 807 846, March 1992, which provides data concerning routine brake application pressures and the resulting forces. NHTSA used on-board electronic data monitors/recorders installed on 216 vehicles (200 ABS equipped truck tractors, and 16 control vehicles). The data were accumulated over nearly 600,000 hours and 18 million miles of tractor operation. More than 13 million brake applications occurred during that time period, at all times of the year and during all types of weather. Brake pressures of 15 pounds per square inch (psi) or less (light braking) accounted for approximately 84 percent of the total braking time recorded. An additional 10 percent of brake applications were between 15 and 20 psi and almost all the remaining brake applications were below 45 psi (moderate to hard braking). Only 0.02 percent of the total braking time was at pressures of 75 psi or greater. Eighty-five percent of the braking resulted in 0.19 g, or less, decelerations indicating light braking, and another 14.7 percent resulted in moderate-to-hard braking from 0.19 to 0.40 g. Importantly, (1) deceleration levels above 0.40 g were only encountered in 0.11 percent of brake applications, and (2) Figure 4.2 of the NHTSA report (Histogram of Braking Deceleration Levels for the 200 ABS-Equipped Tractors Over the Two-Year Period of the Test) indicates that *no* deceleration levels above 0.47 g were measured in the more than 13 million brake applications recorded.

For the purposes of the NHTSA study, a ''major'' ABS braking event was considered to have occurred if at least one wheel speed decreased to 80 percent or less of vehicle speed (*i.e.*, 20 percent wheel slip occurred) during a brake application and then increased speed coincident with solenoid operation at that wheel, and this

occurred for more than 4 cycles. This situation was considered indicative of conditions in which the ABS was cycling often enough to indicate the presence of either very slippery road surface conditions or very high brake pressures (consistent with maximum braking effort stops); conditions potentially conducive to a crash. Using this definition, the test ABSs were found to actuate approximately 10 times a year per truck tractor.

Concerns have been raised that while only 0.11 percent of the more than 13 million brake applications recorded in the NHTSA study exceeded 0.4 g, this still translates into more than 14,000 brake applications that would have exceeded the 0.4 g threshold proposed by FMCSA for normal operating conditions. As noted above, however, Figure 4.2 of the NHTSA report clearly demonstrates that the brake applications exceeding 0.4 g did not approach the 0.8 g threshold, but rather were measured to be between 0.4 g to a maximum of 0.47 g. Further, only approximately 4000 ''major'' ABS braking events (200 ABS-equipped truck tractors × 10 ABS actuations/year × 2 year study), indicating conditions potentially conducive to a crash, were recorded over the course of the study. Even if all of these 4,000 ''major'' ABS braking events were attributable to very high brake pressure (consistent with maximum braking effort stops, as opposed to very slippery road surface conditions), this represents only 0.03 percent of the more than 13 million brake applications measured over the course of the 2-year study. In other words, approximately 99.97 percent of the brake applications measured in the NHTSA study can be considered to have been made under ''normal'' operating conditions—and not under emergency conditions that would actuate the ABS. From the above, it is clear that the current performance criteria of § 393.102(a) do not represent normal service or operating conditions. Specifically, a deceleration in the range of 0.8–0.85 g in the forward direction is *not* a routine force that commercial vehicles are subjected to on a regular basis, but rather (1) ''the highest deceleration likely for an empty or lightly loaded vehicle with an anti-lock brake system, with all brakes properly adjusted, and warmed to provide optimal braking,'' as noted in the September 2002 final rule, and (2) one that did not occurr in the over 13 million brake applications as noted in the Summary Report. The same may be said of a 0.5 g acceleration in a lateral direction, as the Summary Report states that ''the typical lateral acceleration while driving a curve or ramp at the posted advisory speed is in the range of 0.05–0.17 g.''

Given the above, and considering that the Load Security Summary Report defined ''normal driving'' as ''the maximum acceleration that a driver might expect from a hard braking or a turning maneuver, FMCSA does not consider the performance criteria of § 393.102(a) to represent ''normal'' service. It follows that the current reference in § 393.102(c) that cargo securement devices and systems must be designed, installed, and maintained to ensure that the working load limit of these devices are not exceeded under the conditions listed in § 393.102(a) is inconsistent with actual operational demands and needs. Instead, because the Summary Report indicates (1) a deceleration above 0.3 g is quite a hard stop, (2) deceleration levels above 0.4 g were only encountered in 0.11 percent of brake applications, and (3) that normal driving conditions are characterized as being those where the maximum acceleration that a driver might expect from hard braking or a turning maneuver, FMCSA amends § 393.102 to resolve this internal inconsistency in the regulatory language.

However, instead of requiring that the forces acting on tiedown assemblies not exceed the working load limit for those devices under a 0.4 g deceleration in the forward direction as proposed in the NPRM, FMCSA believes that given the discussion above, it is more appropriate to adopt a 0.435 g threshold. To address the small percentage of brake applications recorded in the NHTSA study that exceeded 0.4 g, but were not considered a ''major'' ABS event that resulted in the actuation of the ABS, adoption of a 0.435 g threshold will provide an added margin of safety over that which would be achieved through the 0.4 g threshold proposed in the NPRM. At the same time, adoption of a 0.435 g threshold will maintain consistency with the minimum requirements for braking force currently specified in § 393.52(d) for motor vehicles or combinations of motor vehicles.

Specifically, this final rule requires that cargo securement devices and systems be designed, installed, and maintained to ensure that the (1) maximum forces acting on the devices or systems do not exceed the manufacturer's breaking strength rating under the conditions currently listed in § 393.102(a), and (2) forces acting on the devices or systems under normal operating conditions do not exceed the working load limit for the devices under (1) 0.435 g deceleration in the forward direction, (2) 0.5 acceleration in the rearward direction, and (3) 0.25 acceleration in the lateral direction, all applied separately. It is important to note that FMCSA has not eliminated the requirement that cargo securement systems and devices not fail under the maximum performance capabilities of the vehicle; rather, the Agency does not believe that it is necessary that these cargo securement systems or devices be prohibited from exceeding their stated working load limits under these extreme conditions.

FMCSA certainly agrees with CCMTA's concerns regarding the safe transport of cargo on the nation's highways. At the same time, we continue to believe that the use of working load limits of securement devices to determine whether the cargo securement system can withstand 0.8 g deceleration in the forward direction under all conditions, including emergency braking short of a crash, would result in a potentially burdensome requirement on the industry. Any safety benefits that would result from such a requirement, if benefits exist at all, would likely be grossly disproportionate to the costs of the requirement. If FMCSA retains the requirement that the working load limit must not be exceeded under 0.8 g, the Agency would need to revise § 393.106(d) to require that the aggregate WLL be equal to the weight of the load. This change would be required because § 393.106(d) indicates that cargo secured in accordance with §§ 393.104–393.136 is considered as meeting the performance criteria. This is clearly not the case with the current rule. The change to § 393.106(d) would essentially double the number of tiedowns required. The aggregate WLL needed to withstand 0.8 g is far in excess of the value needed to fulfill the requirement for the aggregate WLL to be equivalent to one half the weight of the articles of cargo being secured. In this regard, FMCSA's 2005 NPRM presented a solution to the inconsistency that retains performance requirements consistent with the original research on this subject and the Model Regulation. The performance requirements are intended to both (1) prevent the securement system from failing under 0.8 g deceleration and (2) to ensure that the WLL for securement devices is rarely exceeded under routine, day-to-day operations. FMCSA notes that none of the commenters provide an alternative that would enable the Agency to resolve the internal

inconsistency while achieving the goals of the Model Regulation.

The calculation of the aggregate WLL is the most readily enforceable portion of the performance requirements because motor carrier managers, drivers and enforcement personnel typically cannot test the performance capability of the cargo securement systems or devices in use on a vehicle during the loading process, or during a roadside inspection. A change in the aggregate WLL value necessary to meet the more stringent performance requirements of 0.8 g in the forward direction and 0.5 g in the lateral and rearward direction would result in motor carriers needing more tiedowns to secure the cargo. CCMTA did not address or provide comment regarding this issue.

Given the discussion provided above, and in an effort to make the performance criteria section of the regulation more easily understood, FMCSA amends § 393.102, consistent with the June 2005 NPRM, with the minor change to the 0.435 g deceleration performance requirement in the forward direction as opposed to the 0.4 g threshold proposed in the NPRM.

FMCSA agrees with WTBA and ARTBA that compliance with the specified performance requirements of 393.102(a) and 393.102(c) cannot be determined in the field, however when cargo securement techniques are evaluated, whether the commodity specific cargo securement requirements are followed, or the general requirements for cargo are used as a baseline, consideration must be given to the performance requirements of 393.102(a) and 393.102(c). The Agency stresses that the cargo securement requirements as identified in 393.106, and 393.110 through 393.136 are the minimum requirements. Nothing in the rule prohibits motor carriers from using additional devices.

4. *NPRM Proposal:* FMCSA proposed to amend § 393.104 by removing paragraph (f)(4) and redesignating paragraph (f)(5) as (f)(4), replacing ''November 15, 1999'' with ''April 26, 2003'' after the publication title ''National Association of Chain Manufacturers' Welded Steel Chain Specifications,'' and by revising paragraphs (b) and (c). (70 FR 33438)

*Comments:* PFITC, FPAC, Rayonier, Georgia-Pacific, and Allegheny requested that § 393.104(a) and § 393.104(c) be reworded for clarification because of the differences in the performances requirements listed between § 393.102(a) and § 393.102(c)(2). These commenters contend that failure to make this change may lead to (1) significantly reduced load securement requirements for all cargo, possibly resulting in danger to carrier personnel and the general public, and (2) possible confusion to personnel who plan load securement systems, load cargo, transport cargo, and enforcement personnel as to which performance criteria (g-forces) of § 393.102 must be met. These commenters suggested that the reference to § 393.102 in both § 393.104(a) and § 393.104(c) be changed to specifically reference the requirements of § 393.102(a).

DOE agreed that the FMCSA proposal to rescind § 393.104(f)(4) would not have an adverse impact on safety, but DOE noted that the inference that it is acceptable to attach tiedowns to rub rails appears to be in conflict with requirements for anchor point and the ''North American Cargo Securement Standard Model Regulation.'' DOE and Mr. Takacs noted that the model regulation defines a rub rail as a rail along the side of a vehicle that protects the sides of the vehicle from impacts, and rub rails are not normally rated by manufacturers. They suggested that given the abuse rub rails are subject to, it would appear they would not be adequate as an anchor point, especially for aluminum bed trailers whose aluminum rub rails may bend and crack easily. They argued that, because the stake pockets located on the sides of flatbed trailers are the only points rated by manufacturers for load securement purposes, using rub rails as anchor points is not in the best interest of cargo securement safety.

EMC stated that they and other leading trailer manufacturers have redesigned their platform trailers and related accessories to include features designed to allow consistent compliance with the current rule. EMC identified these features as (i) use of winch tracks and sliding winches on either side of the trailer; (ii) the provision of hook-retainer clips/brackets designed to be slidably mounted on the winch track (on the opposite side of the trailer relative to the winch) and designed to receive and positively capture the flat-hook or other hook located at the distal end of the cargo retaining strap; (iii) the development of low-profile sliding winches that can be positioned in a forward location on the winch track without interfering with the tires of the tractor; and (iv) the inclusion of tracks in the trailer deck intended to provide for adjustable positioning of chain tie-down plates. EMC stated that these features allow cargo tie-down straps to be positioned inside the rub rails as required by the current rule § 393.104(f)(4). EMC believes that FMCSA's finding that it is not possible to achieve uniform and consistent enforcement of § 393.104(f)(4) is due to the fact that some carriers have not upgraded their fleets to include modern trailers with these state-of-the-art securement features, and that many trailer manufacturers have not made efforts to provide equipment that aids in compliance with the final rule. EMC stated that they and other trailer manufacturers have demonstrated that compliance with the requirements of § 393.104(f)(4) is practicable, and have expended significant resources to comply with the current rule. EMC states that revising the rule as proposed favors manufacturers and carriers who have not sought to comply with the current rule and, as a result, have unfairly avoided significant time and expense burdens. EMC proposed maintaining the current rule, but asked FMCSA to consider a grandfather provision to exempt older trailers from the requirements of 393.104(f)(4).

Kinedyne also recommended retaining the existing § 393.104(f)(4). However, Kinedyne recommended that if this section is eliminated, then the rub rail should be re-identified as a ''securement rail'' and needs to have an established WLL rating by the trailer manufacturer per § 393.108.

CCMTA acknowledges the compliance and enforcement difficulties of § 393.104(f)(4) which have arisen with the inclusion of the term ''whenever practicable'' with respect to placement of tiedowns inboard of rub rails. CCMTA continues to believe that tiedowns should be routed behind rub rails whenever possible. CCMTA proposes that this requirement be phased in over a longer period to allow industry to make adjustments in both the training programs and equipment. CCMTA believes the CVSA Out-of-Service criteria, which provides detailed explanations of unacceptable conditions, provides more practical guidance with respect to damaged or weakened components than is specified in § 393.104.

*FMCSA Response:* FMCSA agrees with the PFITC, FPAC, Rayonier, Georgia-Pacific, and Allegheny comment that there are two performance requirements for load securement devices, specifically § 393.102(c)(2) which ensures the adequate performance of these devices during normal operating conditions, and § 393.102(a), which ensures adequate performance of these devices during all conditions. However, the agency does not believe that this will impact cargo securement safety because most motor carriers are using the calculation of the required aggregate working load limit to

determine the minimum number of tiedowns required to secure their load.

With respect to the comments from DOE, Kinedyne, and Mr. Takacs recommending that rub rails have specified WLLs in order to be used as cargo securement anchorages, FMCSA notes that the 2002 final rule did not include a requirement that anchor points be rated and marked. The 2002 final rule noted that while the Agency agreed with the basic principle of rating and marking of anchor points, there was insufficient data to support establishing manufacturing standards at that time. Any such amendments to the regulatory language to adopt provisions requiring the rating and/or marking of anchor points are beyond the scope of this rulemaking.

FMCSA appreciates the comments provided by EMC, and agrees that vehicle manufacturers can incorporate features that assist the vehicle operators in complying with the cargo securement regulations. The Agency believes that in many instances, the nature of the cargo dictates the ability of the cargo securement devices to meet the existing requirements of § 393.104(f)(4). As discussed in the NPRM, however, State enforcement personnel and motor carriers expressed difficulties in achieving uniform and consistent enforcement of the regulation. Therefore, the Agency rescinds § 393.104(f)(4) as proposed.

5. *NPRM Proposal:* FMCSA proposed to amend § 393.106 to revise paragraphs (a) and (d). (70 FR 33438–33439)

*Comments:* PFITC, FPAC, Rayonier, Georgia-Pacific, and Allegheny provided comments recommending a change to add friction mats to the list of securement materials, identified in 393.106(b) to remove potential for misinterpretation by the enforcement, carrier, shipping and legal communities.

OSP concurred with FMCSA's proposed revision of § 393.106(d), but asked the Agency to clarify the term ''attachment point.'' OSP requested clarification as to whether the tiedown must be attached to a designated point of attachment on the cargo, or simply anywhere (i.e., on the tracks of a bulldozer) as long as the attachment is secure.

Iowa DOT commented that additional language is necessary in § 393.106(d) to ensure that load securement devices are somewhat evenly matched, and that securement capability be evenly distributed to the cargo being secured. Iowa DOT suggested that adoption of language that would ensure that there is adequate securement in each of the forward, rearward, and lateral directions.

CCMTA is opposed to the proposed change regarding the determination of the aggregate WLL. CCMTA contends that the proposal will reduce the contribution of direct tiedowns to the determination of aggregate WLL by 50%. CCMTA believes that this represents a fundamental change from the Model Regulation completed in May 1999, and will conflict with Canada's National Safety Code which states:

- The ''aggregate working load limit'' is the sum of one-half of the working load limit for each end section of a tiedown that is attached to an anchor point
- The National Safety Code defines anchor points as ''part of the structure, fitting or attachment on a vehicle or cargo to which a tiedown is attached''

CCMTA believes that direct tiedowns that attach to cargo provide a much more reliable and predictable level of securement than indirect tiedowns.

WTBA/ARTBA requests that the rule be modified to include 100% of the WLL of direct tiedowns to be used in determining whether the requirements of the rule are met, as opposed to the 50% currently specified. WTBA/ARTBA contends that the current rule encourages the use of indirect tiedowns, and WTBA/ARTBA believes in the context of heavy equipment and wheeled and tracked equipment that this approach undermines the goal of safe transport of this equipment. WTBA believes that direct tiedowns hold the equipment in a stationary position, while indirect tiedowns allow for the equipment to move.

*FMCSA Response:* In response to the comments regarding the definition of ''attachment point'' presented by Iowa DOT, the Agency notes that § 393.5 defines ''anchor point'' as ''part of the structure, fitting, or attachment on a vehicle or article of cargo to which a tiedown is attached.'' Based on this definition, an anchor point can be part of the structure, and does not need to be a designated attachment point. With respect to the concerns from Iowa DOT about loads being unevenly secured, FMCSA notes that § 393.100(c) requires that cargo must be contained, immobilized, or secured to prevent shifting upon or within the vehicle to such an extent that the vehicle's stability or maneuverability is adversely affected. Although mismatching of tiedowns could potentially result in real-world securement issues, the Agency believes § 393.106(d) concerning aggregate WLL deters such practices for what is commonly referred to as direct tiedowns. The rule effectively requires that tiedowns on opposite sides of the load have similar ratings in order to meet the minimum aggregate WLL.

In addressing the comment from OSP regarding attachment points, and the related comments from CCMTA and WTBA/ARTBA regarding the calculation of the aggregate WLL, FMCSA revisited the research reports that serve as the basis for the Model Regulation. First, the Summary Report defines ''anchor point'' as ''part of the structure of a vehicle, or a device firmly attached to that structure, that is designed or commonly used to attach a tiedown assembly.'' From this, it is clear that an anchor point is part of the vehicle, and not on the article of cargo. Second, Section 5.7.1 of the CCMTA Load Security Research Project Summary Report notes that tiedowns serve one of two purposes; they either (1) provide direct resistance to an external acceleration, or (2) increase somewhat the coefficient of friction between the cargo and the deck of the vehicle. The definition of anchor point, along with an understanding of direct and indirect tiedowns—and their contribution to the calculation of aggregate WLL—are discussed in greater detail below.

While the definition of anchor point in the Load Security Research Project Summary Report clearly refers to a point on the vehicle structure, the definition of anchor point in the subsequent Draft Model Regulation was revised to ''part of the structure, fitting or attachment *on a vehicle or cargo* to which a tiedown is attached.'' (Emphasis added) It is not clear to FMCSA why this revision was adopted, but the revised definition of anchor point (to include a point on the vehicle or article of cargo) has been retained in each of the subsequent FMCSA rulemaking documents, revisions to the Model Regulation, and the National Safety Code. This change in terminology, in conjunction with related issues concerning tiedowns discussed below, results in significant changes in calculating the aggregate WLL of a cargo securement system that appear to depart from the original intent of the underlying research and the May 1999 version of the Draft Model Regulation.

The Summary Report states that ''tiedowns placed at a shallow angle to the horizontal that are attached at one end to the vehicle and directly at the other to an article, or pass through an article and are attached on each end to the vehicle, provide an effective direct resistance to forces arising from an external acceleration.'' This served as the basis for the definition of ''direct tiedown'' in the North American Cargo

Securement Standard Draft Model Regulation, dated May 1999, which defined ''direct tiedown'' as ''a tiedown that is intended to provide direct resistance to potential shift of an article.'' mportantly, for the purposes of calculating the aggregate WLL of a cargo securement system, the Draft Model Regulation stated:

> For the purposes of calculation, the aggregate working load limit of all direct tiedowns used to restrain articles is based on the sum of:
>
> One-half of the working load limit of each direct tiedown that is connected between the vehicle and the article of cargo.
>
> The working load limit of each direct tiedown that is attached to the vehicle, passes through or around an article of cargo, or is attached to it, and then is again attached to the vehicle.

The Summary Report states that ''transverse tiedowns that pass across an article and are attached to each side of the vehicle simply increase somewhat the coefficient of friction between the cargo and the deck.'' This served as the basis for the definition of ''indirect tiedown'' in the North American Cargo Securement Standard Draft Model Regulation, dated May 1999, *i.e.*, ''a tiedown whose tension is intended to increase the pressure of an article or stack of articles on the deck of the vehicle.'' Importantly, for the purposes of calculating the aggregate WLL of a cargo securement system, the Draft Model Regulation stated:

> For the purposes of calculation, the aggregate working load limit of all indirect tiedowns used to restrain articles is based on the sum of the working load limits of each indirect tiedown.

FMCSA acknowledges there has been confusion in recent years regarding the definitions of ''direct'' and ''indirect'' tiedowns, and regarding the contribution of each toward the calculation of the aggregate WLL of a cargo securement system. During the notice-and-comment rulemaking process, FMCSA proposed certain requirements in the 2000 NPRM that would have necessitated the distinction between what were referred to as ''direct tiedowns'' and ''indirect tiedowns.'' After reviewing the docket comments, the Agency attempted to adopt a more straightforward approach in the 2002 final rule for calculating the aggregate WLL, while preserving the potential safety benefits of making the distinction between the two types of tiedowns. While the Agency believes that the language adopted in the 2002 final rule was easier to understand than that proposed in the 2000 NPRM, it was clear—based on numerous telephone inquiries from FMCSA field offices, State enforcement agencies, and industry groups—that the intent of § 393.106(d) was still not easily understood. The 2005 NRPM attempted to amend the language to provide an effective approach for adding working load limits for individual tiedowns in a cargo securement system that, at the same time, yields the same answer as the regulatory language in the 2002 final rule. It is important to note that throughout each iteration of the cargo securement rulemaking, it has been the intent of the Agency to maintain consistency with the original Draft Model Regulation.

Specifically, the 2005 NPRM proposed to simplify the formula for determining the aggregate WLL for tiedowns to be the sum of (1) one-half the working load limit of each tiedown that goes from an anchor point on the vehicle to an attachment point on an article of cargo, and (2) the working load limit for each tiedown that goes from an anchor point on the vehicle, through, over or around the cargo and then attaches to another anchor point on the vehicle.

However, CCMTA contends that the above proposal would reduce the contribution of direct tiedowns to the determination of aggregate WLL by 50 percent. CCMTA contends that this represents a fundamental change from the approach proposed in the May 1999 Draft Model Regulation and would establish a serious conflict with the provisions of Canada's National Safety Code which state that the ''aggregate working load limit is the sum of one-half of the working load limit for each end section of a tiedown that is attached to an anchor point.'' Because anchor points can be either on the vehicle or cargo, CCMTA contends that the contribution of a direct tiedown to the aggregate WLL is the full WLL of that tiedown.

FMCSA believes the CCMTA comment above is inconsistent with the provisions of the original Draft Model Regulation. Whereas CCMTA indicates a direct tiedown should be credited with the full WLL of that tiedown toward the aggregate WLL for that cargo securement system, the Draft Model Regulation states that each tiedown connected between the vehicle and the article of cargo contributed one-half of that tiedown's WLL toward the aggregate WLL for the system. This is likely a result of the revisions to the definition of anchor point, which initially referred only to a point on the vehicle, but now refers to a point on the vehicle or the article of cargo. While CCMTA contends that FMCSA has reduced the contribution of direct tiedowns to the determination of aggregate WLL by 50 percent, in fact, CCMTA has doubled the contribution of such tiedowns. FMCSA is not aware of any research or analysis to support this departure from the provisions of the Draft Model Regulation.

The Draft Model Regulation stated that in the case of direct tiedowns that attach to the vehicle, pass through or around an article of cargo, or is attached to it, and then again attached to the vehicle, the full WLL of that tiedown would count toward the aggregate WLL for the system. Given that the Draft Model Regulation clearly addressed this scenario under the heading of direct tiedowns, and that direct tiedowns are defined as those tiedowns that provide direct resistance to forces arising from an external acceleration, it is unclear to FMCSA why the full WLL of such tiedowns were considered to contribute to the aggregate WLL for that system, provided that the tiedown attached back to the vehicle at or near the original point of attachment of the tiedown. Otherwise, if it attached to the other side of the vehicle, it would have to be considered an indirect tiedown under the definitions provided. FMCSA believes that it follows that all direct tiedowns should be considered to contribute equally to the aggregate WLL of a system. If the tiedown fails in either of these instances, the article of cargo will not be secured at that point. Given the above, FMCSA believes that for the purposes of calculation, each tiedown that is attached to the vehicle, passes through or around the article of cargo, and then is again attached the vehicle on the same side should contribute one-half of that tiedown's WLL toward the aggregate WLL of the system.

The proposed language in the 2005 NPRM regarding ''indirect tiedowns'' is consistent with the language in the Draft Model Regulation, in that the full working load limit of each tiedown that goes from an anchor point on the vehicle, through, over or around the cargo and then attaches to another anchor point on the vehicle counts toward the calculation of the aggregate WLL for that system. FMCSA will add clarifying language to § 393.106(d) make sure that it is clear that in these instances, the tiedown must attach to the vehicle, go through, over, or around the cargo, and attach to another anchor point *on the other side of the vehicle.*

In summary, FMCSA believes that CCMTA's contentions that the amendments proposed by FMCSA regarding the calculation of aggregate WLL are inappropriate and do not follow the provisions of the Draft Model Regulation are without basis. Further,

FMCSA believes that changes to the definition of anchor point have been introduced into both the Draft Model Regulation and the National Safety Code that (1) significantly alter the calculation of the aggregate working load limit for some tiedowns, and (2) represent a significant departure from the provisions of the underlying research and the provisions of the initial Draft Model Regulation.

Given the above, FMCSA amends § 393.106(d) to clarify the formula for determining the aggregate working load limit for tiedowns, consistent with the intent and provisions of both The Model Regulations and previous Agency guidance.

6. *NPRM Proposal:* FMCSA proposed to revise the title of § 393.108. (70 FR 33439)

*Comments:* FMCSA received a number of comments specifically relating to the requirements for friction mats under § 393.108. However, the NPRM only proposed to amend the title of § 393.108 to more accurately reflect the role of friction mats in a cargo securement system, and did not specifically address any of its associated requirements. As such, any discussion of the comments to the NPRM in this area are outside the scope of this rulemaking, and will be addressed in the ongoing discussions in the North American Cargo Securement Harmonization Committee (NACSHC) and/or future rulemakings. The title of § 393.108 will be amended as proposed.

7. *NPRM Proposal:* FMCSA proposed to amend § 393.110 by revising paragraphs (a) and (c). (70 FR 33439)

*Comments:* DACAR contends that the proposed revision to § 393.110(a) and (c) will lead to confusion. DACAR believes that there is a perception that metal coils or coiled steel rod on pallets do not need to be secured.

*FMCSA Response:* Sections 393.110(a) and (c) are being revised as proposed to be consistent with the intent of the 2002 final rule. These revisions are editorial in nature. FMCSA is not aware of any ongoing confusion regarding these requirements, given that the regulations have been in effect for over 2 years.

8. *NPRM Proposal:* FMCSA proposed to amend § 393.114 by revising paragraph (b). (70 FR 33439)

*Comments:* FMCSA did not receive any comments opposing the proposed amendment, and incorporates the amended language as proposed in the NPRM.

9. *NPRM Proposal:* FMCSA proposed to amend § 393.116 by revising paragraph (b)(3), inserting a new paragraph (b)(4) and revising paragraph (e). (70 FR 33439)

*Comments:* PFITC, FPAC, Rayonier, Georgia-Pacific, and Allegheny agree with the proposed revision of § 393.116(e)(2)(i) concerning the use of wrappers for securement of logs, but believe that the wording proposed by FMCSA might be misinterpreted to mean that only one ''wrapper'' is required. These commenters propose that the Agency revise the wording to ensure it is clear that a minimum of two wrappers are required.

FRA agrees with the proposed revisions to § 393.116(e)(2)(i), but recommends the deletion of the requirement in § 393.116(e)(1) calling for ''vehicle end structure,'' noting that neither rapid acceleration nor emergency braking will cause short logs to fall off a trailer from the rear stack of logs during transport when secured by one tiedown per stack.

CREA requests that § 393.116 be modified to clarify the requirements for the transportation of longwood or power poles on utility framed vehicles such as bucket trucks and digger derricks. These vehicles have two cradles or bunks and are secured with a tiedown at each cradle. The typical length of pole is 35 feet, and CREA states that under current regulations, several Ports of Entry have required five tiedowns for these 35 foot poles. CREA requests that 393.116 be clarified to allow power poles to be transported on vehicles with the same requirement of longwood and requiring only two tiedowns for poles cradled in two or more bunks

CCMTA noted a number of concerns with the Agency's proposed amendments to § 393.116. CCMTA does not support the proposed change to § 393.116(b)(3)(i), and notes that it will continue to require tiedowns to be used on such trailers in Canada. CCMTA supports the proposed change to § 393.116(b)(4) for logs loaded lengthwise, but believes further discussion with industry is required on the practicality of applying this provision to logs loaded crosswise. CCMTA supports the proposed clarification to 393.116(e)(2)(ii) that tiedowns used as wrappers do not need to be attached to the vehicle. However, CCMTA believes this provision should only apply to logs transported on pole trailers.

WCLA/WTA suggested that § 393.116(e)(2) be revised to specifically apply to longwood and shortwood. WCLA/WTA contends that there is no discernible reason why the use of wrappers and standards as a means of securing loads of shortwood should be prohibited given that the use of wrappers is (1) currently allowed for the transportation of logs on pole trailers (§ 393.116(f)), and (2) proposed for the securement of longwood in the NPRM (§ 393.116(e)(2)(ii)).

*FMCSA Response:* FMCSA understands the concern raised by the PFITC, FPAC, Rayonier, Georgia-Pacific, and Allegheny, and agrees that the proposed clarification of § 393.116(e)(2)(i) that would specify that at least two wrappers must be used to secure longwood will make § 393.116(e)(2)(ii) consistent with the proposed language of § 393.116(e)(2)(i) which requires at least 2 tiedowns for effective securement of longwood. FMCSA includes the revised wording in the final rule.

With regard to FRA's suggestion to delete the requirement for a ''vehicle end structure'' in § 393.116(e)(1), the Agency notes that the use of only one tiedown or wrapper is predicated on the requirement that the logs in any stack are blocked in the front by a front-end structure strong enough to restrain the load, or another stack of logs, and blocked in the rear by another stack of logs or vehicle end structure. However, because the definition of shortwood includes logs up to 16 feet in length, hauling shortwood under the general cargo securement rule would require a minimum of 3 tiedowns per stack, if the aggregate working load limit requirement could be achieved with only 3 tiedown assemblies. While adherence to the general cargo securement rule would require 3 tiedowns as above, adoption of the proposed revision to delete the requirement for a ''vehicle end structure'' in § 393.116(e)(1) would permit the same load to be secured with only 1 tiedown. FMCSA does not believe that shortwood, up to 16 feet in length, can be adequately secured with only 1 tiedown without a vehicle end structure, and therefore does not believe that it is appropriate to eliminate the requirement for the vehicle end structure as suggested by FRA.

FMCSA understands the concern of the CREA, and does not believe that the existing requirements specified for longwood in § 393.116 prohibit their application to the transportation of power poles on bucket trucks and digger derricks provided that all the applicable requirements of § 393.116 are met. However, to eliminate any future uncertainties regarding the applicability of § 393.116 with respect to utility poles, FMCSA is revising the definition of longwood in § 393.5 as follows:

*Longwood.* All logs, including utility poles, that are not shortwood, *i.e.*, are over 4.9 m (16 feet) long. Such logs are usually described as long logs or treelength.

FMCSA acknowledges CCMTA's concern with regard to crib-type log trailers. However, the agency explained in a clarification dated December 30, 2003, that generally, the use of a crib-type log securement system, without wrappers or tiedowns, would satisfy the commodity-specific requirements of § 393.116 provided:

(1) All vehicle components in the crib-type system are designed and built to withstand all anticipated operational forces without failure, accidental release or permanent deformation. Stakes or standards that are not permanently attached to the vehicle must be secured in a manner that prevents unintentional separation from the vehicle in transit [49 CFR 393.116(b)(2)];

(2) Logs are solidly packed, with the outer bottom logs in contact with and resting solidly against the bunks, bolsters, stakes or standards [49 CFR 393.116(c)(1)];

(3) Each outside log on the side of a stack of logs must touch at least two stakes, bunks, bolsters, or standards. If one end does not actually touch a stake, it must rest on other logs in a stable manner and must extend beyond the stake, bunk, bolster or standard [49 CFR 393.116(c)(2)];

(4) The maximum height of each stack of logs being transported is below the height of the stakes, and the front- and rear-end structures; and,

(5) The heights of the stacks are approximately equal so that logs in the top of one stack cannot shift longitudinally onto another stack on the vehicle.

The Agency further explained that § 393.116(b)(3), which requires that tiedowns be used in combination with the stabilization provided by bunks, stakes and bolsters to secure loads of logs, should not be considered applicable to the transportation of logs on crib-type vehicles under the conditions described above. However, § 393.116(c)(4), which also concerns tiedowns, remains applicable for logs that are not held in place by contact with other logs, stakes, bunks, or standards. This means the decision whether tiedowns must be used is contingent upon how the logs are loaded onto the vehicle. If the tops of the stacks of logs are relatively level, then tiedowns would not be required when the logs are transported in crib-type vehicles. Uneven loads would require tiedowns on the taller stacks, and on logs that are not held in place by other logs, bunks, or standards. FMCSA will amend § 393.116 as proposed.

FMCSA agrees with the WCLA/WTA recommendation regarding the securement of shortwood using wrappers on flatbed and frame vehicles. Specifically, while wrappers are not currently identified as a possible means of securing loads of shortwood, FMCSA believes that § 393.116(e) should be revised to permit the use of tiedowns or wrappers for these loads. Wrappers are tiedown-type devices that encircle the entire load, which is then placed onto the flatbed or frame vehicle in conjunction with the use of standards to keep the bundled logs in place. Given that the use of wrappers is permitted (1) on loads of longwood per the revisions to § 393.116(e)(2)(ii) as discussed above, and (2) for the transportation of logs on pole trailers in § 393.116(f), there is no discernable reason the use of wrappers and standards as a means of securing loads of shortwood should be prohibited. While FMCSA agrees that wrappers should be included as possible method of securing shortwood, the Agency does not agree with the WCLA/WTA recommendation to revise § 393.116(e)(2) that refers to longwood. Instead, FMCSA amends § 393.116(e)(1) to permit the use of wrappers in security loads of shortwood, consistent with the comparable requirements for loads of longwod in § 393.116(e)(2).

10. *NPRM Proposal:* FMCSA proposed to amend § 393.118 by revising paragraph (d)(3)(iv)(B), replacing the period at the end of paragraph (d)(4) with a semicolon (;) and ''or,'' and adding paragraph (d)(5). (70 FR 33439)

*Comments:* PFITC, FPAC, Rayonier, Georgia-Pacific, Allegheny, and EdgeWorks raised concerns that the proposed amendments in the NPRM (1) may impose a new securement requirement on stacked loads of dressed lumber and similar building products that would require tiedowns over an intermediate tier regardless of the height, and (2) will remove the requirement for a minimum of two tiedowns over each of the top bundles longer than 5 feet. The commenters believe that these changes would add securement requirements when they are not necessary to some loads, and remove a critical securement requirement for a minimum of two tiedowns over each bundle that is longer than 5 feet for all units on these loads.

These commenters state that for dressed lumber or similar building materials stacked two tiers high and that exceed 2.5 meters in height, there should be a requirement for intermediate height securement over the lower tier in accordance with the general provisions of § 393.100–§ 393.114 unless the overall height of the two tier load is 2.5 meter or less, in which case the lower tier would not require additional securement. In addition, these commenters believe that if there are three or more tiers, one of the middle tiers must be secured by tiedowns in accordance with the general provisions of § 393.100–§ 393.114 at a height that may not exceed 1.85 meters. In all instances, these commenters believe that stacked cargo longer than 5 feet requires at least two tiedowns over the top tier.

CCMTA was supportive of the proposed change provided the requirement for a minimum of two tiedowns over bundles longer than 1.52 m on the top tier has not been removed (§ 393.118(d)(3)(iv)(A)).

*FMCSA Response:* FMCSA appreciates the comment from PFITC, FPAC, Rayonier, Georgia-Pacific, Allegheny, and EdgeWorks, but the Agency does not believe there is a significant difference between the commenters' suggested amendments and the requirements proposed in the NPRM. The proposed language does not remove the requirement for a minimum of two tiedowns over each bundle that is longer than 5 feet (§ 393.118(d)(3)(iv)(A), which references the general provisions of § 393.100–§ 393.114). The Agency also believes the tiedown requirements specified for intermediate tiers, as proposed in the NPRM, are consistent with those identified by the commenters. The Agency therefore adopts the amendments as proposed.

11. *NPRM Proposal:* FMCSA proposed to amend § 393.122 by revising paragraphs (b)(4) and (d)(4). (70 FR 33439–33440)

*Comments:* PFITC, FPAC, Rayonier, Georgia-Pacific, and Allegheny believe that the proposed amendments to § 393.122(b)(4)(iv) could allow the forwardmost roll of all split loads that are secured using a combination of methods that include friction mats to not be adequately secured against forward tipping when the roll has a width greater than 1.25 times its diameter. The commenters proposed revising this section as follows:

§ 393.122(b)(4)(iv). If a paper roll or the forwardmost roll in a group of paper rolls has a width greater than 1.25 times its diameter, and it is not prevented from tipping or falling forwards by vehicle structure or other cargo, and it is not restrained against forward movement by friction mat(s) **alone**, then it must be prevented from tipping or falling by banding it to other rolls, bracing or tiedowns.

The commenters agree with the proposed revision of § 393.122(d), but stated that a roll in a stack of rolls (two or more) raised by dunnage may be safely and effectively secured with friction mats, if the roll is not resting on the dunnage. The commenters requested the following clarification in 393.122(d)(4):

§ 393.122(d)(4) A roll that is in the rearmost of any layer may not be secured by friction mats alone when it is raised using

dunnage and is directly above and in contact with that dunnage.

Iowa DOT believes that friction mats used to secure paper rolls should be required to be sized and positioned to contact 100% of the footprint of the paper roll. In addition, Iowa DOT contends that there are many cases in which paper rolls are not adequately secured by the use of friction mats and believes that the existing regulations and policy guidance for § 393.122(b)(4) are too complex and difficult to enforce at roadside. Iowa suggested revising § 393.122(b)(4) such that when paper rolls are loaded with eyes vertical, friction mats or other blocking or dunnage devices would be required to prevent horizontal movement, regardless of roll width (vertical height) or position in the vehicle. In addition, rolls that have a width greater than 1.25 times their diameter would be required to be banded or secured to prevent tipping, regardless of position in the vehicle.

CCMTA supported the proposed change, but suggested further clarification regarding the securement of single rolls of paper, in addition to paper rolls transported in groups. Specifically CCMTA recommended that § 393.122(b)(4)(ii) and (iii) be reworded to state, ''If a single paper roll or the forwardmost roll in a group of paper rolls * * *.'' However, CCMTA did not support the proposed amendment to § 393.122(d)(4), noting that the original proposed Model Regulation and National Safety Code Standard 10 prohibits raising loads in the last row on dunnage.

*FMCSA Response:* FMCSA agrees with the commenters proposed clarification of § 393.122(b)(4)(iv). The preamble of the NPRM had included the phrase ''by friction mat(s) *alone,*'' but that specific language was not included in the proposed regulatory text. FMCSA considers this an editorial correction to its 2005 proposal and the change has been included in the final regulatory text.

While the Model Regulation and the National Safety Code Standard 10 expressly prohibit raising a roll in the rearmost row of any layer using dunnage, neither of these publications—nor the research that was performed as the basis for developing these requirements—explains the intent of this prohibition or the hazards associated with loading paper rolls contrary to the stated prohibition. It is unclear to FMCSA why the language of the Model Regulation and the National Safety Code Standard 10 is written to prohibit such loading for situations in which rolls in the rearmost row of the second and following layers are prevented from forward, rearward, or side-to-side movement by means other than friction mats alone, (*i.e.*, blocked, braced, banded, or tied down). In fact, the Cargo Securement Training Program developed by CCMTA and published in 2005 to assist both the enforcement community as well as carriers and drivers in applying and understanding the National Safety Code Standard 10 specifically states ''that a roll in the rearmost row of any layer *must not* be raised using dunnage unless the roll is blocked or braced or banded or tied down to prevent rearward movement.''

FMCSA explained in the NPRM that securing a paper roll in the rearmost row of the second and following layers using friction mats alone is difficult, if not impossible, because of the sometimes limited surface area of the risers and the coefficients of friction involved. However, based on information from the Paper and Forest Industry Transportation Committee, the Agency concluded that paper rolls on risers could be adequately secured provided they are blocked, braced, or banded to other rolls such that forward, rearward, and side-to-side movement is prevented. This guidance is consistent with the material currently in the Cargo Securement Training Program developed by CCMTA. While § 393.122 will differ from the Model Regulation and the National Safety Code Regulation 10 with respect to this issue, the Agency is confident that the securement of paper rolls in the rearmost row of any layer will not be compromised provided that any such rolls are adequately secured using blocking, bracing, or by banding the rolls together such that forward, rearward, and side-to-side movement is prevented. FMCSA does not believe that the language in § 393.122(d)(4) needs to be clarified as recommended by the commenters, and the Agency will amend the section as proposed in the NPRM.

FMCSA agrees with the concerns expressed by Iowa DOT regarding the need to specify the minimum footprint of friction mats. While the regulation is currently silent on the matter of effective footprint area, the Agency appreciates Iowa's request that § 393.122(b)(4) be simplified and made easier to understand for law enforcement personnel. The Agency is working closely with all interested parties through the NACSHC to further clarify the cargo securement regulations so that they are more easily understood and enforceable. Specifically with respect to the issue of friction mats, a separate working group has been formed under the NACSHC to examine the feasibility of establishing specific performance parameters for friction mats and their use as part of a cargo securement system.

12. *NPRM Proposal:* The Agency proposed to amend § 393.126 by revising paragraph (b)(1). (70 FR 33440)

*Comments:* Iowa DOT concurred with the proposed amendments, but believes that additional language can be added to clearly reinforce the need to comply with the general securement requirements of §§ 393.106 and 393.110, specifically for empty intermodal containers transported on flatbed vehicles and secured by indirect tiedowns over the top of the container.

*FMCSA Response:* FMCSA acknowledges the concern expressed by the Iowa DOT with regard to the load securement requirements for the transportation of empty intermodal containers on vehicles other than container chassis vehicles. However, FMCSA believes that the general requirements for securing articles of cargo in § 393.106, coupled with the commodity specific requirements for securing intermodal containers in § 393.126(d), are sufficient to ensure the proper securement of empty intermodal containers on flatbed vehicles. Specifically, FMCSA believes that § 393.126(d)(1) provides enough clarification by requiring that the empty intermodal container be balanced and positioned on the vehicle so that the container is stable before the addition of tiedowns or other securement equipment. Given the above, FMCSA does not believe that additional clarification is necessary to ensure proper securement of intermodal containers, and the amendments to § 393.126 will be adopted as proposed in the NPRM.

13. *NPRM Proposal:* FMCSA proposed to amend § 393.132 by revising paragraphs (b) and (c)(2)(i). (70 FR 33440)

*Comments:* Iowa DOT and CCMTA support the proposed amendments to § 393.132(b) that would allow for the use of short segments of synthetic web strapping on crushed car body loads, provided there is clear language that there may be absolutely no contact between the cargo and the segment of synthetic web strap used. Iowa believes the rule could further state that the only allowed use of synthetic web strapping would be at a point of attachment or tensioning device.

Iowa DOT noted that several carriers have removed the floor from flatbed vehicles, leaving the floor cross bracing intact, creating a skeletal vehicle, which allows the debris and fluids to escape

from the bottom of the vehicle while in transit. Iowa suggested the inclusion of language in § 393.132(c) to clearly state that the transport vehicle must have a floor that is free of openings that would allow any cargo to escape from the vehicle, and further suggested that the floor requirement clearly state the floor must be pan-shaped and must be capable of capturing and retaining all liquids and debris that may leak from the car bodies.

CCMTA supported the intent of the proposed change, but expressed concern regarding some form of protection to synthetic webbing portion of tiedowns from being cut or damaged by the cargo.

*FMCSA Response:* FMCSA believes that the risk to synthetic webbing from flattened or crushed vehicles is adequately reflected in the proposed verbage in § 393.132(b) which clearly states, ''However, the webbing (regardless of whether edge protection is used) must not come into contact with the flattened or crushed cars.''

Iowa DOT's comment about fluid leaks while transporting flattened or crushed cars is very useful. FMCSA will close this loophole by modifying § 393.132(c)(5)(i) to read: ''Vehicles used to transport flattened or crushed vehicles must be equipped with a means to prevent liquids from leaking from the bottom of the vehicle, and loose parts from falling from the bottom and all four sides of the vehicle extending to the full height of the cargo.''

14. *Additional Comments.*

AEM requested that a clarification be added regarding the requirement of § 393.130(b)(1) that ''Accessory equipment, such as hydraulic shovels must be completely lowered and secured to the vehicle.'' It suggested that the following language be added to this section:

> Accessory equipment is not required to be lowered and secured, if either of the following criteria is met: (a) Transport restraint device/systems are used that meet the requirements of § 393.102. (b) Drift or swing of accessory equipment will not move beyond the legal envelope of the trailer.

AEM made a presentation to FMCSA personnel in 2004 requesting clarification and on September 8, 2005, the Agency approved the following official regulatory guidance:

> § 393.130 What are the rules for securing heavy vehicles, equipment and machinery?
>
> Question 1: If an item of construction equipment which weighs less than 4,536 kg (10,000 lb.) is transported on a flatbed or drop-deck trailer, must the accessory equipment be lowered to the deck of the trailer?
>
> Guidance: No. However, the accessory equipment must be properly secured using locking pins or similar devices in order to prevent either the accessory equipment or the item of construction equipment itself from shifting during transport.
>
> Question 2: How should I secure the accessories for an item of construction equipment which weighs 4,536 kg (10,000 lb.) or more, if the accessory devices would extend beyond the width of the trailer if they are lowered to the deck for transport?
>
> Guidance: The accessory devices (plows, trencher bars, and the like) may be transported in a raised position, provided they are designed to be transported in that manner. However, the accessory equipment must be locked in place for transport to ensure that neither the accessories nor the equipment itself shifts during transport.
>
> Question 3: A tractor loader-backhoe weighing over 10,000 pounds is being transported on a trailer. The loader and backhoe accessories are each equipped with locking devices or mechanisms that prevent them from moving up and down and from side-to-side while the construction equipment is being transported on the trailer. Must these accessories also be secured to the trailer with chains?
>
> Guidance: No. However, if the construction equipment does not have a means of preventing the loader bucket, backhoe, or similar accessories from moving while it is being transported on the trailer, then a chain would be required to secure those accessories to the trailer.

In view of this guidance, the Agency does not consider regulatory amendments to be necessary.

FMCSA received additional comments to the NPRM that were deemed to be outside the scope of this rulemaking. As part of the process for ensuring consistent interpretations of the harmonized cargo securement regulations, a North American Cargo Securement Harmonization Committee was formed to provide interested parties the opportunity to participate in the ongoing efforts to harmonize U.S. and Canadian cargo securement standards. FMCSA will continue to announce its public meetings with the harmonization committee so that all interested parties have the opportunity to participate in the discussions between the Agency, its Canadian counterparts, enforcement agencies, and the industry about interpretations and other implementation issues. Three public meetings have been held on this subject. The first meeting was held April 21–22, 2005, in Albuquerque, New Mexico, and the second September 29–30, 2005, in Indianapolis, Indiana, and the third April 23, 2006, in Hartford, Connecticut. Minutes from these meetings, and the presentations made by participants will be placed in the Docket No. FMCSA–2005–22056 as they are available, and can be viewed electronically at *http://dms.dot.gov*. Future public meetings will be announced in the **Federal Register**.

## X. Regulatory Analyses and Notices

### *Executive Order 12866 (Regulatory Planning and Review) and DOT*

Regulatory Policies and Procedures

FMCSA has determined this action is not a significant regulatory action within the meaning of Executive Order 12866 or Department of Transportation regulatory policies and procedures. This document was not reviewed by the Office of Management and Budget (OMB). We expect the final rule will have minimal costs, but the Agency has prepared a regulatory analysis and regulatory flexibility analysis. A copy of the analysis document is included in the docket referenced at the beginning of this notice.

FMCSA has determined that it has good cause under 5 U.S.C. 553(b)(B) to incorporate by reference the 2005 version of the NACM's ''Welded Steel Chain Specifications'' because additional notice and opportunity for comment on this issue are unnecessary. The NPRM proposed to incorporate the 2003 version. The 2005 version was published shortly after the NPRM, but includes no changes that would affect this rule.

### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FMCSA has considered the effects of this regulatory action on small entities and determined that this rule will not have a significant impact on a substantial number of small entities, as defined by the U.S. Small Business Administration's Office of Size Standards.

This rulemaking will make only minor amendments and editorial corrections to FMCSA's September 27, 2002, final rule establishing new regulations concerning protection against shifting and falling cargo for CMVs operated in interstate commerce. The amendments will improve the clarity of certain provisions of the cargo securement regulations to ensure that the requirements are fully understood by motor carriers and enforcement officials. This action will better enable motor carriers to meet the safety performance requirements of the final rule, while continuing to adhere to industry best-practices that have been shown to effectively prevent the shifting and falling of cargo.

Accordingly, FMCSA has considered the economic impacts of the requirements on small entities and determined that this rule will not have

a significant economic impact on a substantial number of small entities. A copy of the agency's regulatory flexibility analysis is included in the docket listed at the beginning of this notice.

*Unfunded Mandates Reform Act of 1995*

FMCSA has determined this rule will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128 million or more in any 1 year.

*Executive Order 12988 (Civil Justice Reform)*

FMCSA has determined this action would meet 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)*

FMCSA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The agency has determined this rulemaking is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

*Executive Order 12630 (Taking of Private Property)*

FMCSA has determined this rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*Executive Order 13132 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. FMCSA has determined this rulemaking does not have a substantial direct effect on States, and does not limit the policy-making discretion of the States. Nothing in this document preempts any State law or regulation.

*Executive Order 12372 (Intergovernmental Review)*

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

*Paperwork Reduction Act*

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

*National Environmental Policy Act*

FMCSA has analyzed this action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined this action does not have an effect on the quality of the environment. However, an environmental assessment (EA) has been prepared because the rulemaking is not among the type covered by a categorical exclusion. A copy of the environmental assessment is included in the docket listed at the beginning of this notice.

*Executive Order 13211 (Energy Effects)*

FMCSA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. We have determined that it is not a ''significant energy action'' under that order because it is not economically significant and will not have a significant adverse effect on the supply, distribution or use of energy. This action merely makes minor amendments and editorial corrections to FMCSA's September 27, 2002, final rule establishing new regulations concerning protection against shifting and falling cargo for CMVs operated in interstate commerce. This action has no effect on the supply or use of energy, nor do we believe it will cause a shortage of drivers qualified to distribute energy, such as gasoline, fuel oil or other fuels.

**List of Subjects for 49 CFR Part 393**

Incorporation by reference, Highway safety, Motor carriers.

■ In consideration of the foregoing, FMCSA amends title 49, Code of Federal Regulations, chapter III, as follows:

## PART 393—[AMENDED]

■ 1. The authority citation for part 393 continues to read as follows:

**Authority:** Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914; 49 U.S.C. 31136 and 31502; and 49 CFR 1.73.

■ 2. Amend § 393.5 by adding definitions of ''crib-type trailer,'' and ''metal coil'' in alphabetical order to read as follows:

**§ 393.5 Definitions.**

* * * * *

*Crib-type log trailer* means a trailer equipped with stakes, bunks, a front-end structure, and a rear structure to restrain logs. The stakes prevent movement of the logs from side to side on the vehicle while the front-end and rear structures prevent movement of the logs from front to back on the vehicle.

* * * * *

*Longwood* means all logs, including utility poles, that are not shortwood, i.e., that are over 4.9 m (16 feet) long. Such logs are usually described as long logs or treelength.

*Metal coil* means an article of cargo comprised of elements, mixtures, compounds, or alloys commonly known as metal, metal foil, metal leaf, forged metal, stamped metal, metal wire, metal rod, or metal chain that are packaged as a roll, coil, spool, wind, or wrap, including plastic or rubber coated electrical wire and communications cable.

* * * * *

■ 3. Amend § 393.7 by revising paragraph (b)(19) to read as follows:

**§ 393.7 Matters Incorporated by reference.**

* * * * *

(b) * * *

(19) Welded Steel Chain Specifications, National Association of Chain Manufacturers, September 28, 2005, incorporation by reference approved for § 393.104(e).

* * * * *

■ 4. Revise § 393.102 to read as follows:

**§ 393.102 What are the minimum performance criteria for cargo securement devices and systems?**

(a) *Performance criteria*—(1) *Breaking Strength.* Tiedown assemblies (including chains, wire rope, steel strapping, synthetic webbing, and cordage) and other attachment or fastening devices used to secure articles of cargo to, or in, commercial motor vehicles must be designed, installed, and maintained to ensure that the maximum forces acting on the devices or systems do not exceed the manufacturer's breaking strength rating under the following conditions, applied separately:

(i) 0.8 g deceleration in the forward direction;

(ii) 0.5 g acceleration in the rearward direction; and

(iii) 0.5 g acceleration in a lateral direction.

(2) *Working Load Limit.* Tiedown assemblies (including chains, wire rope, steel strapping, synthetic webbing, and cordage) and other attachment or fastening devices used to secure articles of cargo to, or in, commercial motor vehicles must be designed, installed, and maintained to ensure that the forces

acting on the devices or systems do not exceed the working load limit for the devices under the following conditions, applied separately:

(i) 0.435 g deceleration in the forward direction;

(ii) 0.5 g acceleration in the rearward direction; and

(iii) 0.25 g acceleration in a lateral direction.

(b) *Performance criteria for devices to prevent vertical movement of loads that are not contained within the structure of the vehicle.* Securement systems must provide a downward force equivalent to at least 20 percent of the weight of the article of cargo if the article is not fully contained within the structure of the vehicle. If the article is fully contained within the structure of the vehicle, it may be secured in accordance with Sec. 393.106(b).

(c) *Equivalent means of securement.* The means of securing articles of cargo are considered to meet the performance requirements of this section if the cargo is ''

(1) Immobilized, such so that it cannot shift or tip to the extent that the vehicle's stability or maneuverability is adversely affected; or

(2) Transported in a sided vehicle that has walls of adequate strength, such that each article of cargo within the vehicle is in contact with, or sufficiently close to a wall or other articles, so that it cannot shift or tip to the extent that the vehicle's stability or maneuverability is adversely affected; or

(3) Secured in accordance with the applicable requirements of §§ 393.104 through 393.136.

■ 5. Amend § 393.104 as follows:

■ a. By revising paragraphs (b) and (c);

■ b. By removing the words ''November 15, 1999'' and adding the words ''dated September 28, 2005'' in their place in paragraph (e) (2) table;

■ c. By removing paragraph (f)(4); and

■ d. By redesignating paragraph (f)(5) as paragraph (f)(4).

The revisions read as follows:

**§ 393.104 What standards must cargo securement devices and systems meet in order to satisfy the requirements of this subpart?**

* * * * *

(b) *Prohibition on the use of damaged securement devices.* All tiedowns, cargo securement systems, parts and components used to secure cargo must be in proper working order when used to perform that function with no damaged or weakened components, such as, but not limited to, cracks or cuts that will adversely affect their performance for cargo securement purposes, including reducing the working load limit.

(c) *Vehicle structures and anchor points.* Vehicle structures, floors, walls, decks, tiedown anchor points, headerboards, bulkheads, stakes, posts, and associated mounting pockets used to contain or secure articles of cargo must be strong enough to meet the performance criteria of § 393.102, with no damaged or weakened components, such as, but not limited to, cracks or cuts that will adversely affect their performance for cargo securement purposes, including reducing the working load limit.

* * * * *

■ 6. Amend § 393.106 by revising paragraphs (a) and (d) to read as follows:

**§ 393.106 What are the general requirements for securing articles of cargo?**

(a) *Applicability.* The rules in this section are applicable to the transportation of all types of articles of cargo, except commodities in bulk that lack structure or fixed shape (*e.g.*, liquids, gases, grain, liquid concrete, sand, gravel, aggregates) and are transported in a tank, hopper, box, or similar device that forms part of the structure of a commercial motor vehicle. The rules in this section apply to the cargo types covered by the commodity-specific rules of § 393.116 through § 393.136. The commodity-specific rules take precedence over the general requirements of this section when additional requirements are given for a commodity listed in those sections.

* * * * *

(d) *Aggregate working load limit for tiedowns.* The aggregate working load limit of tiedowns used to secure an article or group of articles against movement must be at least one-half times the weight of the article or group of articles. The aggregate working load limit is the sum of:

(1) One-half the working load limit of each tiedown that goes from an anchor point on the vehicle to an anchor point on an article of cargo;

(2) One-half the working load limit of each tiedown that is attached to an anchor point on the vehicle, passes through, over, or around the article of cargo, and is then attached to an anchor point on the same side of the vehicle.

(3) The working load limit for each tiedown that goes from an anchor point on the vehicle, through, over, or around the article of cargo, and then attaches to another anchor point on the other side of the vehicle.

■ 7. Revise the heading of § 393.108 to read as follows:

**§ 393.108 How is the working load limit of a tiedown, or the load restraining value of a friction mat, determined?**

* * * * *

■ 8. Amend § 393.110 by revising paragraphs (a) and (c) to read as follows:

**§ 393.110 What else do I have to do to determine the minimum number of tiedowns?**

(a) When tiedowns are used as part of a cargo securement system, the minimum number of tiedowns required to secure an article or group of articles against movement depends on the length of the article(s) being secured, and the requirements of paragraphs (b) and (c) of this section. These requirements are in addition to the rules under § 393.106.

* * * * *

(c) If an individual article is blocked, braced, or immobilized to prevent movement in the forward direction by a headerboard, bulkhead, other articles which are adequately secured or by an appropriate blocking or immobilization method, it must be secured by at least one tiedown for every 3.04 meters (10 feet) of article length, or fraction thereof.

* * * * *

■ 9. Amend § 393.114 by revising paragraph (b)(1) to read as follows:

**§ 393.114 What are the requirements for front-end structures used as part of a cargo securement system?**

* * * * *

(b) *Height and width.* (1) The front end structure must extend either to a height of 4 feet above the floor of the vehicle or to a height at which it blocks forward movement of any item or article of cargo being carried on the vehicle, whichever is lower.

* * * * *

■ 10. Amend § 393.116 by revising paragraph (b)(3), adding a new paragraph (b)(4) and revising paragraph (e) to read as follows:

**§ 393.116 What are the rules for securing logs?**

* * * * *

(b) *Components of a securement system.* * * *

(3) Tiedowns must be used in combination with the stabilization provided by bunks, stakes, and bolsters to secure the load unless the logs:

(i) are transported in a crib-type log trailer (as defined in 49 CFR 393.5), and

(ii) are loaded in compliance with paragraphs (b)(2) and (c) of this section.

(4) The aggregate working load limit for tiedowns used to secure a stack of logs on a frame vehicle, or a flatbed vehicle equipped with bunks, bolsters,

or stakes must be at least one-sixth the weight of the stack of logs.

* * * * *

(e) *Securement of logs loaded lengthwise on flatbed and frame vehicles*—(1) *Shortwood.* In addition to meeting the requirements of paragraphs (b) and (c) of this section, each stack of shortwood loaded lengthwise on a frame vehicle or on a flatbed must be cradled in a bunk unit or contained by stakes and

(i) Secured to the vehicle by at least two tiedowns, or

(ii) If all the logs in any stack are blocked in the front by a front-end structure strong enough to restrain the load, or by another stack of logs, and blocked in the rear by another stack of logs or vehicle end structure, the stack may be secured with one tiedown. If one tiedown is used, it must be positioned about midway between the stakes, or

(iii) Be bound by at least two tiedown-type devices such as wire rope, used as wrappers that encircle the entire load at locations along the load that provide effective securement. If wrappers are being used to bundle the logs together, the wrappers are not required to be attached to the vehicle.

(2) *Longwood.* Longwood must be cradled in two or more bunks and must either:

(i) Be secured to the vehicle by at least two tiedowns at locations that provide effective securement, or

(ii) Be bound by at least two tiedown-type devices, such as wire rope, used as wrappers that encircle the entire load at locations along the load that provide effective securement. If a wrapper(s) is being used to bundle the logs together, the wrapper is not required to be attached to the vehicle.

■ 11. Amend § 393.118 by revising paragraph (d)(3)(iv)(B), removing the period at the end of paragraph (d)(4) and adding ''; or'' in its place, and adding paragraph (d)(5) to read as follows:

**§ 393.118 What are the rules for securing dressed lumber or similar building products?**

* * * * *

(d) Securement of bundles transported using more than one tier. * * *

(3) * * *

(iv) * * *

(B) Secured by tiedowns as follows:

*(1)* If there are 3 tiers, the middle and top bundles must be secured by tiedowns in accordance with the general provisions of §§ 393.100 through 393.114; or

*(2) (i)* If there are more than 3 tiers, then one of the middle bundles and the top bundle must be secured by tiedown devices in accordance with the general provision of §§ 393.100 through 393.114, and the maximum height for the middle tier that must be secured may not exceed 6 feet about the deck of the trailer; or

*(ii)* Otherwise, the second tier from the bottom must be secured in accordance with the general provisions of §§ 393.100 through 393.114; or

* * * * *

(5) When loaded in a sided vehicle or container of adequate strength, dressed lumber or similar building products may be secured in accordance with the general provisions of §§ 393.100 through 393.114.

■ 12. Amend § 393.122 by revising paragraphs (b)(4) and (d)(4) to read as follows:

**§ 393.122 What are the rules for securing paper rolls?**

* * * * *

(b) *Securement of paper rolls transported with eyes vertical in a sided vehicle.* * * *

(4)(i) If a paper roll is not prevented from tipping or falling sideways or rearwards by vehicle structure or other cargo, and its width is more than 2 times its diameter, it must be prevented from tipping or falling by banding it to other rolls, bracing, or tiedowns.

(ii) If the forwardmost roll(s) in a group of paper rolls has a width greater than 1.75 times its diameter and it is not prevented from tipping or falling forwards by vehicle structure or other cargo, then it must be prevented from tipping or falling forwards by banding it to other rolls, bracing, or tiedowns.

(iii) If the forwardmost roll(s) in a group of paper rolls has a width equal to or less than 1.75 times its diameter, and it is restrained against forward movement by friction mat(s) alone, then banding, bracing, or tiedowns are not required to prevent tipping or falling forwards.

(iv) If a paper roll or the forwardmost roll in a group of paper rolls has a width greater than 1.25 times its diameter, and it is not prevented from tipping or falling forwards by vehicle structure or other cargo, and it is not restrained against forward movement by friction mat(s) alone, then it must be prevented from tipping or falling by banding it to other rolls, bracing or tiedowns.

* * * * *

(d) *Securement of stacked loads of paper rolls transported with eyes vertical in a sided vehicle.* * * *

(4) A roll in the rearmost row of any layer raised using dunnage may not be secured by friction mats alone.

* * * * *

■ 13. Amend § 393.126 by revising paragraph (b)(1) to read as follows:

**§ 393.126 What are the rules for securing intermodal containers?**

* * * * *

(b) *Securement of intermodal containers transported on container chassis vehicle(s).* (1) All lower corners of the intermodal container must be secured to the container chassis with securement devices or integral locking devices that cannot unintentionally become unfastened while the vehicle is in transit.

* * * * *

■ 14. Amend § 393.132 by revising paragraphs (b), (c)(2)(i), and (c)(5)(i) to read as follows:

**§ 393.132 What are the rules securing flattened or crushed vehicles?**

* * * * *

(b) *Prohibition on the use of synthetic webbing.* The use of synthetic webbing to secure flattened or crushed vehicles is prohibited except that such webbing may be used to connect wire rope or chain to anchor points on the commercial motor vehicle. However, the webbing (regardless of whether edge protection is used) must not come into contact with the flattened or crushed cars.

(c) * * *

(2)(i) Containment walls or comparable means on three sides which extend to the full height of the load and which block against movement of the cargo in the direction for which there is a containment wall or comparable means, and

* * * * *

(5)(i) Vehicles used to transport flattened or crushed vehicles must be equipped with a means to prevent liquids from leaking from the bottom of the vehicle, and loose parts from falling from the bottom and all four sides of the vehicle extending to the full height of the cargo.

* * * * *

Issued on: June 5, 2006.

**David H. Hugel,**

*Acting Administrator for Federal Motor Carrier Safety Administration (FMCSA).*

[FR Doc. 06–5236 Filed 6–21–06; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 051104293 5344 02; I.D. 061206B]**

### Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfer

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

**ACTION:** Temporary rule; inseason quota transfer.

**SUMMARY:** NMFS announces that the State of Florida is transferring 200,000 lb (90,718 kg) of commercial bluefish quota to the State of North Carolina from its 2006 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

**DATES:** Effective June 19, 2006 through December 31, 2006, unless NMFS publishes a superseding document in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Management Specialist, (978) 281–9341, FAX (978) 281–9135.

**SUPPLEMENTARY INFORMATION:** Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Florida through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.160.

Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine bluefish commercial quota under § 648.160(f). The Regional Administrator is required to consider the criteria set forth in § 648.160(f)(1) in the evaluation of requests for quota transfers or combinations.

Florida has agreed to transfer 200,000 lb (90,718 kg) of its 2006 commercial quota to North Carolina to cover unexpectedly high landings in North Carolina. The Regional Administrator has determined that the criteria set forth in § 648.160(f)(1) have been met. The revised quotas for calendar year 2006 are: North Carolina, 2,852,869 lb (1,294,040 kg); and Florida, 601,012 lb (272,614 kg).

#### Classification

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

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

Dated: June 16, 2006.

**Alan D. Risenhoover,**

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

[FR Doc. 06–5610 Filed 6–19–06; 2:20 pm]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 060216045–6045–01; I.D. 061506A]**

### Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole in the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for yellowfin sole in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2006 yellowfin sole total allowable catch (TAC) in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), June 19, 2006, through 2400 hrs, A.l.t., December 31, 2006.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2006 yellowfin sole TAC in the BSAI is 81,346 metric tons (mt) as established by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the 2006 yellowfin sole TAC in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 79,346 mt, and is setting aside the remaining 2,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for yellowfin sole in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of yellowfin sole in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 15, 2006.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: June 16, 2006

**Alan D. Risenhoover,**

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

[FR Doc. 06–5609 Filed 6–19–06; 2:20 pm]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 71, No. 120
Thursday, June 22, 2006

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

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### 10 CFR Part 440

**RIN 1904–AB56**

### Weatherization Assistance Program for Low-Income Persons

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Energy (DOE) is proposing to amend the regulations for the Weatherization Assistance Program for Low-Income Persons to incorporate statutory changes resulting from the passage of the Energy Policy Act of 2005. Specifically, DOE proposes to: define renewable energy systems eligible for funding in the Weatherization Assistance Program, establish criteria for performance and quality standards for eligible renewable energy systems, establish procedures for submission of and action on manufacturer petitions for Secretarial determinations of eligibility of renewable energy technologies and systems, and establish a ceiling for funding of renewable energy systems in the Weatherization Assistance Program.

**DATES:** Public comments on this proposed rule will be accepted until July 24, 2006.

**ADDRESSES:** You may submit comments, identified by RIN 1904–AB56, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-Mail: Weatherization.rules@ee.doe.gov.* Include RIN 1904–AB56 in the subject line of the message.
- *Mail:* Weatherization Assistance Program, U.S. Department of Energy, Mail Stop EE2K, 5E–066, 1000 Independence Avenue, SW., Washington, DC 20585.

You may obtain copies of this notice of proposed rulemaking and review comments received by DOE by visiting the DOE Freedom of Information Reading Room, Department of Energy, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** John Atcheson, Weatherization Assistance Program, U.S. Department of Energy, Mail Stop EE–2K, 5E–066, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0771.

**SUPPLEMENTARY INFORMATION:** This notice of proposed rulemaking (NOPR) proposes to amend the program regulations for the Weatherization Assistance Program for Low-Income Persons, which is authorized by Title IV, Part A, of the Energy Conservation and Production Act, as amended (Act), 42 U.S.C. 6861 *et seq.* The proposed amendments are necessitated by certain changes in the Weatherization Assistance Program mandated in the Energy Policy Act of 2005 (Pub. L. 109–58) (EPACT 2005). The proposed rule would define renewable energy systems eligible for funding in the Weatherization Assistance Program, establish criteria for performance and quality standards for eligible renewable energy systems, establish procedures for submission of and action on manufacturer petitions for Secretarial determinations of eligibility of renewable energy technologies and systems, and establish a new ceiling for funding of renewable energy systems in the Weatherization Assistance Program.

Today, DOE is also publishing, elsewhere in this issue of the **Federal Register**, a direct final rule that makes the amendments to the Weatherization Assistance Program for Low-Income Persons that are being proposed in this NOPR. As explained in the preamble of the direct final rule, DOE considers these amendments not to be controversial and unlikely to generate any significant adverse or critical comments. If no significant adverse or critical comments are received on the direct final rule, the direct final rule will become effective on the date specified in that rule, and there will be no further action on this proposal. If significant adverse or critical comments are timely received on the direct final rule, DOE will withdraw the direct final rule. The public comments will then be addressed in a subsequent final rule based on the rule proposed in this NOPR (which is the same as the rule set forth in the direct final rule). Because DOE will not institute a second comment period on this proposed rule, any persons interested in commenting should do so during this comment period.

For further supplemental information, the detailed description of the proposed rule, and the proposed rule amendments, see the information provided in the notice of direct final rulemaking in this **Federal Register**.

### Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's notice of proposed rulemaking, as well as the accompanying direct final rule.

### List of Subjects 10 CFR Part 440

Administrative practice and procedure, Aged, Energy conservation, Grant programs—energy, Grant programs—housing and community development, Housing standards, Indians, Individuals with disabilities, Reporting and recordkeeping requirements, Weatherization.

Issued in Washington, DC, on June 9, 2006.

**Douglas L. Faulkner,**

*Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. E6–9857 Filed 6–21–06; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2006–25084; Directorate Identifier 2005–SW–38–AD]**

**RIN 2120–AA64**

### Airworthiness Directives; Bell Helicopter Textron Canada Model 206L Series Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes adopting a new airworthiness directive

(AD) for the Bell Helicopter Textron Canada (BHTC) Model 206L series helicopters. This proposal would require inspecting the fuel low-level detector switch unit (switch unit) to determine if it is a certain serial-numbered switch unit that may fail to indicate a low fuel condition. If the serial number is missing or unreadable, the mounting flange of the switch unit is not colored red or the purchase date is within a certain range or cannot be determined, this proposal would require an operational test. The AD would also require replacing before further flight each affected switch unit with an airworthy switch unit that is not listed in the applicability of the AD. This proposal is prompted by the manufacturer's discovery that eight switch units may have a manufacturing flaw that could cause them to hang in the high position and fail to indicate a low fuel condition. The actions specified by this proposed AD are intended to prevent failure of the switch unit to indicate a low fuel condition that could lead to fuel exhaustion and a subsequent forced landing.

**DATES:** Comments must be received on or before August 21, 2006.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically;
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically;
- *Mail:* Docket Management Facility; US Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590;
- *Fax:* 202–493–2251; or
- *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.

You may get the service information identified in this proposed AD from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272.

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Chinh Vuong, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0112, telephone (817) 222–5116, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES.** Include the docket number ''FAA–2006–25084, Directorate Identifier 2005–SW–38–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

## Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Management System (DMS) Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located at the plaza level of the Department of Transportation Nassif Building in Room PL–401 at 400 Seventh Street, SW., Washington, DC. Comments will be available in the AD docket shortly after the DMS receives them.

## Discussion

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHTC Model 206L series helicopters. Transport Canada advises that eight low fuel level detectors of listed serial numbers may have been installed on Model 206L series helicopters. These detectors could hang in the high position and fail to indicate the low fuel condition. Transport Canada advises removing from service switch unit, part number 206–063–613–003, serial numbers 1413, 1414, 1415, 1424, 1428, 1430, 1432, and 1433.

BHTC has issued Alert Service Bulletin No. 206L–04–132, Revision A, dated October 4, 2004 (ASB). The ASB specifies determining whether any of eight specified, serial-numbered detector switch units are installed because they may fail to indicate a low fuel condition. If the serial number is missing or unreadable, the ASB specifies inspecting the switch unit to determine if it is an affected switch unit. The ASB also specifies removing each affected switch unit. Transport Canada classified this ASB as mandatory and issued AD No. CF–2004–24, dated November 24, 2004, to ensure the continued airworthiness of these helicopters in Canada.

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept us informed of the situation described above. We have examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This previously described unsafe condition is likely to exist or develop on other helicopters of these same type designs registered in the United States. Therefore, the proposed AD would require, on or before the next 100-hour time-in-service inspection, determining whether the low fuel level detector switch unit has a S/N listed in the applicability of this AD. If the serial number is missing or unreadable, this proposal would also require determining whether it is an affected switch unit. This AD would also require, before further flight, replacing each affected switch unit with an airworthy switch unit that is not listed in the applicability of this AD.

We estimate that this proposed AD would affect 719 helicopters of U.S. registry and would take about:

- ½ work hour to determine the serial number,
- 4 work hours to do a test of the low fuel caution system,
- 4 work hours to replace an affected switch per helicopter at $65 per work hour, and
- $426 to replace each switch unit.

Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $91,480, assuming 10 percent of the fleet switch units (72) are replaced.

## Regulatory Findings

We have determined that this proposed AD would not have federalism

implications under Executive Order 13132. Additionally, 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 draft economic evaluation of the estimated costs to comply with this proposed AD. See the DMS to examine the draft economic evaluation.

## 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.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**Bell Helicopter Textron, Inc.:** Docket No. FAA–2006–25084; Directorate Identifier 2005–SW–38–AD.

### Applicability

Model 206L series helicopters, with low fuel level detector switch unit (switch unit), part number 206–063–613–003, serial numbers 1413, 1414, 1415, 1424, 1428, 1430, 1432, and 1433, installed, certificated in any category.

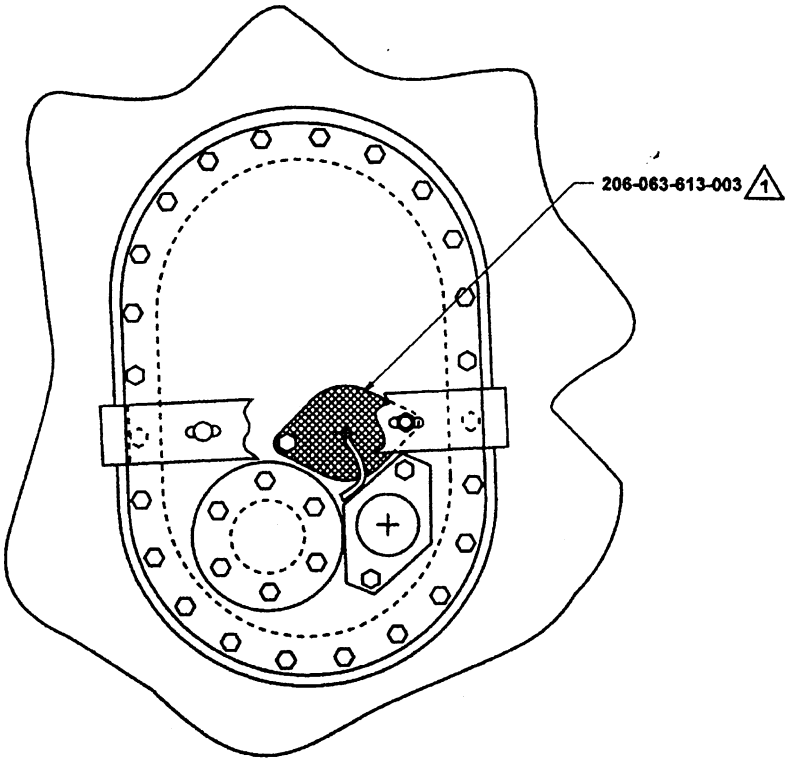
### Compliance

Required as indicated, unless accomplished previously.

To prevent failure of the switch unit to indicate a low fuel condition that could lead to fuel exhaustion and a subsequent forced landing, do the following:

(a) On or before the next 100-hour time-in-service inspection, determine whether the installed switch unit has a serial number listed in the applicability section of this AD. If the installed switch unit is one of the listed switch units, before further flight, replace it with an airworthy switch unit that has a serial number other than those listed in the applicability section of this AD. *See* Figure 1 of this AD for the location of the serial number.

BILLING CODE 4910–13–P




NOTE

1 Part number and serial number are located in the cross hatched area.

Figure 1

**Note 1:** Bell Helicopter Textron Alert Service Bulletin No. 206L–04–132, Revision A, dated October 4, 2004, pertains to the subject of this AD.

(b) If the switch unit serial number is missing or unreadable, determine the color of the switch unit mounting flange.

(1) If the mounting flange color is red, the switch unit is not affected by this AD.

(2) If the mounting flange color is other than red; the purchase date of the switch unit is between April 19 and July 26, 2004, or cannot be established; and the serial number cannot be identified, do an operational test. If the switch unit passes the operational test, this AD requires no further action. If the switch unit fails the operational test, before further flight, replace the switch unit with an airworthy switch unit that does not have a serial number listed in the applicability section of this AD.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, ATTN: Chinh Vuong, Aviation Safety Engineer, Fort Worth, Texas 76193–0112, telephone (817) 222–5116, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

**Note 2:** The subject of this AD is addressed in Transport Canada (Canada) AD CF–2004–24, dated November 24, 2004.

Issued in Fort Worth, Texas, on June 12, 2006.

**Mark R. Schilling,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 06–5599 Filed 6–21–06; 8:45 am]

BILLING CODE 4910–13–C

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2006–25097; Directorate Identifier 2005–SW–19–AD]**

**RIN 2120–AA64**

# Airworthiness Directives; Arrow Falcon Exporters, Inc. (Previously Utah State University); Firefly Aviation Helicopter Services (Previously Erickson Air-Crane Co.); California Department of Forestry; Garlick Helicopters, Inc.; Global Helicopter Technology, Inc.; Hagglund Helicopters, LLC (Previously Western International Aviation, Inc.); International Helicopters, Inc.; Precision Helicopters, LLC; Robinson Air Crane, Inc.; San Joaquin Helicopters (Previously Hawkins and Powers Aviation, Inc.); S.M.&T. Aircraft (Previously US Helicopters, Inc., UNC Helicopter, Inc., Southern Aero Corporation, and Wilco Aviation); Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation International, Inc. (Previously Jamie R. Hill and Southwest Florida Aviation); Tamarack Helicopters, Inc. (Previously Ranger Helicopter Services, Inc.); US Helicopter, Inc. (Previously UNC Helicopter, Inc.); West Coast Fabrication; and Williams Helicopter Corporation (Previously Scott Paper Co.) Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P Helicopters; and Southwest Florida Aviation Model SW204, SW204HP, SW205, and SW205A–1 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes adopting a new airworthiness directive (AD) for the specified restricted category type-certificated helicopters. The AD would require a review of the helicopter records to determine the Commercial and Government Entity (CAGE) code of the tail rotor (T/R) slider. If the T/R slider is FAA approved or has a certain legible CAGE code, this AD would require no further action. If you cannot determine whether the T/R slider is FAA approved and it has no stamped CAGE code, an illegible stamped CAGE code, or an affected CAGE code, the AD would also require, before further flight and at specified intervals, magnaflux inspecting the T/R slider for a crack. If a crack is found, the AD would require, before further flight, replacing the T/R slider with an airworthy T/R slider. The AD would also require replacing the T/R slider with an airworthy T/R slider on or before accumulating 1,000 hours time-in-service (TIS) or on or before 12 months, whichever occurs first. This proposal is prompted by two accidents attributed to sub-standard T/R sliders that failed during flight. The actions specified by the proposed AD are intended to prevent failure of a T/R slider, loss of T/R control, and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before August 21, 2006.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically;
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically;
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590;
- *Fax:* 202–493–2251; or
- *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.

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Kreg Voorhies, Aerospace Engineer, Denver Aircraft Certification Office (ANM–100D), 26805 E. 68th Ave., Room 214, Denver, Colorado 80249, telephone (303) 342–1092, fax (303) 342–1088.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number ''FAA–2006–25097, Directorate Identifier 2005–SW–19–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any

personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

**Examining the Docket**

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Management System (DMS) Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located at the plaza level of the Department of Transportation NASSIF Building in Room PL–401 at 400 Seventh Street, SW., Washington, DC. Comments will be available in the AD docket shortly after the DMS receives them.

**Discussion**

This document proposes adopting a new AD for Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters; and Southwest Florida Aviation Model SW204, SW204HP, SW205, and SW205A–1 helicopters, with a T/R slider, part number (P/N) 204–010–720–3 or P/N 204010720–3, installed. The AD would require a review of the helicopter records to determine the CAGE code of the T/R slider. If the T/R slider is FAA approved or has a certain legible CAGE code, this AD would require no further action. If you cannot determine whether the T/R slider is FAA approved or if it has an illegible CAGE code or CAGE Code 15716 or 26098, the AD would require, before further flight and at specified intervals, magnaflux inspecting the T/R slider for a crack. If a crack is found, the AD would also require, before further flight, replacing the T/R slider with an airworthy T/R slider. The AD would also require replacing the T/R slider that has an illegible CAGE code or Code 15716 or 26098 with an airworthy T/R slider on or before accumulating 1,000 hours TIS or on or before 12 months, whichever occurs first. The T/R sliders manufactured by Forest Scientific, Inc., were produced under a military contract and do not meet the original equipment manufacturers (OEM) specifications. The machining process resulted in excess surface roughness. This proposal is prompted by two accidents attributed to sub-standard T/R sliders that failed during flight. This condition, if not corrected, could result in cracking in the T/R slider, loss of T/R control, and subsequent loss of control of the helicopter.

This unsafe condition is likely to exist or develop on other helicopters of these same type designs. Therefore, the proposed AD would require the following:

- Within 25 hours TIS, unless accomplished previously:
- Review the helicopter records for the CAGE code of the T/R slider. If necessary, remove the installed T/R slider to determine the CAGE code.
  - ○ If the T/R slider is an FAA approved part; for example, an OEM part; or has a legible CAGE code other than Code 15716 or 26098; no further action is required.
  - ○ If you cannot determine whether the T/R slider is FAA approved and it contains no stamped CAGE code, an illegible stamped CAGE code, or a stamped CAGE code 15716 or 26098, before further flight, unless accomplished previously, and thereafter at intervals not to exceed 25 hours TIS, magnaflux inspect the T/R slider for a crack.
  - ○ If a crack is found, before further flight, replace the T/R slider with an airworthy T/R slider.
- On or before accumulating 1000 hours TIS or on or before 12 months, whichever occurs first, replace the T/R slider with an airworthy T/R slider or one that is FAA approved and has a legible CAGE code other than 15716 or 26098. Any T/R slider removed from service based on the requirements of this paragraph is not eligible for installation on any helicopter.
- Replacing the T/R slider with an airworthy FAA approved T/R slider or with a legible CAGE code other than 15716 or 26098, constitutes terminating action for the requirements of this AD.

We estimate that this proposed AD would affect 75 helicopters of U.S. registry and that it would take about:

- 1 work hour to review the helicopter records and 2 work hours to remove and replace the T/R slider for a total of 3 work hours per helicopter to determine the CAGE code for each helicopter in the fleet;
- 3 work hours for each magnaflux inspection with a total of 24 such inspections on each of 10 helicopters based on 600 hours TIS per year; and
- 2 work hours to replace the T/R slider with 10 helicopters needing the T/R slider replaced.

The average labor rate is $65 per work hour. Required parts would cost about $825 for each T/R slider. Based on these figures, the total cost impact of the proposed AD on U.S. operators would be $70,975 ($195 per helicopter to determine the CAGE code and $5,635 per helicopter for repetitively inspecting and ultimately replacing the T/R slider on 10 helicopters).

**Regulatory Findings**

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. Additionally, 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 draft economic evaluation of the estimated costs to comply with this proposed AD. See the DMS to examine the draft economic evaluation.

**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.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**Arrow Falcon Exporters, Inc. (previously Utah State University); California Department of Forestry; Firefly Aviation Helicopter Services (previously Erickson Air-Crane Co.); Garlick Helicopters, Inc.; Global Helicopter Technology, Inc.; Hagglund Helicopters, LLC (previously Western International Aviation, Inc.); International Helicopters, Inc.; Precision Helicopters, LLC; Robinson Air Crane, Inc.; San Joaquin Helicopters (previously Hawkins and Powers Aviation, Inc.); S.M.&T. Aircraft (previously US Helicopters, Inc., UNC Helicopter, Inc., Southern Aero Corporation, and Wilco Aviation); Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation International, Inc. (previously Jamie R. Hill and Southwest Florida Aviation); Tamarack Helicopters, Inc. (previously Ranger Helicopter Services, Inc.); US Helicopters, Inc. (previously UNC Helicopter, Inc.); West Coast Fabrication; and Williams Helicopter Corporation (previously Scott Paper Co.):** Docket No. FAA–2006–25097; Directorate Identifier 2005–SW–19–AD.

### Applicability

Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters, and Southwest Florida Model SW204, SW204HP, SW205, and SW205A–1 helicopters, with tail rotor (T/R) slider, part number (P/N) 204–010–720–3 or P/N 204010720–3, installed, certificated in any category.

### Compliance

Required as indicated.

To prevent failure of the T/R slider, which could result in loss of T/R control and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS), unless accomplished previously:

(1) Review the helicopter records to determine the Commercial and Government Entity (CAGE) code of the T/R slider. If necessary, remove the installed T/R slider to determine the CAGE code.

(2) If the T/R slider is an FAA approved part; for example, an original equipment manufacturer (OEM) part, and has a legible CAGE code other than Code 15716 or 26098; no further action is required.

(3) If you cannot determine whether the T/R slider is an FAA approved part and it contains no stamped CAGE code, an illegible stamped CAGE code, or is stamped with a CAGE code 15716 or 26098:

(i) Before further flight, unless accomplished previously, and thereafter at intervals not to exceed 25 hours TIS, magnaflux inspect the T/R slider for a crack.

(ii) If a crack is found, before further flight, replace the cracked T/R slider with an airworthy T/R slider.

**Note 1:** T/R sliders manufactured by Forest Scientific, Inc., were produced under a military contract and do not meet the OEM specifications. The machining process resulted in excess surface roughness. See Figure 1 of this AD.

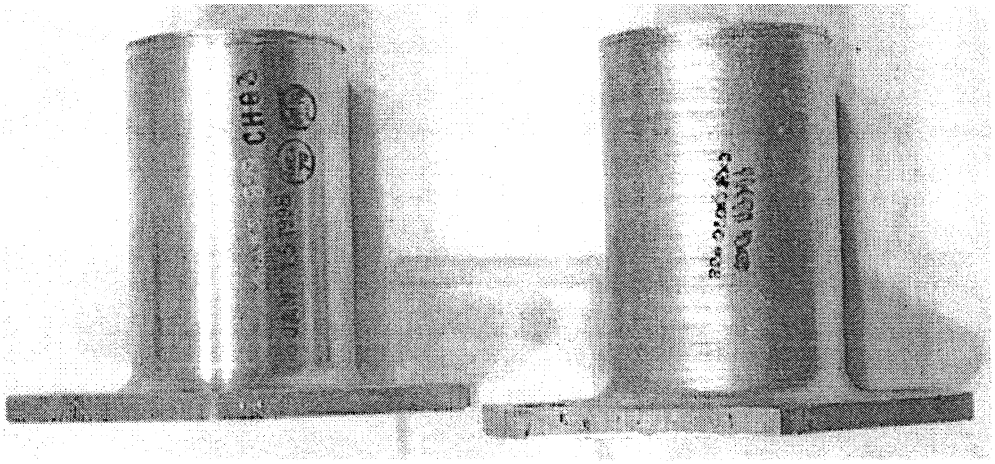


FIGURE 1

Tail rotor sliders manufactured by Bell Helicopter Textron, Inc. (left) and Forest Scientific, Inc. (right). Note the rough finish of the Forest Scientific, Inc.-manufactured T/R slider compared to the one shown on the left.

**Note 2:** T/R sliders manufactured by Bell Helicopter Textron, Inc. have a vibro-etched P/N on them and do not have a CAGE code marking on the part.

(iii) On or before accumulating 1000 hours TIS or on or before 12 months, whichever occurs first, replace each T/R slider that

has an illegible CAGE code or Code 15716 or 26098 with an FAA approved airworthy slider without a CAGE code or with a legible CAGE code other than 15716 or 26098. Any T/R slider removed from service based on the requirements of this paragraph is not eligible for installation on any helicopter.

(iv) Replacing the T/R slider with an FAA approved airworthy T/R slider without a CAGE code or with a legible CAGE code other than 15716 or 26098, constitutes terminating action for the requirements of this AD.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Denver Aircraft Certification Office (ANM–100D), ATTN: Kreg Voorhies, Aerospace Engineer, 26805 E. 68th Ave., Room 214, Denver, Colorado 80249, telephone (303) 342–1092, fax (303) 342–1088, for information about previously approved alternative methods of compliance.

Issued in Fort Worth, Texas, on June 15, 2006.

**S. Frances Cox,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 06–5600 Filed 6–21–06; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2004–SW–16–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; MD Helicopters, Inc., Model 600N Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The FAA withdraws a notice of proposed rulemaking (NPRM) proposing a new Airworthiness Directive (AD) for MD Helicopters, Inc. (MDHI) Model 600N helicopters. The NPRM proposed adding six more inspection holes in the aft fuselage skin panels and inspecting the upper and lower tailboom attachment fittings, the upper longerons, and the angles and nutplates for cracks. Also, the NPRM proposed a terminating action of modifying the fuselage aft section to strengthen the tailboom attachments and longerons. Since issuing the NPRM, we have received a report of an in-flight separation of the tailboom in the inspection area. Based on that accident and due to the critical unsafe condition, we issued a final rule; request for comments that addressed the actions proposed in the NPRM. Accordingly, we withdraw the proposed AD.

**ADDRESSES:** This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Jon Mowery, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5322, fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Discussion

A proposal to amend 14 CFR part 39 by superseding AD 2001–24–51, Docket 2001–SW–57–AD, Amendment 39–12706 (67 FR 17934, April 12, 2002), for the MDHI Model 600N helicopters was published in the **Federal Register** on February 10, 2005 (70 FR 7063). In addition to retaining various requirements of AD 2001–24–51, the action proposed installing six more inspection holes in the aft fuselage skin panels and inspecting the upper and lower tailboom attachment fittings, the upper longerons, and the angles and nutplates for cracks. Also, the action proposed a terminating action of modifying the fuselage aft section to strengthen the tailboom attachments and longerons. That actions was prompted by analysis that shows that certain tailboom attachments and longerons may develop cracks. The proposed actions were intended to prevent failure of a tailboom attachment, loss of the tailboom, and subsequent loss of control of the helicopter.

Since issuing the NPRM, we have received an additional report of an in-flight separation of the tailboom in the inspection area. After reviewing the data, we issued a final rule; request for comments (AD 2006–08–12, 71 FR 24808, April 27, 2006) to correct a critical unsafe condition. That AD, 2006–08–12, requires the necessary actions proposed in the NPRM as well as other actions necessary to correct the unsafe condition.

### FAA's Conclusion

Since we issued AD 2006–08–12, which includes the necessary actions that were previously proposed, we are withdrawing the NPRM.

Withdrawal of the NPRM does not preclude the FAA from issuing another notice in the future nor does it commit the agency to any course of action in the future.

### Regulatory Impact

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Withdrawal

Accordingly, we withdraw the NPRM, Docket No. 2004–SW–16–AD, published in the **Federal Register** on February 10, 2005, 70 FR 7063, FR Doc. 05–2608, filed February 9, 2005.

Issued in Fort Worth, Texas, on June 9, 2006.

**Mark R. Schilling,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. E6–9846 Filed 6–21–06; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2006–24954; Directorate Identifier 2006–CE–30–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an airworthiness authority of another country to identify and correct an unsafe condition on an aviation product. The proposed AD would require actions that are intended to address an unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by July 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.
- *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 the proposed AD, contact the Pilatus Aircraft Ltd., Customer Support Manager, CH–6371 STANS, Switzerland; telephone: +41 41 619 6208; facsimile: +41 41 619 7311; e-mail: *SupportPC12@pilatus-aircraft.com*.

**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:**

## Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. We are prototyping this process and specifically request your comments on its use. You can find more information in FAA draft Order 8040.2, ''Airworthiness Directive Process for Mandatory Continuing Airworthiness Information'' which is currently open for comments at *http://www.faa.gov/aircraft/draft_docs*. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public.

This process continues to follow all existing AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to follow our technical decision-making processes in all aspects to meet our responsibilities to determine and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

The comment period for this proposed AD is open for 30 days to allow time for comment on both the process and the AD content. In the future, ADs using this process will have a 15-day comment period. The comment period is reduced because the airworthiness authority and manufacturer have already published the documents on which we based our decision, making a longer comment period unnecessary.

## Comments Invited

We invite you to send any written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2006–24954; Directorate Identifier 2006–CE–30–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 are also inviting comments, views, or arguments on the new MCAI process. 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

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, has issued FOCA AD HB–2006–223, effective date April 20, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states that the aircraft manufacturer has identified drill damage on some Frame 21 (FR21) lug fittings on the production line and during a number of midlife wing lug inspections. It is thought that the damage found on the FR21 lug fittings occurred during assembly of the airplane. Depending on the size and location of the possible damage, if not corrected, the fatigue life of the wing attachment lugs on FR21 may be affected. The MCAI requires a one-time inspection of the FR21 adjacent to the wing upper-attachment lugs, left and right, and a repair if necessary. You may obtain further information by examining the MCAI in the docket.

## Relevant Service Information

Pilatus Aircraft Ltd. issued Service Bulletin No. 53–004, dated February 10, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

## FAA's Determination and Requirements of the Proposed AD

This product is manufactured outside the United States and is 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 agreement. Pursuant to this bilateral airworthiness agreement, the State of Design's airworthiness authority has notified us of the unsafe condition described in the MCAI and service information referenced above. We have examined the airworthiness authority's findings, evaluated all pertinent information, and determined an unsafe condition exists and is likely to exist or develop on all products of this type design. We are issuing this proposed AD to correct the unsafe condition.

## Differences Between the Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable in a U.S. court of law. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the proposed AD. These proposed requirements, if ultimately adopted, will take precedence over the actions copied from the MCAI.

## Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 394 products of U.S. registry. We also estimate that it would take about 5 work-hours per product to do the action and that the average labor rate is $80 per work-hour. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the

proposed AD on U.S. operators to be $157,600, or $400 per product.

## Authority for This Rulemaking

Title 49 of the United States Code specifies 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 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 FAA amends § 39.13 by adding the following new AD:

**Pilatus Aircraft Ltd.**: FAA–2006–24954; Directorate Identifier 2006–CE–30–AD.

**Comments Due Date**

(a) We must receive comments on this proposed airworthiness directive (AD) by July 24, 2006.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Models PC–12 and PC–12/45 airplanes; manufacturer serial numbers 101 through 617 inclusive, certificated in any U.S. category.

**Reason**

(d) The mandatory continuing airworthiness information (MCAI) states that the aircraft manufacturer has identified drill damage on some Frame 21 (FR21) lug fittings on the production line and during a number of midlife wing lug inspections. It is thought that the damage found on the FR21 lug fittings occurred during assembly of the airplane. Depending on the size and location of the possible damage, if not corrected, the fatigue life of the wing attachment lugs on FR21 may be affected. The MCAI requires a one-time inspection of the FR21 adjacent to the wing upper-attachment lugs, left and right, and a repair if necessary.

**Actions and Compliance**

(e) Unless already done, do the following except as stated in paragraph (f) below.

(1) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, perform an inspection of FR21 in the area of the outer sidewall frame attachment lug forward and aft side faces, left and right, to determine if there is any damage that may have been made with a drill. Follow Pilatus Aircraft Ltd. Service Bulletin No. 53–004, dated February 10, 2006.

(2) Within the next 100 hours TIS after the effective date of this AD, perform an inspection of FR21 in the area of the top surface of the wing upper-attachment lugs, left and right, to determine if there is any damage that may have been made with a drill. Follow Pilatus Aircraft Ltd. Service Bulletin No. 53–004, dated February 10, 2006.

(3) If during the inspection required by paragraph (e)(1) of this AD any damage less than 0.1 mm (0.0040 inch) on any FR21 is found, prior to further flight, repair the damaged FR21 in accordance with Pilatus Aircraft Ltd. Service Bulletin No. 53–004, dated February 10, 2006.

(4) If during the inspection required in paragraph (e)(1) of this AD any damage equal to or greater than 0.1 mm (0.0040 inch) on any FR21 is found, prior to further flight contact Pilatus Aircraft Ltd. for an FAA-approved repair solution.

(5) If during the inspection required by paragraph (e)(2) of this AD any damage less than 1 mm (0.040 inch) depth on any FR21 wing attachment lug top surface is found, prior to further flight, repair the damaged FR21 in accordance with Pilatus Aircraft Ltd. Service Bulletin No. 53–004, dated February 10, 2006.

(6) If during the inspection required by paragraph (e)(2) of this AD any damage equal to or greater than 1 mm (0.040 inch) depth on any FR21 wing attachment lug top surface is found, prior to further flight contact Pilatus Aircraft Ltd. for an FAA-approved repair solution.

**FAA AD Differences**

(f) None.

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, 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 AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) *Return to Airworthiness:* When complying with this AD, perform FAA-approved corrective actions before returning the product to an airworthy condition.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

**Related Information**

(h) This AD is related to Federal Office for Civil Aviation AD HB–2006–223, effective date April 20, 2006, which references Pilatus Aircraft Ltd. Service Bulletin No. 53–004, dated February 10, 2006.

Issued in Kansas City, Missouri, on June 12, 2006.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E6–9845 Filed 6–21–06; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**19 CFR Part 358**

**[Docket No. 060602144–6144–01]**

**RIN 0625–AA71**

## Procedures for Importation of Supplies for Use in Emergency Relief Work

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The Department of Commerce (''the Department'') proposes to establish procedures for importation of supplies for use in emergency relief work free of antidumping or countervailing duties, as authorized under section 318(a) of the Tariff Act of 1930, as amended (''the Act'') (19 U.S.C. 1318(a)). Such supplies would be for use in emergency relief work related to an emergency declared by the President.

**DATES:** To be assured of consideration, written comments must be received not later than July 24, 2006.

**ADDRESSES:** A signed original and two copies of each set of comments, including reasons for any recommendation, should be submitted to David M. Spooner, Assistant Secretary for Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; attention: Proposed Procedures for Importation of Supplies for Use in Emergency Relief Work. Any comments on the collection-of-information requirements also should be submitted to OMB at The Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, attention: ITA Desk Officer.

**FOR FURTHER INFORMATION CONTACT:** Stacy J. Ettinger, Office of the Chief Counsel for Import Administration, Room 3622, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: (202)482–4618.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 318(a) of the Act (19 U.S.C. 1318(a)) gives the Secretary of the Treasury authority, on a temporary basis, to respond immediately where the President declares the existence of an emergency. Specifically, the Secretary may ''permit * * * the importation free of duty of * * * supplies for use in emergency relief work.'' This authority, insofar as it encompasses antidumping and countervailing duties, was delegated to the Secretary of Commerce in 1979, pursuant to Reorg. Plan No. 3 of 1979.[1] Consistent with the Reorg. Plan, we have proposed this rule in consultation with the Department of Treasury. The proposed rule, if adopted, would establish procedures for importation of supplies for use in emergency relief work free of antidumping or countervailing duties, as authorized under section 318(a) of the Act.

### Explanation of Proposed Rule

*Section 358.101*

Section 358.101 sets forth the scope of Part 358, procedures for importation of supplies for use in emergency relief work free of antidumping or countervailing duties, as authorized under section 318(a) of the Act.

*Section 358.102*

Section 358.102 sets forth the definition of terms that are used in part 358.

*Section 358.103*

Section 358.103 sets forth the procedures for importation of supplies for use in emergency relief work free of antidumping or countervailing duties.

Where the President, acting under section 318 of the Act, authorizes the Secretary to permit the importation of supplies for use in emergency relief work , the Secretary will consider a request for importation free of antidumping or countervailing duties under the conditions set forth in paragraph (a). Paragraph (a)(1) requires that a request be in writing, identifies persons that may submit a request, indicates the number of copies required for filing, and states that a request must be filed with the Department's Central Records Unit. Paragraph (a)(2) identifies the information required to be provided in a request.

Paragraph (b) provides that if the Secretary determines to permit importation of particular merchandise free of antidumping or countervailing duties, the Secretary will notify the person who submitted the request and instruct Customs to allow entry of the merchandise without regard to antidumping or countervailing duties.

Paragraph (c) indicates possible penalties where merchandise entered for use in emergency relief work is used in the United States for some other purpose. The merchandise may be subject to seizure or other penalty, including under section 592 of the Act (19 U.S.C. 1592).

Paragraph (d) clarifies that, although merchandise entered for use in emergency relief work is subject to Department reporting requirements in antidumping or countervailing administrative reviews, such merchandise will be excluded from the calculation of assessment and cash deposit rates.

### Classification

*E.O. 12866*

This proposed rule has been determined to be not significant under E.O. 12866.

*Paperwork Reduction Act*

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for a 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 Office of Management and Budget (OMB) control number. This proposed rule involves collection-of-information requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. These requirements have been sent to OMB for approval. The public reporting burden for this collection of information is estimated at 10 total burden hours. This time is an estimate of the time required to complete a request for importation, review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Send comments on the reporting burden estimate or any other aspect of the information requirements in this proposed rule to David M. Spooner, Assistant Secretary for Import Administration, Central Records Unit, room 1870, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, attention: Proposed Procedures for Importation of Supplies for Use in Emergency Relief Work; and to OMB at The Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, attention: ITA Desk Officer.

*E.O. 12612*

This proposed rule does not contain federalism implications warranting the preparation of a Federalism Assessment.

[1] All functions of the Secretary of Treasury under this provision, with respect to the AD/CVD functions, were transferred to Commerce pursuant to Reorg. Plan No. 3 of 1979, to be exercised in consultation with the Secretary of the Treasury. Reorg. Plan No. 3 is set out as notes under 19 U.S.C.A. § 2171. Authority under section 318 of the Act was transferred to Commerce under section 5(a)(1)(E) of the Reorg. Plan.

*Regulatory Flexibility Act*

The Chief Counsel for Regulation at the Department certified to the Chief Counsel for Advocacy, Small Business Administration that this rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

The Department proposes to establish procedures for importation of supplies free of antidumping or countervailing duties if those supplies are to be used in emergency relief work, as authorized under section 318(a) of the Tariff Act of 1930, as amended (''the Act'') (19 U.S.C. 1318(a)). Section 318(a) of the Act gives the Secretary of the Treasury authority, on a temporary basis, to respond immediately where the President declares the existence of an emergency. Specifically, the Secretary may ''permit * * * the importation free of duty of * * * supplies for use in emergency relief work.'' This authority, insofar as it encompasses antidumping and countervailing duties, was delegated to the Secretary of Commerce in 1979. Section 318(a) of the Act authorizes the Secretary to take action ''under such regulations as the Secretary may prescribe.'' This proposed action prescribes such regulations. This proposed action only addresses the procedures for importation of supplies for emergency relief work free of antidumping and countervailing duties.

The Department is unable to estimate the number of small entities that will be affected by this rule as the Department does not collect this information; nor is the Department able to predict the types of entities that would apply for importation of supplies for use in emergency relief work free of antidumping or countervailing duties. However, there is the possibility that this rule would impact some number of small entities. Although the number of small entities that may impacted is unknown, this rule would not impose a significant economic impact. This rule merely sets up the process persons would use to request importation of supplies for use in emergency relief work free of antidumping or countervailing duties. The exemption of certain goods from liability for antidumping or countervailing duties will not result in a significant economic impact because the exempted goods would be gifts contributed to, or goods sold for, the specific purpose of providing emergency relief. Because the purpose of these provisions is targeted specifically for emergency relief and not for mass consumption, this rule would not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 19 CFR Part 358**

Administrative practice and procedure, Antidumping duties, Business and industry, Countervailing duties, Emergency powers, Reporting and recordkeeping requirements.

Dated: June 16, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

For the reasons stated, 19 CFR part 358 is proposed to be added to read as follows:

## PART 358—SUPPLIES FOR USE IN EMERGENCY RELIEF WORK

Sec.
358.101 Scope.
358.102 Definitions.
358.103 Importation of supplies.

**Authority:** 19 U.S.C. 1318(a).

### § 358.101 Scope.

This part sets forth the procedures for importation of supplies for use in emergency relief work free of antidumping or countervailing duties, as authorized under section 318(a) of the Act.

### § 358.102 Definitions.

For purposes of this part:

*Act* means the Tariff Act of 1930, as amended.

*Customs* means the Bureau of Customs and Border Protection of the United States Department of Homeland Security.

*Department* means the United States Department of Commerce.

*Order* means an order issued by the Secretary under section 303, section 706, or section 736 of the Act.

*Secretary* means the Secretary of Commerce or a designee.

*Supplies for use in emergency relief work* means supplies for use in emergency relief work related to the emergency declared by the President.

### § 358.103 Importation of supplies.

(a) Where the President, acting under section 318 of the Act, authorizes the Secretary to permit the importation of supplies for use in emergency relief work free of antidumping and countervailing duties, the Secretary shall consider requests for such importation under the following conditions:

(1) Before importation, a written request shall be submitted to the Secretary by the person in charge of sending the subject merchandise from the foreign country, or by the person for whose account it will be brought into the United States. Three copies of the request should be submitted to the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

(2) The request shall state the Department antidumping or countervailing duty order case number, the producer of the merchandise, a detailed description of the merchandise, current HTS number, price in the United States, quantity, proposed date of entry, proposed port of entry, mode of transport, destination, use to be made of the merchandise, and any other information the person would like the Secretary to consider.

(b) If the Secretary determines to permit importation of particular merchandise for use in emergency relief work, the Secretary will notify the person who submitted the request and instruct Customs to allow entry of the merchandise without regard to antidumping or countervailing duties.

(c) Any subject merchandise entered under paragraph (b) of this section which is used in the United States other than for a purpose contemplated for it by section 318(a) of the Act may be subject to seizure or other penalty, including under section 592 of the Act.

(d) Any subject merchandise entered under paragraph (b) of this section is subject to the Department's reporting requirements in its conduct of an antidumping or countervailing duty administrative review, however, the Department will exclude such merchandise from the calculation of assessment and cash deposit rates.

[FR Doc. 06–5612 Filed 6–21–06; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF STATE

## 22 CFR Part 42

**[Public Notice 5445]**

**RIN 1400–AC17**

## Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000; Consular Officer Procedures in Convention Cases

**AGENCY:** State Department.

**ACTION:** Proposed Rule with request for comments.

**SUMMARY:** This proposed rule amends U.S. Department of State regulations to provide for intercountry adoptions that will occur pursuant to the Hague Convention on Protection of Children

and Co-operation in Respect of Intercountry Adoption (hereinafter the ''Convention'') and the Intercountry Adoption Act of 2000 (hereinafter the ''IAA'') This proposed rule addresses consular officer processing of immigration petitions, visas, and Convention certificates in cases of children immigrating to the United States in connection with an adoption subject to the Convention.

**DATES:** Written comments must be submitted on or before July 24, 2006.

**ADDRESSES:** You may submit comments, identified by any of the following methods:

- E-mail: *visaregs@state.gov.* You must include the RIN number in the subject line of your message.
- Mail: Chief, Legislation and Regulations Division, Visa Office, U.S. Department of State, 2401 E Street, NW., Washington DC 20520–0106.
- Fax: 202–663–3898. You must include the RIN number in the subject line of your message.

Persons with access to the Internet may also view this document and provide comments by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm.*

**FOR FURTHER INFORMATION CONTACT:** Barbara J. Kennedy, Legislation and Regulations Division, Visa Services, U.S. Department of State, 2401 E Street, NW., Room L–603, Washington, DC 20520–0106; telephone 202–663–1206 or e-mail *KennedyBJ@state.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention) is a multilateral treaty that provides a framework for the adoption of children habitually resident in one country party to the Convention by persons habitually resident in another party to the Convention. It establishes procedures to be followed in such adoption cases and imposes safeguards to protect the best interests of the children at issue. It also provides for recognition of adoptions that occur pursuant to the Convention. In the United States, the implementing legislation for the Hague Convention is the Intercountry Adoption Act of 2000 (IAA). To implement the Convention, the IAA makes two significant changes to the Immigration and Nationality Act (INA): (1) It creates a new definition of child applicable in Convention adoption cases, INA 101(b)(1)(G) (''Hague child''), that roughly parallels the current ''orphan'' definition, INA 101(b)(1)(F), but that applies only to children being adopted from Convention parties. (2) It incorporates Hague procedures into the immigration process for children covered by INA 101(b)(1)(G), most directly by precluding approval of an immigration petition under this classification until the Department has certified that the child was adopted in accordance with the Convention and the IAA. Separately, the IAA requires domestic entities to recognize adoptions that have been so certified by the Department.

The Department of Homeland Security will be issuing separate but complementary regulations relating to the immigration process for Hague children. Additional regulations will implement other aspects of the Convention and the IAA, such as on the accreditation/approval of adoption service providers to perform adoption services in cases covered by the Convention (22 CFR Part 96), preservation of records (22 CFR Part 98), and certificate issuance with respect to U.S. court proceedings (22 CFR Part 97). Further background on the Convention and IAA is provided in the Preamble to the Final Rule on the Accreditation of Agencies and Approval of Persons under the Intercountry Adoption Act of 2000, Sections III and IV, 71 FR 8064–8066 (February 15, 2006).

## The Proposed Regulation

This proposed rule establishes new procedures that consular officers will follow in adjudicating Hague child cases. Although much of the petition and visa processes will be similar to the current orphan case procedures, there are important changes. Perhaps most significantly, U.S. authorities will perform the bulk of petition and visa adjudication work much earlier than under current practice. This early review will enable U.S. authorities to make the determination required by Article 5 of the Convention that the child will be eligible to enter and reside permanently in the receiving state prior to the adoption or grant of custody. The regulation also provides that, once the country of origin has provided appropriate notification that the adoption or custody grant has occurred, the consular officer will issue a certificate to the U.S. adoptive or prospective adoptive parent if the officer is satisfied that the requirements of the Convention and IAA have been met, and only if so will the consular officer approve the immigration petition and complete visa processing. To streamline the process, the regulation departs from current practice by allowing consular officers to approve Hague child petitions regardless of whether the petition was originally filed with the Department or DHS.

Paragraph (a) of the proposed § 42.24 sets forth short forms and abbreviations of terms used in this section that do not appear in the general definitions for 22 CFR Part 42.

Paragraph (b) clarifies that INA 101(b)(1)(G) is the only definition of child applicable to adoptions subject to the Convention. Children who are immigrating to the United States from a Convention country in connection with an adoption will not be classifiable under INA 101(b)(1)(F). The Convention obligates Contracting Parties to apply the Convention in all cases that fall within its scope. Continuing to allow children to qualify under INA 101(b)(1)(F), which provides for children to enter the United States as part of the intercountry adoption process, but which does not incorporate Hague procedures, would be inconsistent with this mandate. (Note, however, that it may still be possible for a child adopted in a Hague country to qualify for a visa pursuant to INA 101(b)(1)(E). INA 101(b)(1)(E) is designed to allow immigration of an adopted child who is an established part of an existing family. It generally requires that the child have been in the legal custody of, and have resided with, the adoptive parent(s) for at least two years. Unlike INA 101(b)(1)(F), INA 101(b)(1)(E) is not targeted at children habitually resident abroad being adopted by parents habitually resident in the United States, but rather at adoptive families formed while both parents and child were habitually resident abroad. A subsequent move to the United States would not trigger U.S. procedural obligations under the Convention.

Paragraph (c) provides that the provisions of § 42.24 will govern the operations of consular officers in processing Hague child cases. It also incorporates the Secretary's non-delegable authority to waive any requirement of the IAA or these regulations in a particular case in the interests of justice or to prevent grave physical harm to the child, to the extent consistent with the Convention. This authority is granted in IAA section 502. The Department does not anticipate that the Secretary will exercise this authority, which would require her personal consideration of the matter, except in the most rare and unusual of circumstances.

Paragraph (d) states the general rules that will govern the adoption process in Hague child cases and the division of functions between DHS and the Department. To qualify as a Hague

child, a DHS or consular officer must review and provisionally approve an immigration petition for the child (I–600) and a consular officer must review and annotate the child's visa application prior to the foreign adoption or custody proceeding. A consular officer will give final approval to the petition and visa application only after the adoption or custody proceeding, and before a visa may be issued to the child.

This procedure reflects a significant shift in timing of consular processing of adoption cases that is effectively mandated by the Convention. Under current practices, the determination of whether the child will be permitted to enter the United States is generally made only after the adoption or custody proceeding has been completed. Article 5 of the Convention requires that the receiving country make such a determination much earlier in the process. Pursuant to this Article, the adoption may not take place until the competent authorities of the receiving State have (1) Determined that the prospective adoptive parents are eligible and suited to adopt; (2) ensured that the prospective adoptive parents have been counseled as may be necessary; and (3) determined that the child is or will be authorized to enter and reside permanently in that State. These requirements effectively mean that U.S. authorities must provisionally review the child's case before an adoption or custody proceeding under the Convention takes place abroad.

Paragraph (e) sets forth the procedures a consular officer will follow if a petition is filed abroad with a consular officer. Consular officers are instructed to follow DHS requirements in making a decision on provisional approval of the petition. Based on consultations with DHS, the Department anticipates that before providing provisional approval, a consular or DHS officer will need to establish that DHS has granted I–600A approval (concluding that prospective adoptive parents are eligible and suitable to adopt). In addition, a consular or DHS officer will need to determine whether, but for the absence of a final adoption or custody order, the proposed adoption or custody grant complies with all Convention requirements and whether the child falls within the Hague child definition. In some cases, as is current practice, DHS will carry out an initial review of classification but request that a consular officer do additional reviews, determinations or investigations. The regulation makes clear that the consular officer will provide this service to DHS so that it can decide whether to grant provisional approval of the petition.

Paragraph (f) instructs consular officers to approve a petition provisionally if, in accordance with applicable DHS requirements, it appears the child will be classifiable as a Hague child and that the proposed adoption or grant of custody will be in compliance with the Convention. If a consular officer knows or has reason to believe the petition is not provisionally approvable, the consular officer must return the petition to DHS for processing in accordance with existing procedures for consular officer suspension of action in petition cases, which are set forth in § 42.43.

Paragraph (g) requires an immigrant visa application for the child, together with supporting documentation identified in 42.63 (Application forms and other documentation) and 42.65 (Supporting documents) and any required fees, to be submitted to a U.S. consular officer located in the consular district in which the child's visa will be processed (as determined by § 42.61) for a provisional review of visa eligibility. Paragraph (g) also requires visa applicants to comply with the remainder of the requirements normally applicable to persons filing an immigrant visa petition to the extent practicable to do so: § 42.62 (personal appearance and interview of applicant), § 42.64 (passport requirements), § 42.66 (medical examination) and § 42.67 (execution of application, registration, and fingerprinting). Because conclusions drawn at this stage of processing will be critical to the determination of the child's eligibility to enter and reside permanently in the United States, it will be important for the consular officer to make as comprehensive a review of visa eligibility as possible. In some cases, however, it will not be practicable to satisfy all visa processing requirements prior to the adoption or custody grant, in particular with respect to requirements that require actions to be taken by the applicant child. For example, it may not be practicable for a child to travel a considerable distance to be examined by a panel physician or be interviewed by a consular officer until the adoption or custody proceeding has taken place. Thus the regulation does not require applicants to comply with § 42.62, § 42.64, § 42.66 or § 42.67 at the provisional review stage if it is not practicable to do so.

Paragraph (h) instructs the consular officer to determine visa eligibility provisionally based on the information provided. The consular officer must follow all procedures that would normally be required to adjudicate an immigrant visa, except to the extent the consular officer cannot because the applicant has not provided the necessary input. For example, the consular officer does not need to examine a panel physician's report if the applicant has not undergone a panel physician exam. If there is other information in the record before the consular officer indicating that the child may have a disease that would result in a medical ineligibility, however, the consular officer will have to take this information into account as part of the provisional review process.

If it appears that the child will not be ineligible for a visa, the consular officer will so annotate the visa application. If it appears the child will be ineligible for a visa, the rule requires the consular officer to inform the prospective adoptive parents of the ineligibility and give them an opportunity to show that it will be overcome. If, after the prospective adoptive parents have had such an opportunity, the child continues to appear ineligible, the consular officer will be required to deny the visa in accordance with the normal procedures set forth in § 42.81. Although these procedures normally apply only to executed visa applications, this proposed rule will authorize consular officers to follow the procedures set forth in § 42.81 even if the application has not been executed. This adjustment to normal procedures is required because in at least some cases the applicant may not have complied with § 42.67 (execution of application, registration, and fingerprinting). If, in the course of reviewing the visa-related materials, the consular officer comes to know or have reason to believe that the petition is not approvable, the consular officer will be required to return the petition to DHS for processing in accordance with existing procedures for consular officer suspension of action in petition cases, set forth in § 42.43.

Paragraph (i) provides that, if both the petition and visa provisional reviews are concluded favorably, and the consular officer is aware of no grounds that would preclude the entry of the child into the United States, the consular officer will notify the country of origin that the steps required under Article 5 have been taken, so that the adoption or custody proceeding may proceed. The Department intends that, in general, the consular officer's notification will be transmitted to the country of origin through the relevant adoption service provider.

Paragraph (j) provides that, once the country of origin has notified the consular officer that the adoption or grant of custody has occurred and once any remaining petition or visa-related

requirements have been met, the consular officer will reexamine the case. (Thus, for example, if it was not practicable for the child to submit to a panel physician's exam at the provisional review stage, the exam must be done prior to this final stage of consular officer review.) If, upon review of additionally submitted information, the consular officer is satisfied that the Convention and IAA requirements have been met, the consular officer will affix a certificate so indicating to the adoption decree or grant of custody. This certificate will meet the requirements of INA section 204(d)(2), which mandates certification by the Department prior to petition approval, as well as the requirements of IAA section 301(a), which addresses certificate issuance by the Department to parents. Paragraph (j) also instructs consular officers that, for purposes of deciding whether to issue a certificate, the fact that a consular officer previously provided notification to the country of origin pursuant to paragraph (i) (*i.e.*, the Article 5 notification) with respect to the case is prima facie evidence of compliance with the Convention and IAA. The earlier provisional approval of the petition, and Article 5 notification, will have required a finding of Convention and IAA compliance on every matter except the existence of a final adoption or custody decree. Thus, following appropriate notification from the country of origin regarding completion of the adoption or custody proceedings, and compliance with all remaining visa and petition requirements, the prior determinations should be considered a sufficient basis on which to issue a certificate except in very unusual cases in which a consular officer becomes aware of information calling into question Convention and IAA compliance.

Paragraph (k) instructs consular officers to notify the country of origin in those rare cases for which they are unable to certify Convention and IAA compliance as provided in paragraph (j). For example, new information may be discovered that reveals that birthparent consent was fraudulently obtained. Article 24 of the Convention provides that recognition of an adoption may be refused by a Contracting State if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child. The country of origin is notified so that it can be involved in determining appropriate next steps in the case.

Following the determination of whether to issue the certificate described in paragraph (j), paragraph (l) instructs the consular officer to perform a final adjudication of the petition and visa application in accordance with standard procedures.

There may also be circumstances in which, although the adoption is certified as being in compliance with the Convention and the IAA, a visa cannot be issued to the child, at least in the immediate term. For example, if the panel physician medical exam is not performed prior to Article 5 notification, completion of that exam may reveal that the child has a medical ineligibility. Such cases will usually be resolved through treatment of an illness or through the use of Department and DHS waiver authorities in appropriate cases.

Paragraph (m) instructs consular officers unable to give final approval to the petition at this stage to follow standard procedures in handling such cases, which include returning the petition to DHS for possible revocation, pursuant to § 42.43, and denial of the visa pursuant to § 42.81. If the petition is approvable but the visa application is not, the visa must be refused in accordance with § 42.81.

## Regulatory Findings

### *Administrative Procedure Act*

In accordance with provisions of the Administrative Procedure Act governing rules promulgated by federal agencies that affect the public (5 U.S.C. 552), the Department is publishing this proposed rule and inviting public comment.

### *Regulatory Flexibility Act/Executive Order 13272: Small Business*

The Department of State, in accordance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) and Executive Order 13272, section 3(b), has evaluated the effects of this action of small entities and has determined and hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities.

### *The Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule would not result in any such expenditure, nor would it significantly or uniquely affect small governments.

### *The Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. This rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

### *Executive Order 12866*

The Department of State does not consider this rule to be a ''significant regulatory action'' within the scope of section 3(f)(1) of Executive Order 12866. Nonetheless, the Department has reviewed the rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

### *Executive Orders 12372 and 13132: Federalism*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

### *Executive Order 12988: Civil Justice Reform*

The Department has reviewed the regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

### *Paperwork Reduction Act*

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act (PRA), 44 U.S.C. Chapter 35. The Department plans for applicants for visas for children adopted under the Hague Convention to use visa application forms that have already been approved by OMB. The forms related to the petition process, such as the I600 and I600A, are DHS forms, and DHS would be responsible for compliance with the PRA, where it applies, with respect to any changes in those forms. We currently anticipate that the certificates to be issued by

consular officers will not involve the collection of additional information not already collected. Moreover, Section 503(c) of the IAA exempts from the PRA any information collection ''for use as a Convention record as defined'' in the IAA. Information collected on Convention adoptions in connection with the visa, petition, and certificate processes would relate directly to specific Convention adoptions (whether final or not), and therefore would fall within this exemption. Accordingly, the Department has concluded that this regulation will not involve an ''information collection'' under the Paperwork Reduction Act.

**List of Subjects in 22 CFR Part 42**

Immigration, Passports, Visas, Intercountry adoption, Convention certificates.

In view of the foregoing, 22 CFR part 42 would be amended as follows:

## PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for part 42 is revised to read as follows:

**Authority:** 8 U.S.C. 1104 and 1182; Pub. L. 107–56, sec 421; The Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); The Intercountry Adoption Act of 2000, 42 U.S.C. 14901–14954, Pub. L. 106–279.

2. Add a new § 42.24 to subpart C to read as follows:

### § 42.24 Adoption under the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and the Intercountry Adoption Act of 2000.

(a) For purpose of this section, the following definitions apply:

*Convention* means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993.

*DHS* means the Department of Homeland Security and encompasses the former Immigration and Naturalization Service (INS) or any successor entity designated by the Secretary of Homeland Security to assume the functions vested in the Attorney General by the IAA relating to the INS's responsibilities.

*IAA* means the Intercountry Adoption Act of 2000, Public Law 106–279 (2000) (42 U.S.C. 14901–14954), as amended from time to time.

(b) A child habitually resident in a country with which the Convention is in force with the United States who is traveling to the United States in connection with an adoption must qualify for visa status under the provisions of INA section 101(b)(1)(G) as provided in this section. Such a child shall not be accorded status under INA section 101(b)(1)(F).

(c) The provisions of this section govern the operations of consular officers in processing cases involving children for whom classification is sought under INA section 101(b)(1)(G), unless the Secretary has personally waived any requirement of the IAA or these regulations in a particular case in the interests of justice or to prevent grave physical harm to the child, to the extent consistent with the Convention.

(d) An alien child shall only be classifiable under INA section 101(b)(1)(G) if, before the child is adopted or legal custody for the purpose of adoption is granted, (1) A petition for the child has been received and provisionally approved by a DHS officer or, where authorized by DHS, by a consular officer, and (2) a visa application for the child has been received and annotated in accordance with paragraph (h) of this section by a consular officer. No alien child shall be issued a visa pursuant to INA section 101(b)(1)(G) unless the petition and visa application are finally approved by a consular officer.

(e) If a petition for a child under INA section 101(b)(1)(G) is received by a consular officer, the consular officer will review the petition for the purpose of determining whether the petition can be provisionally approved in accordance with applicable DHS requirements. If a petition for a child under INA section 101(b)(1)(G) is received by a DHS officer, the consular officer will conduct any reviews, determinations or investigations requested by DHS with regard to the petition and classification determination in accordance with applicable DHS procedures.

(f) A petition shall be provisionally approved by the consular officer if, in accordance with applicable DHS requirements, it appears that the child will be classifiable under INA 101(b)(1)(G) and that the proposed adoption or grant of custody will be in compliance with the Convention. If the consular officer knows or has reason to believe the petition is not provisionally approvable, the consular officer shall return it to DHS pursuant to § 42.43.

(g) After a petition has been provisionally approved, a completed visa application form, any supporting documents required pursuant to § 42.63 and § 42.65, and any required fees must be submitted to the consular officer in accordance with § 42.61 for a provisional review of visa eligibility. The requirements in § 42.62, § 42.64, § 42.66 and § 42.67 shall also be satisfied to the extent practicable.

(h) A consular officer shall provisionally determine visa eligibility based on a review of the visa application, submitted supporting documents, and the provisionally approved petition. In so doing, the consular officer shall follow all procedures required to adjudicate the visa to the extent possible in light of the degree of compliance with §§ 42.62–42.67. If it appears, based on the available information, that the child would not be ineligible under INA section 212 or other applicable law to receive a visa, the consular officer shall so annotate the visa application. If evidence of an ineligibility is discovered during the review of the visa application, the prospective adoptive parents shall be informed of the ineligibility and given an opportunity to establish that it will be overcome. If the visa application cannot be annotated, the consular officer shall deny the visa in accordance with § 42.81, regardless of whether the application has yet been executed in accordance with § 42.67(a). If in addition the consular officer comes to know or have reason to believe that the petition is not approvable as provided in § 42.43, the consular officer shall return the petition to DHS pursuant to that section.

(i) If the petition has been provisionally approved, the visa application has been annotated in accordance with subparagraph (h), and the consular officer is aware of no grounds that would preclude the entry of the child into the United States following the adoption or grant of custody, the consular officer shall notify the country of origin that the steps required by Article 5 of the Convention have been taken.

(j) After the consular officer has received appropriate notification from the country of origin that the adoption or grant of custody has occurred and any remaining requirements established by DHS or §§ 42.61–42.67 have been fulfilled, the consular officer, if satisfied that the requirements of the IAA and the Convention have been met with respect to the adoption or grant of custody, shall affix to the adoption decree or grant of custody a certificate so indicating. This certificate shall constitute the certification required by IAA section 301(a) and INA section 204(d)(2). For purposes of determining whether to issue a certificate, the fact that a consular officer notified the country of

origin pursuant to paragraph (i) that the steps required by Article 5 of the Convention had been taken shall constitute prima facie evidence of compliance with the Convention and the IAA.

(k) If the consular officer is unable to issue the certificate described in paragraph (j) of this section, the consular officer shall notify the country of origin of the consular officer's decision.

(l) After the consular officer determines whether to issue the certificate described in paragraph (j) of this section, the consular officer shall finally adjudicate the petition and visa application in accordance with standard procedures.

(m) If the consular officer is unable to give final approval to the visa application or the petition, then the consular officer shall, as appropriate, return the petition to DHS for appropriate action in accordance with applicable DHS procedures and/or refuse the visa application in accordance with § 42.43 or § 42.81. The consular officer shall notify the country of origin that the visa has been refused.

Dated: June 9, 2006.

**Maura Harty,**

*Assistant Secretary for Consular Affairs, Department of State.*

[FR Doc. E6–9596 Filed 6–21–06; 8:45 am]

**BILLING CODE 4710–06–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD07–06–019]**

**RIN 1625–AA09**

## Drawbridge Operation Regulations; New River and New River South Fork Bridges, Ft. Lauderdale, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the regulations governing the operation of the S.E. Third Avenue, S. Andrews Avenue and Marshal (Seventh Avenue) Bridges across the New River at miles 1.4, 2.3, and 2.7 respectively, and the regulation governing the operation of the Davie Boulevard (S.W. Twelfth Street) Bridge across the New River, South Fork, mile 0.9, Fort Lauderdale, Broward County, Florida.

**DATES:** Comments and related material must reach the Coast Guard on or before August 21, 2006.

**ADDRESSES:** You may mail comments and related material to Commander (dpb), Seventh Coast Guard District, 909 S.E. 1st Ave, Suite 432, Miami, FL 33131–3050. Commander (dpb) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in the preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Bridge Branch, Seventh Coast Guard District, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Lieberum, Project Manager, Seventh Coast Guard District, Bridge Branch, 305–415–6744.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–06–019], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

### Public Meeting

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to the Bridge Branch, Seventh Coast Guard District, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

The City of Fort Lauderdale has requested that the Coast Guard change the current operating regulations of four bridges on the New River and New River South Fork by adding an additional half-hour to the morning and afternoon no-draw hours to the S.E. Third Avenue Bridge, the Davie Boulevard (S.W. Twelfth Street) Bridge, and the operating regulations of the S. Andrews Avenue and Marshal (Seventh Avenue) Bridges to include these same non-draw periods. Currently, the S.E. Third Avenue Bride and the Davie Boulevard Bridge open on signal, except that from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Friday, the draws need not be opened for the passage of vessels; and the Andrews Avenue and Marshal Bridges open on signal, however the Andrews Avenue draw need not be opened for upbound vessels when the draw of the Florida East Coast Railroad Bridge is in the closed position.

The proposed regulations for these bridges, which state that the draws need not be opened for the passage of vessels from 7:30 a.m. through 9 a.m. and from 4:30 p.m. through 6 p.m., Monday through Friday, except Federal holidays, will help alleviate the existing vehicle traffic delays.

### Discussion of Proposed Rule

The Coast Guard proposes to change the operating regulations of the S.E. Third Avenue Bridge, mile 1.4, the S. Andrews Avenue Bridge, mile 2.3, the Marshal (Seventh Avenue) Bridge, mile 2.7, and the Davie Boulevard (S.W. Twelfth Street) Bridge, mile 0.9, across the New River and South Fork of the New River. The draw shall open on signal, except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday, the draw need not be opened for the passage of vessels. Public vessels of the United States, regularly scheduled cruise vessels, tugs with tows, and vessels in distress shall be passed as necessary.

The proposed rule change would impact automobile traffic crossing the New River and New River, South Fork Bridges, as well as boat operators traversing the New River and New River, South Fork. Broward County commuters would gain one additional half hour each morning and evening during rush-hour in which to cross the Bridges without interruption due to vessel traffic. Vessel operators on the river would only have an additional half-hour each morning and evening in which they would have to wait for the draw to open.

### Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the policies and procedures of DHS is unnecessary, because the rule will allow for bridge openings before and after the curfew times.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities, because the regulations provide for opening before and after the curfew times.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in **FOR FURTHER INFORMATION CONTACT.** The Coast Guard will not retaliate against small entities that have questions or complain about this rule or any policy or action of the Coast Guard.

**Collection of Information**

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

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32) (e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); § 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.313 revise paragraphs (a) and (b) and add paragraph (c) to read as follows:

**§ 117.313 New River.**

(a) The draw of the S.E. Third Avenue Bridge, mile 1.4 at Fort Lauderdale shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw need not be opened for the passage of vessels. Public vessels of the United States, regularly scheduled cruise vessels, tugs with tows, and vessels in distress shall be passed as necessary.

(b) The draw of the Andrews Avenue Bridge, mile 2.3 at Fort Lauderdale, shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw need not be opened for the passage of vessels. The draw need not be opened for inbound vessels when the draw of the Florida East Coast railroad bridge, mile 2.5 at Fort Lauderdale is in the closed position for the passage of a train.

(c) The draw of the Marshal (Seventh Avenue) bridge, mile 2.7 at Fort Lauderdale shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw need not be opened for the passage of vessels. Public vessels of the United States, regularly scheduled cruise vessels, tugs with tows, and vessels in distress shall be passed as necessary

3. In § 117.315 revise paragraph (a) to read as follows:

**§ 117.315 New River, South Fork.**

(a) The draw of the Davie Boulevard (S.W. Twelfth Street) bridge, mile 0.9 at Fort Lauderdale shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw need not be opened for the passage of vessels. Public vessels of the United States, regularly scheduled cruise vessels, tugs with tows, and vessels in distress shall be passed as necessary.

* * * * *

Dated: June 12, 2006.

**D.W. Kunkel,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 06–5576 Filed 6–21–06; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD05–06–062]**

**RIN 1625–AA00**

## Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone upon certain waters of the Patapsco River, Northwest Harbor, and Inner Harbor during the movement of the historic sloop-of-war USS CONSTELLATION. This action is necessary to provide for the safety of life on navigable waters during the tow of the vessel from its berth at the Inner Harbor in Baltimore, Maryland, to a point on the Patapsco River near the Fort McHenry National Monument and Historic Shrine in Baltimore, Maryland, and return. This action will restrict vessel traffic in portions of the Patapsco River, Northwest Harbor, and Inner Harbor during the event.

**DATES:** Comments and related material must reach the Coast Guard on or before August 7, 2006.

**ADDRESSES:** You may mail comments and related material to Commander, U.S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland, 21226–1791. Coast Guard Sector Baltimore, Waterways Management Division, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander, U.S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland 21226–1791, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576–2674 or (410) 576–2693.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–06–062), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Sector Baltimore, Waterways Management Division, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

The USS CONSTELLATION Museum is planning to conduct a ''turn-around'' ceremony involving the sloop-of-war USS CONSTELLATION in Baltimore, Maryland on Friday, September 8, 2006. Planned events include a three-hour, round-trip tow of the USS CONSTELLATION in the Port of Baltimore, with an onboard salute with navy pattern cannon while the historic vessel is positioned off Fort McHenry National Monument and Historic Site. The historic Sloop-of-War USS CONSTELLATION will be towed ''dead ship,'' which means that the vessel will be underway without the benefit of mechanical or sail propulsion. The return dead ship tow of the USS CONSTELLATION to its berth in the Inner Harbor is expected to occur immediately upon execution of a tug-assisted turn-around of the USS CONSTELLATION on the Patapsco River near Fort McHenry. The Coast Guard anticipates a large recreational boating fleet during this event, scheduled on a late Friday afternoon during the summer in Baltimore, Maryland. Operators should expect significant vessel congestion along the planned route.

The purpose of this rule is to promote maritime safety and protect participants and the boating public in the Port of Baltimore immediately prior to, during, and after the scheduled event. The rule will provide for a clear transit route for

the participating vessels, and provide a safety buffer around the participating vessels while they are in transit. The rule will impact the movement of all vessels operating upon certain waters of the Patapsco River, Northwest Harbor and Inner Harbor.

**Discussion of Proposed Rule**

The historic sloop-of-war USS CONSTELLATION is scheduled to be towed ''dead ship'' on September 8, 2006. The USS CONSTELLATION is scheduled to be towed from its berth at Pier 1 in Baltimore's Inner Harbor to a point on the Patapsco River near Fort McHenry National Monument and Historic Shrine, Baltimore, Maryland, to take place along a one-way, planned route of approximately four nautical miles, that includes specified waters of the Patapsco River, Northwest Harbor and Inner Harbor. After being turned-around, the USS CONSTELLATION will be returned to its original berth at Pier 1, Inner Harbor, Baltimore, Maryland.

The safety of dead ship tow participants requires that persons and vessels be kept at a safe distance from the intended route during this evolution. The Coast Guard proposes to establish a temporary moving safety zone around the USS CONSTELLATION dead ship tow participants on September 8, 2006, to ensure the safety of participants and spectators immediately prior to, during, and following the dead ship tow. Interference with normal port operations will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled event.

**Regulatory Evaluation**

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate, remain or anchor within certain waters of the Patapsco River, Northwest Harbor and Inner Harbor, in Baltimore, Maryland, from 2 p.m. through 7 p.m. on September 8, 2006. Because the zone is of limited size and duration, it is expected that there will be minimal disruption to the maritime community. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the river and harbors to allow mariners to make alternative plans for transiting the affected areas. In addition, smaller vessels not constrained by their draft, which are more likely to be small entities, may transit around the safety zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

**Collection of Information**

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

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule establishes a safety zone.

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

**List of Subjects in 33 CFR Part 165**

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T05–062 to read as follows:

**§ 165.T05–062 Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD.**

(a) *Definitions.* For the purposes of this section:

(1) *Captain of the Port, Baltimore, Maryland* means the Commander, Coast Guard Sector Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his or her behalf.

(2) *USS CONSTELLATION ''turn-around'' participants* means the USS CONSTELLATION, its support craft and the accompanying towing vessels.

(b) *Location.* The following area is a moving safety zone: all waters within 200 yards ahead of or 100 yards outboard or aft of the historic Sloop-of-War USS CONSTELLATION, surface to bottom, while operating in the Inner Harbor, the Northwest Harbor and the Patapsco River.

(c) *Regulations.* (1) The general regulations governing safety zones, found in Sec. 165.23, apply to the safety zone described in paragraph (b) of this section.

(2) With the exception of USS CONSTELLATION ''turn-around'' participants, entry into or remaining in this zone is prohibited, unless authorized by the Captain of the Port, Baltimore, Maryland.

(3) Persons or vessels requiring entry into or passage through the moving safety zone must first request authorization from the Captain of the Port, Baltimore, Maryland to seek permission to transit the area. The Captain of the Port, Baltimore, Maryland can be contacted at telephone number (410) 576–2693. The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF Channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the person or vessel shall proceed as directed. If permission is granted, all persons or vessels must comply with the instructions of the Captain of the Port, Baltimore, Maryland, and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State and local agencies.

(e) *Effective period.* This section will be enforced from 2 p.m. through 7 p.m. local time on September 8, 2006.

Dated: June 7, 2006.

**Brian D. Kelley,**

*Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.*

[FR Doc. E6–9865 Filed 6–21–06; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2006–0376–200611b; FRL–8186–9]**

## Approval and Promulgation of Implementation Plans Alabama: Open Burning Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is approving revisions to the Alabama State Implementation Plan (SIP), submitted by the Alabama Department of Environmental Management (ADEM) on March 9, 2006. The revisions include modifications to Alabama's open burning rules found at Alabama Administrative Code (AAC) Chapter 335–3–3–.01. These revisions are part of Alabama's strategy to meet the national ambient air quality standards (NAAQS) for fine particulates (PM2.5) and ozone. Open burning creates smoke that contains fine particles, volatile organic compounds and nitrogen oxides, precursors to ozone. ADEM has found that elevated levels of PM2.5 mirror the months when ozone levels are highest (May–September), and that PM2.5 levels remain elevated into October. These rules are intended to help control levels of PM2.5 and ozone precursors that contribute to high ozone and PM2.5 levels. This action is being taken pursuant to section 110 of the Clean Air Act (CAA).

In the Rules Section of this **Federal Register**, EPA is approving Alabama's

SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A rationale for the approval is set forth in the direct final rule, and incorporated herein by reference. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated with regard to this proposed action. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before July 24, 2006.

**ADDRESSES:** Comments may be submitted by mail to: Stacy DiFrank, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, **ADDRESSES** section which is published in the Rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Stacy DiFrank, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9042. Ms. DiFrank can also be reached via electronic mail at *difrank.stacy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** For additional information, see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: June 12, 2006.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 06–5597 Filed 6–21–06; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2005–KY–0002–200531(d); FRL–8187–5]**

## Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Kentucky; Redesignation of the Boyd County $SO_2$ Nonattainment Area; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; correction.

**SUMMARY:** On May 24, 2006 (71 FR 29878), EPA published a proposed document redesignating the Boyd County, Kentucky area to attainment for $SO_2$. The Federal Docket Management System (FDMS) docket number was incorrectly referenced. This document corrects the docket number.

**DATES:** This action is effective June 22, 2006.

**ADDRESSES:** Copies of the documentation used in the action being corrected are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Stacy DiFrank, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9042. Ms. DiFrank can also be reached via electronic mail at *difrank.stacy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA is making a correction to the document published on May 24, 2006, (71 FR 29878), approving a Kentucky SIP revision which redesignated the Boyd County Area to attainment for $SO_2$. The FDMS docket number ''R04–OAR–2005–KY–0002'' was inadvertently stated in the May 24, 2006, document. The FDMS docket number in the heading on page 29878 of the proposed rule should read as follows: ''EPA–R04–OAR–2005–KY–0002.''

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 12, 2006.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 06–5603 Filed 6–21–06; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

**[FRL–8186–6]**

## National Oil and Hazardous Substance Pollution Contingency Plan

## National Priorities List Update

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Dixie Oil Processors, Inc. Superfund Site from the National Priorities List.

**SUMMARY:** The United States Environmental Protection Agency (EPA) Region 6 is issuing a notice of intent to delete the Dixie Oil Processors, Inc. Superfund Site (Site), located in Friendswood, Texas, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Texas, through the Texas Commission on Environmental Quality (TCEQ), have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

In the ''Rules and Regulations'' Section of today's **Federal Register,** we are publishing a direct final notice of deletion of the Dixie Oil Processors, Inc. Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will

withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

**DATES:** Comments concerning this Site must be received by July 24, 2006.

**ADDRESSES:** Written comments should be addressed to: Donn Walters, Community Outreach Team, U.S. EPA Region 6 (6SF–PO), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–6483 or 1–800–533–3508 (*walters.donn@epa.gov*).

**FOR FURTHER INFORMATION CONTACT:** John C. Meyer, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–LP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–6742 or 1–800–533–3508 (*meyer.john@epa.gov*).

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register.**

*Information Repositories:* Repositories have been established to provide detailed information concerning this decision at the following addresses: U.S. EPA Region 6 Library, 7th Floor, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, (214) 665–6424, Monday through Friday 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.; San Jacinto College, South Campus Library, 13735 Beamer Road, Houston, Texas, 77089, (281) 992–3416, Monday through Thursday 8 a.m. to 9 p.m.; Friday 8 a.m. to 3 p.m.; Saturday 10 a.m. to 1 p.m.; Texas Commission on Environmental Quality (TCEQ), Central File Room Customer Service Center, Building E, 12100 Park 35 Circle, Austin, Texas, 78753, (512) 239–2900, Monday through Friday 8 a.m. to 5 p.m.

### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: May 5, 2006.

**Lawrence E. Starfield,**

*Deputy Regional Administrator, Region 6.*

[FR Doc. E6–9747 Filed 6–21–06; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

**[EPA–R04–SFUND–2006–0228; FRL–8187–9]**

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of intent to delete the Davie Landfill Superfund Site from the National Priorities List.

**SUMMARY:** EPA Region 4 is issuing a notice of intent to delete the Davie Landfill Superfund Site (Site) located in Davie, Florida, from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the State of Florida, through the Florida Department of Environmental Protection (FDEP), have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

In the Final Rules Section of this **Federal Register**, the EPA is approving the direct final notice of deletion of the Davie Landfill Superfund Site without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final notice. If no significant, material, and adverse comments are received in response to this notice, no further activity is contemplated. If EPA receives adverse comments, the direct final notice will be withdrawn and all public comments received will be addressed in a subsequent final notice based on this proposed notice. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Comments concerning this Site must be received by July 24, 2006.

**ADDRESSES:** Submit your comments, identified by EPA–R04–SFUND–2006–0228 by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail: martin.scott@epa.gov.*

3. *Fax:* (404) 562–8896.

4. *Mail:* ''(EPA–R04–SFUND–2006–0228)'', Superfund Remedial Section C, Superfund Remedial & Technical Services Branch, Waste Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Scott M. Martin, Remedial Project Manager, Waste Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. 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 federal holidays.

Please see the direct final notice which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Scott M. Martin, Remedial Project Manager, Superfund Remedial Section C, Superfund Remedial & Technical Services Branch, Waste Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8916. Mr. Martin can also be reached via electronic mail at *martin.scott@epa.gov.*

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final notice which is published in the Rules Section of this **Federal Register**.

*Information Repositories:* Repositories have been established to provide detailed information concerning this decision at the following address: Davie Landfill Superfund Site Repository, Broward County Main Public Library, 100 S. Andrews Ave., Level 5, Ft. Lauderdale, Florida 33301.

U.S. EPA Record Center, attn: Ms. Debbie Jourdan, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, Phone: (404) 562–8862, Hours: 8 a.m. to 4 p.m., Monday through Friday by appointment only.

Dated: June 8, 2006.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 06–5596 Filed 6–21–06; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[I.D. 050306E]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Gulf of Alaska Fishery Resources; Notice of Rockfish Pilot Program Public Workshops

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

**ACTION:** Notice of public workshops.

**SUMMARY:** NMFS will present two public workshops on the Central Gulf of Alaska Rockfish Pilot Program (Program) for potentially eligible participants and other interested parties. At each workshop, NMFS will provide an overview of the proposed Program, discuss the key Program elements, provide information on the proposed rule comment process, and answer questions. NMFS is conducting these public workshops to provide assistance to fishery participants in understanding and reviewing the proposed rule that would implement this new Program.

**DATES:** Two workshops will be held on the following dates:

1. Friday, June 23, 2006, 9 a.m. to 12 p.m. Pacific Daylight Time, Seattle, WA.

2. Monday, June 26, 2006, 9 a.m. to 12 p.m. Alaska Daylight Time, Kodiak, AK.

**ADDRESSES:** The workshops will be held at the following locations:

1. Seattle — Nordby Conference Center in Fishermen's Terminal, 3919 18th Ave. W., Seattle, WA 98119.

2. Kodiak — Kodiak Fisheries Research Center (Main Conference Room), 301 Research Court, Kodiak, AK 99615.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, 907–586–7228 or *glenn.merrill@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** On June 7, 2006 (71 FR 33040), NMFS published a proposed rule that would implement the Program as Amendment 68 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The proposed rule would establish a program to allocate specific Central Gulf of Alaska groundfish resources among harvesters and processors. Harvesting and processing privileges for several species of rockfish, incidental harvests of other groundfish species, and halibut prohibited species catch would be allocated to participants that meet specific requirements. Amendment 68 was approved by the North Pacific Fishery Management Council (Council) on June 6, 2005. Amendment 68 would implement the Program designed to meet the requirements of section 802 of the Consolidated Appropriations Act of 2004 (Public Law 108–109, Section 802). Section 802 specifies the eligible participants, duration of the program, methods for allocating harvesting and processing privileges, and provides NMFS with the authority to regulate processors under this Program.

NMFS is conducting public workshops to provide assistance to fishery participants in reviewing the proposed requirements of this new program. At each workshop, NMFS will provide an overview of the proposed Program, discuss the key proposed Program elements, and provide information on the public comment process for the proposed rule. The key proposed Program elements to be discussed include quota share application; cooperative, limited access, and opt-out fishery participation provisions; cooperative quota transfer provisions; the appeals process; monitoring and enforcement; and electronic reporting. Additionally, NMFS will answer questions from workshop participants. For further information on the proposed Program, please visit the NMFS Alaska Region website at *http://www.fakr.noaa.gov*.

### Special Accommodations

These workshops are physically accessible to people with disabilities. Requests for special accommodations should be directed to Glenn Merrill (see **FOR FURTHER INFORMATION CONTACT**) at least 5 working days before the workshop date.

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, 3631 *et seq.*; and Pub. L. 108-199, 118 Stat. 110.

Dated: June 16, 2006.

**James W. Balsiger,**

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

[FR Doc. 06–5607 Filed 6–19–06; 2:20 pm]

BILLING CODE 3510–22–S

# Notices

Federal Register

Vol. 71, No. 120

Thursday, June 22, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### Warehouse Charges and Delivery Obligations for Peanuts Forfeited to the Commodity Credit Corporation Through the Marketing Assistance Loan Program

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice advises warehouse operators operating under a Commodity Credit Corporation (CCC) Peanut Storage Agreement of provisions that may not be altered, even through changes made to the public tariff of the warehouse. When CCC transfers title to CCC-owned peanuts in store (*i.e.*, to a third-party buyer), the storage and handling rates applicable to CCC must remain applicable to the transferee under the terms of the Peanut Storage Agreement. Also, warehouse operators must load out, or transfer instore, the total loan value of the peanuts represented on the warehouse receipt, calculated by using USDA's Price Table File for the applicable crop year. This value is not subject to a subsequent shrink factor. The delivery obligation created by issuing the warehouse receipt may not be altered for any reason or by any method, including public tariffs.

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

**FOR FURTHER INFORMATION CONTACT:** Mark Overbo, Deputy Director, Warehouse and Inventory Division, Farm Service Agency, USDA, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250–0553. Telephone: (202) 720–4647. E-mail: *mark.overbo@usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:** CCC incurred forfeitures on the 2004 crop of peanuts. A portion of the CCC-owned peanuts were sold to third-party buyers. During routine warehouse examinations, examiners received from several warehouse operators questions relating to: Storage and handling rates applicable to peanuts after title is transferred from CCC; and the delivery obligation of the warehouse operator with respect to issues of shrinkage.

The CCC Peanut Storage Agreement, Part 2, General Terms, Item D(2), provides ''If CCC transfers title to CCC-owned peanuts in store, the storage and handling rates contained in the Schedule of Rates will apply to the peanuts until loaded out, provided the transferee, in writing, orders the peanuts loaded out for immediate shipment within 30 days after the date title is transferred. If the transferee does not request, in writing, load out within 30 days after the date title is transferred, the storage and handling rates applicable to the transferee for the peanuts shall not exceed CCC's Schedule of Rates in effect at the time of title transfer until the earlier of: (a) 60 days, or (b) title to the peanuts is transferred by the transferee to another party, or (c) the transferee loads the peanuts out of the warehouse.'' Under this provision, it is permissible for warehouse operators to charge rates in excess of the CCC rates after the end of this specified date if the rates were included in the public tariff at the time the warehouse receipt was issued.

Under the CCC marketing assistance loan program, in perfecting its security interest in peanuts pledged as collateral for such a loan, CCC will only accept warehouse receipts that meet the regulations set forth in 7 CFR part 1421. Under these regulations and under the U.S. Warehouse Act, the warehouse operator must specify on the receipt: Net pounds; loose-shelled kernels (LSK) pounds; and the total value of the peanuts based on a USDA price table file (loan rate data). The warehouse operator must also indicate on the warehouse receipt that: ''The warehouse operator's obligation shall be to deliver this total value upon demand'', and ''Return of peanuts will be both net pounds and LSK pounds. Both have been reduced for a shrink factor.'' Warehouse operators are advised that changes to the public tariff to include a shrink factor for peanuts does not in any way alter their delivery obligation created by issuing the warehouse receipt. In order for warehouse operators to compensate for shrinkage, any shrink factors must be applied before issuing the warehouse receipt.

Instructions for the issuance of negotiable warehouse receipts may be found on the Commodity Operations Web site at *http://www.fsa.usda.gov/daco/peanuts.htm.* Any questions about this notice may be directed to Mark Overbo by calling (202) 720–4647 or e-mail *mark.overbo@usda.gov.*

Signed at Washington, DC, June 9, 2006.

**Glen L. Keppy,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. E6–9836 Filed 6–21–06; 8:45 am]

BILLING CODE 3410–05–P

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Farm Service Agency

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCIES:** Rural Housing Service (RHS), Farm Service Agency (FSA), USDA.

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agencies' intention to request an extension for a currently approved information collection in support of 7 CFR part 1951, subpart F, ''Analyzing Credit Needs and Graduation of Borrowers.''

**DATES:** Comments on this notice must be received on or before August 21, 2006 to be assured consideration.

**FOR FURTHER INFORMATION CONTACT:** Gary Wheeler, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Servicing and Property Management Division, 1400 Independence Ave., SW., Washington, DC 20250–0523, telephone (202) 690–4021. E-mail: *gary.wheeler@wdc.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* 7 CFR, part 1951, subpart F, ''Analyzing Credit Needs and Graduation of Borrowers.''

*OMB Number:* 0575–0093.

*Expiration Date of Approval:* November 30, 2006.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* Section 333 of the Consolidated Farm and Rural Development Act (Con Act) (7 U.S.C. 1983) requires the Agencies to ''graduate'' their direct loan borrowers to other credit when they are able to do so. Graduation is required because the Government loans are not to be extended beyond a borrower's need for subsidized rates or Government credit. Borrowers must refinance their direct Government loan when other credit becomes available at reasonable rates and terms. If other credit is not available, the Agencies will continue to review the account for possible graduation at periodic intervals. Also, 7 CFR part 1951, subpart F, requires FSA to provide a financial prospectus to lenders who may be interested in providing credit to FSA direct farm loan borrowers with an FSA guarantee and interest assistance. The information collected to carry out these statutory mandates is financial data such as amount of income, operating expenses, asset values and liabilities. This information collection is then submitted by the Agencies to private creditors.

*Estimate of Burden:* Public reporting for this collection of information is estimated to average two hours per response.

*Respondents:* Individuals or households, business or other for profit and farms.

*Estimated Number of Respondents:* 18,383.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Number of Responses:* 18,383.

*Estimated Total Annual Burden on Respondents:* 38,322 hours.

Copies of this information collection can be obtained from Renita Bolden, Regulations and Paperwork Management Branch, at (202) 692–0035.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies estimate of the burden of the proposed collection of information including the validity of the Department of Agriculture methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Renita Bolden, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 16, 2006.

**David Villano,**

*Acting Administrator, Rural Housing Service.*

Dated: June 14, 2006.

**Glen L. Keppy,**

*Acting Administrator, Farm Service Agency.*

[FR Doc. 06–5580 Filed 6–21–06; 8:45 am]

BILLING CODE 3410–XV–P

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

### Public Meetings of Advisory Committee on Beginning Farmers and Ranchers

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice of public meetings.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, the Farm Service Agency (FSA) is issuing this notice to advise the public that meetings of the Advisory Committee on Beginning Farmers and Ranchers (Committee) will be held to discuss various beginning farmer issues.

**DATES:** The public meetings will be held July 11–12, 2006. The first meeting, on July 11, 2006, will start at 8:30 a.m. and end at 5:30 p.m. The second meeting, on July 12, 2006, will begin at 8 a.m. and end by 4 p.m. All times noted are Eastern Standard Time (EST).

**ADDRESSES:** All meetings will be held at the Doubletree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC, (202) 232–7000. Written requests to make oral presentations must be sent to: Mark Falcone, Designated Federal Official for the Advisory Committee on Beginning Farmers and Ranchers, Farm Service Agency, U.S. Department of Agriculture (USDA), 1400 Independence Avenue, SW., STOP 0522, Washington, DC 20250–0522; telephone (202) 720–1632; FAX (202) 690–1117; e-mail: *mark.falcone@wdc.usda.gov*.

**FOR FURTHER INFORMATION CONTACT:** Mark Falcone at (202) 720–1632.

**SUPPLEMENTARY INFORMATION:** Section 5 of the Agricultural Credit Improvement Act of 1992 (Pub. L. 102–554) required the Secretary of Agriculture (the Secretary) to establish the Committee for the purpose of advising the Secretary on the following:

(1) The development of a program of coordinated financial assistance to qualified beginning farmers and ranchers required by section 309(i) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929). Under the program, Federal and State beginning farmer programs provide financial assistance to beginning farmers and ranchers;

(2) Methods of maximizing the number of new farming and ranching opportunities created through the program;

(3) Methods of encouraging States to participate in the program;

(4) The administration of the program; and

(5) Other methods of creating new farming or ranching opportunities.

The Committee meets at least once a year and all meetings are open to the public. The duration of the Committee is indefinite. Earlier meetings of the Committee, beginning in 1999, provided an opportunity for members to exchange ideas on ways to increase opportunities for beginning farmers and ranchers. Members discussed various issues and drafted numerous recommendations, which were provided to the Secretary.

Agenda items for the July 2006 meetings include:

(1) Discussions concerning provisions to recommend for inclusion in the 2007 Farm Bill to assist beginning farmers and ranchers;

(2) Farm Credit System lending to young, small, and beginning farmers and ranchers;

(3) Bank lending to beginning farmers and ranchers;

(4) Opportunities for beginning farmers and ranchers through USDA's Cooperative State Research, Education, and Extension Service (CSREES), Natural Resources Conservation Service (NRCS) and Farm Service Agency (FSA).

Attendance is open to all interested persons but limited to space available. Anyone wishing to make an oral statement should submit a request in writing (letter, fax, or e-mail) to Mark Falcone at the above address. Statements should be received no later than July 5, 2006. Requests should include the name and affiliation of the individual who will make the presentation and an outline of the issues to be addressed.

The floor will be open to oral presentations beginning at 1:15 p.m.

EST on July 11, 2006. Comments will be limited to 5 minutes, and presenters will be approved on a first-come, first-served basis. Persons with disabilities who require special accommodations to attend or participate in the meetings should contact Mark Falcone by July 5, 2006.

Signed in Washington, DC, on June 16, 2006.

**Thomas B. Hofeller,**

*Acting Administrator, Farm Service Agency.*

[FR Doc. E6–9856 Filed 6–21–06; 8:45 am]

BILLING CODE 3410–05–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Deschutes and Ochoco National Forests Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Deschutes and Ochoco National Forests Resource Advisory Committee will meet in Redmond, Oregon. The purpose of the meeting is to review proposed projects and make recommendations under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

**DATES:** The meeting will be held July 10, 2006 from 9 a.m to 5 p.m.

**ADDRESSES:** The meeting will be held at the office of the Central Oregon Intergovernmental Council, 2363 SW Glacier Place, Redmond, Oregon 97756. Send written comments to Jeff Walter, Designated Federal Official, for the Deschutes and Ochoco Resource Advisory Committee, c/o Forest Service, USDA, Ochoco National Forest, 3160 NE 3rd St., Princeville, OR 97754 or electronically to *jwalter@fs.fed.us.*

**FOR FURTHER INFORMATION CONTACT:** Jeff Walter, Designated Federal Official, Ochoco National Forest, 541–416–6625.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Title II matters to the attention of the Committee may file written statements with the Committee staff before the meeting. A public input session will be provided and indivdiuals who made written requests by June 29 will have the opportunity to address the Committee at the session.

Dated: June 12, 2006.

**Jeff Walter,**

*Designated Federal Official, Forest Supervisor, Ochoco National Forest.*

[FR Doc. 06–5497 Filed 6–21–06; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Ravalli County Resource Advisory Committee

**AGENCY:** Forest Service, USDA,

**ACTION:** Notice of Meeting.

**SUMMARY:** The Ravalli County Resource Advisory Committee will be meeting to have presentations of 2006 projects and hold a short public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

**DATES:** The meeting will be held on June 27, 2006, 6:30 p.m.

**ADDRESSES:** The meeting will be held at the Bitterroot National Forest, 1801 N. First Street, Hamilton, Montana. Send written comments to Daniel G. Ritter, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *dritter@fs.fed.us.*

**FOR FURTHER INFORMATION CONTACT:** Daniel G. Ritter, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: June 14, 2006.

**David T. Bull,**

*Forest Supervisor.*

[FR Doc. 06–5584 Filed 6–21–06; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Siskiyou Resource Advisory Committee (RAC)

**ACTION:** Notice of meeting.

**SUMMARY:** The Siskiyou Resource Advisory Committee will meet on Thursday, July 20, 2006 to recommend Title II projects for fiscal year 2007 under the Secure Rural Schools and Community Self Determination Act of 2000. The meeting will be held at the Cave Junction City Hall, 222 W. Lister Street, Cave Junction, Oregon. It begins at 9 a.m. ends at 2:30 p.m.; the open public comments begin at 11 a.m. and ends at 11:30 a.m. Written comments may be submitted prior to the meeting and delivered to Designated Federal Official, Scott Conroy at the Rogue River-Siskiyou National Forest, P.O. Box 520, Medford, Oregon 97501.

**FOR FURTHER INFORMATION CONTACT:** Rogue River-Siskiyou National Forest Public Affairs Officer Patty Burel at telephone: (541) 858–2211, e-mail: *pburel@fs.fed.us*, or USDA Forest Service, P.O. Box 520, 333 West 8th Street, Medford, OR 97501.

Dated: June 15, 2006.

**Scott Conroy,**

*Forest Supervisor, Rogue River-Siskiyou National Forest.*

[FR Doc. 06–5588 Filed 6–21–06; 8:45 am]

BILLING CODE 3410–11–M

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### Courthouse Access Advisory Committee; Meeting

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice of meeting.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to advise the Board on issues related to the accessibility of courthouses covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. The Courthouse Access Advisory Committee (Committee) includes organizations with an interest in courthouse accessibility. This notice announces the date, times and location of the next Committee meeting, which will be open to the public.

**DATES:** The meeting of the Committee is scheduled for July 20, 2006 (beginning at 9 a.m. and ending at 5 p.m.) and July 21, 2006 (beginning at 9 a.m. and ending at 3 p.m.).

**ADDRESSES:** The meeting will be held at the Edward W. Brooke Courthouse, 24 New Chardon Street, Boston, MA.

**FOR FURTHER INFORMATION CONTACT:** David Yanchulis, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0026 (Voice); (202) 272–0082 (TTY). E-mail *yanchulis@access-board.gov*. This document is available in alternate formats (cassette tape, Braille, large

print, or computer disk). This document is also available on the Board's Internet site (*http://www.access-board.gov/caac/meeting.htm*).

**SUPPLEMENTARY INFORMATION:** In 2004, as part of the outreach efforts on courthouse accessibility, the Access Board established a Federal advisory committee to advise the Access Board on issues related to the accessibility of courthouses, particularly courtrooms, including best practices, design solutions, promotion of accessible features, educational opportunities, and the gathering of information on existing barriers, practices, recommendations, and guidelines. On October 12, 2004, the Access Board published a notice appointing 31 members to the Courthouse Access Advisory Committee. 69 FR 60608 (October 12, 2004). Members of the Committee include designers and architects, disability groups, members of the judiciary, court administrators, representatives of the codes community and standard-setting entities, government agencies, and others with an interest in the issues to be explored. The Committee held its initial meeting on November 4 and 5, 2004. Members discussed the current requirements for accessibility, committee goals and objectives, and the establishment of subcommittees. The Committee established three subcommittees: Education, Courtrooms and Courthouses (areas unique to courthouses other than courtrooms).

The Committee has held quarterly meetings in the following cities: Phoenix (February 2005), Washington, DC (May 2005), Chicago (August 2005), San Francisco (November 2005), Washington, DC (February 2006), and Miami (May 2006). At each of these meetings, Committee members toured area courthouses and held full Committee and subcommittee sessions. At the next meeting in Boston, members will continue to address issues in meetings of the full Committee and of each of the subcommittees. Meeting minutes and other information about the Committee are available on the Access Board's website at *http://www.access-board.gov/caac/index.htm*.

Committee meetings are open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee during public comment periods scheduled on each day of the meeting. Members of groups or individuals who are not members of the Committee are invited to participate on the subcommittees. The Access Board believes that participation of this kind can be very valuable for the advisory committee process.

The meeting will be held at a site accessible to individuals with disabilities. Real-time captioning will be provided. Individuals who require sign language interpreters should contact David Yanchulis by June 30, 2006. Persons attending Committee meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants. Notices of future meetings will be published in the **Federal Register**.

**Lawrence W. Roffee,**

*Executive Director, Architectural and Transportation Barriers Compliance Board.*

[FR Doc. E6–9903 Filed 6–21–06; 8:45 am]

BILLING CODE 8150–01–P

## 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:* Northwest Region Federal Fisheries Permits.

*Form Number(s):* None.

*OMB Approval Number:* 0648–0203.

*Type of Request:* Regular submission.

*Burden Hours:* 642.

*Number of Respondents:* 339.

*Average Hours per Response:* Exempted fishing permit (EFP), 10 hours; EFP summary report, 1 hour; EFP data report, 10 minutes; EFP trip notification, 2 minutes; limited entry permit transfer form or renewal form, 20 minutes; mid-season transfer of sablefish permit, 30 minutes; sablefish permit ownership interest form, 30 minutes; addition of spouse as co-owner of sablefish permit application, 20 minutes; at-sea processing vessel exemption application, 30 minutes.

*Needs and Uses:* As part of its fishery management responsibilities, NOAA Fisheries collects certain information to determine whether a respondent complies with regulations that allow for the issuance, transfer or renewal of a Pacific Coast Groundfish limited entry permit or an exempted fishing permit. Also, NOAA Fisheries collects information to determine whether current individual permit owners/holders comply with other existing permit regulations for enforcement purposes. The respondents are principally groundfish fishermen or fishing companies/partnerships. Other respondents include state fisheries agencies who seek an exempted to fishing permit to conduct research.

*Affected Public:* Business or other for-profit organizations; not-for-profit institutions; individuals or households; State, local or tribal government.

*Frequency:* Annually, monthly, weekly and on occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, fax number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: June 16, 2006.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E6–9837 Filed 6–21–06; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### Office of Civil Rights; Proposed Information Collection; Comment Request; Request for Reasonable Accommodation

**AGENCY:** Office of the Secretary, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before August 21, 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 Jennifer Croft, 202–482–8187, or *jcroft@doc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

Under the Rehabilitation Act of 1973, Federal agencies must provide reasonable accommodation to qualified applicants with disabilities, unless to do so would cause undue hardship.

Executive Order 13164 requires Federal agencies to provide written procedures for reasonable accommodation for applicants. In order to evaluate and ensure that the process and requests for reasonable accommodation are done in a fair, timely, and equitable manner, applicants are required to verify their request in writing by using a form (CD–575). The form is also used for internal data tracking regarding the number and types of reasonable accommodations requested and granted (or denied). This information is required by the Equal Employment Opportunities Commission to be compiled and analyzed on an annual basis.

### II. Method of Collection

The information will be collected in paper or electronic format.

### III. Data

*OMB Number:* 0690–0022.
*Form Number:* CD 575.
*Type of Review:* Regular submission.
*Affected Public:* Individuals or households.
*Estimated Number of Respondents:* 10.
*Estimated Time per Response:* 30 minutes.
*Estimated Total Annual Burden Hours:* 5 hours.
*Estimated Total Annual Cost to Public:* $0.

### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 16, 2006.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E6–9838 Filed 6–21–06; 8:45 am]

**BILLING CODE 3510–BP–P**

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–570–900]**

## Notice of Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 22, 2006.

**FOR FURTHER INFORMATION CONTACT:** Anya Naschak or Carrie Blozy, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–6375 or 482–5403, respectively.

**SUPPLEMENTARY INFORMATION:**

### Amendment to the Final Determination

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended, (''the Act''), on May 22, 2006, the Department of Commerce (''the Department'') published its final determination of sales at less than fair value (''LTFV''). *See Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) (''*Final Determination*''). See *Final Determination* and corresponding Issues and Decision Memorandum, dated May 15, 2006.

Between May 23, 2006, and May 26, 2006, the following parties filed timely allegations that the Department made various clerical errors in the *Final Determination*. On May 23, 2006, the Diamond Sawblade Manufacturers' Coalition (''Petitioner'') filed a timely request pursuant to section 351.224(c)(2) of the Department's regulations, requesting that the Department correct alleged ministerial errors in the *Final Determination* in the calculation of a margin for Bosun Tools Group Co., Ltd. (''Bosun'') and Beijing Gang Yan Diamond Product Company (''BGY'') (included with Yichang HXF Circular Saw Industrial Co., Ltd (''HXF'') as a single entity, Advanced Technology & Materials Co., Ltd. (''AT&M'') (*see Final Determination*)). Also on May 23, 2006, AT&M filed comments on the Department's draft customs instructions. On May 26, 2006, Hebei Jikai Industrial Group Co. Ltd. (''Hebei Jikai'') filed a request that the Department correct certain clerical errors with respect to Hebei Jikai. On May 31, 2006, Petitioner filed comments rebutting Hebei Jikai's allegations.

A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Department considers ministerial. *See* 19 CFR 351.224(f).

After analyzing all interested party comments and rebuttals, we have determined, in accordance with 19 CFR 351.224(e), that we made ministerial errors in our calculations performed for the final determination with respect to Bosun and AT&M. However, the Department finds that the errors alleged by Hebei Jikai were not ministerial errors within the meaning of 19 CFR 351.224(f). For a detailed discussion of these ministerial errors, as well as the Department=s analysis, see Memorandum to James C. Doyle from Anya Naschak: Antidumping Duty Investigation of Diamond Sawblades from the People's Republic of China: Analysis of Ministerial Error Allegations, dated June 15, 2006 (''Ministerial Error I&D Memo''). Additionally, in the *Final Determination*, we determined that several companies qualified for a separate rate. The margin we calculated in the *Final Determination* for these companies, which is the weighted average of the mandatory respondents' rates, was 20.72 percent. Because the rates of the mandatory respondents have changed since the *Final Determination*, we have recalculated the rate for the separate rate applicants. The new rate is 21.43 percent. *See* Ministerial Error I&D Memo at Attachment IV.

In addition, AT&M requested that the Department make certain changes to the Department's draft instructions to U.S. Customs and Border Protection (''CBP'').

AT&M requested that the Department modify the language used in the Department's customs instructions to read ''on exports where Cliff (Tianjin) International, Ltd. acted as the exporter and facilitator for the AT&M entity, imports are eligible to claim the antidumping duty rate'' for AT&M. *See* AT&M's letter to the Department dated May 23, 2006. Though this suggestion does not constitute a ''ministerial'' error within the meaning of section 351.224(f) of the Department's regulations, the Department will make the change as requested by AT&M to ensure that the Department's intent is clear to CBP. Thus, the Department will include language in the customs module indicating that exports where Cliff (Tianjin) International, Ltd. acted as an exporter and facilitator to AT&M, the importer is eligible to claim AT&M's antidumping duty rate.[1]

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of sales at LTFV in the antidumping duty investigation of diamond sawblades from the People's Republic of China (''PRC''). The revised weighted–average dumping margins are included in the ''Antidumping Duty Order'' section, below. For the revisions to the calculations for all companies, *see* Ministerial Error I&D Memo.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of sales at LTFV in the antidumping duty investigation of diamond sawblades from the PRC. The revised dumping margins are as follows:

DIAMOND SAWBLADES FROM THE PRC - WEIGHTED–AVERAGE DUMPING MARGINS

| Exporter | Producer | Weighted–Average Deposit Rate |
|---|---|---|
| Advanced Technology & Materials Co., Ltd. | Advanced Technology & Materials Co., Ltd. | [2] 2.82% |
| Bosun Tools Group Co., Ltd. | Bosun Tools Group Co., Ltd. | 35.51% |
| Danyang Huachang Diamond Tools Manufacturing Co., Ltd. | Danyang Huachang Diamond Tools Manufacturing Co., Ltd. | 21.43% |
| Danyang NYCL Tools Manufacturing Co., Ltd. | Danyang NYCL Tools Manufacturing Co., Ltd. | 21.43% |
| Danyang Youhe Tool Manufacturer Co., Ltd. | Danyang Youhe Tool Manufacturer Co., Ltd. | 21.43% |
| Fujian Quanzhou Wanlong Stone Co., Ltd. | Fujian Quanzhou Wanlong Stone Co., Ltd. | 21.43% |
| Guilin Tebon Superhard Material Co., Ltd. | Guilin Tebon Superhard Material Co., Ltd. | 21.43% |
| Hebei Jikai Industrial Group Co., Ltd. | Hebei Jikai Industrial Group Co., Ltd. | 48.50% |
| Huzhou Gu's Import & Export Co., Ltd. | Danyang Aurui Hardware Products Co., Ltd. | 21.43% |
| Huzhou Gu's Import & Export Co., Ltd. | Danyang Huachang Diamond Tools Manufacturing Co., Ltd. | 21.43% |
| Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd. | Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd. | 21.43% |
| Jiangyin Likn Industry Co., Ltd. | Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd. | 21.43% |
| Jiangyin Likn Industry Co., Ltd. | Wuhan Wanbang Laser Diamond Tools Co. | 21.43% |
| Qingdao Shinhan Diamond Industrial Co., Ltd. | Qingdao Shinhan Diamond Industrial Co., Ltd. | 21.43% |
| Quanzhou Zhongzhi Diamond Tool Co., Ltd. | Quanzhou Zhongzhi Diamond Tool Co., Ltd. | 21.43% |
| Rizhao Hein Saw Co., Ltd. | Rizhao Hein Saw Co., Ltd. | 21.43% |
| Shanghai Deda Industry & Trading Co., Ltd. | Hua Da Superabrasive Tools Technology Co., Ltd. | 21.43% |
| Shanghai Robtol Tool Manufacturing Co., Ltd. | Shanghai Robtol Tool Manufacturing Co., Ltd. | 21.43% |
| Shijiazhuang Global New Century Tools Co., Ltd. | Shijiazhuang Global New Century Tools Co., Ltd. | 21.43% |
| Sichuan Huili Tools Co. | Chengdu Huifeng Diamond Tools Co., Ltd. | 21.43% |
| Sichuan Huili Tools Co. | Sichuan Huili Tools Co. | 21.43% |
| Weihai Xiangguang Mechanical Industrial Co., Ltd. | Weihai Xiangguang Mechanical Industrial Co., Ltd. | 21.43% |
| Wuhan Wanbang Laser Diamond Tools Co. | Wuhan Wanbang Laser Diamond Tools Co. | 21.43% |
| Xiamen ZL Diamond Tools Co., Ltd. | Xiamen ZL Diamond Tools Co., Ltd. | 21.43% |
| Zhejiang Tea Import & Export Co., Ltd. | Danyang Dida Diamond Tools Manufacturing Co., Ltd. | 21.43% |
| Zhejiang Tea Import & Export Co., Ltd. | Danyang Tsunda Diamond Tools Co., Ltd. | 21.43% |
| Zhejiang Tea Import & Export Co., Ltd. | Wuxi Lianhua Superhard Material Tools Co., Ltd. | 21.43% |
| Zhejiang Wanli Tools Group Co., Ltd. | Zhejiang Wanli Super–hard Materials Co., Ltd. | 21.43% |
| Zhenjiang Inter–China Import & Export Co., Ltd. | Danyang Weiwang Tools Manufacturing Co., Ltd. | 21.43% |
| PRC–Wide Rate | | 164.09% |

**Continuation of Suspension of Liquidation**

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from the PRC. We will also instruct CBP to require cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart above. These instructions suspending liquidation will remain in effect until further notice.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: June 15, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6–9874 Filed 6–21–06; 8:45 am]

BILLING CODE 3510–DS–S

[1] The Department will also include such language in its cash deposit instructions to CBP.

[2] Including Beijing Gang Yan Diamond Products Company as an exporter when merchandise was also produced by Beijing Gang Yan Diamond Products Company, and Yichang HXF Circular Saw Industrial Co., Ltd. as an exporter when merchandise was also produced by Yichang HXF Circular Saw Industrial Co., Ltd.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–835]**

### Oil Country Tubular Goods from Japan: Notice of Intent to Rescind Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an

administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Japan in response to a request by United States Steel Corporation, one of the petitioners in the original investigation (Petitioner). Petitioner requested administrative reviews of JFE Steel Corporation (JFE), Nippon Steel Corporation (Nippon), NKK Tubes (NKK) and Sumitomo Metal Industries, Ltd. (SMI). This review covers sales of subject merchandise to the United States during the period of August 1, 2004 through July 31, 2005.

We preliminarily determine that JFE and NKK had no shipments of subject merchandise to the United States during the period of review (POR), and that Nippon and SMI had no reviewable sales of subject merchandise during the POR. Accordingly, we preliminarily determine that the review of these four companies should be rescinded in accordance with 19 CFR 351.213(d)(3). Interested parties are invited to comment on these preliminary results. *See* the ''Intent to Rescind the Administrative Review'' section of this notice.

**EFFECTIVE DATE:** June 22, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mark Hoadley or Jun Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3148 or (202) 482–1396, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On August 11, 1995, the Department published the antidumping duty order on OCTG from Japan in the **Federal Register** (60 FR 41058). On August 1, 2005, the Department published a notice of opportunity to request an administrative review of this order (70 FR 44085). On August 31, 2005, the Department received a timely request for review from Petitioner, covering JFE, Nippon, NKK and SMI.[1] On September 28, 2005, we published a notice initiating an administrative review of the antidumping order on OCTG from Japan. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 56631 (September 28, 2005).

The Department issued the original questionnaire on October 27, 2005. On November 16, 2005, JFE submitted a no shipment sales certification and requested prompt rescission of the review with respect to JFE. On December 5, 2005, Nippon responded that it had no sales of subject merchandise to or in the United States during the period of review. On December 5, 2005, NKK submitted a no shipment certification and requested expeditious rescission of the review with respect to NKK. Also on December 5, 2005, SMI responded that it did not have any U.S. sales or shipments of subject merchandise during the POR. The Department issued several supplemental questionnaires, and received a response by Nippon on March 13, 2006, and responses by SMI on March 14, April 25, May 2, May 24, June 6 and June 9, 2006, providing further explanation and documentation concerning their claims of no shipments during the POR.

On April 26, 2006, the Department extended the deadline for the preliminary results of this antidumping duty administrative review until June 19, 2006. *See Oil Country Tubular Goods from Japan: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 24640 (April 26, 2006).

## Period of Review

This review covers the period August 1, 2004, through July 31, 2005.

## Scope of the Order

The merchandise covered by this order consists of oil country tubular goods, hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non–API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.21.30.00, 7304.21.60.30, 7304.21.60.45, 7304.21.60.60, 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

## Analysis

### Intent to Rescind the Administrative Review

In response to our questionnaire, all four respondents submitted certified statements claiming no U.S. sales or shipments of subject merchandise during the POR. The petitioner did not comment on the claims. In order to corroborate the no–shipment statements, the Department requested information from U.S. Customs and Border Protection (CBP). Such information showed no entries of subject merchandise produced by JFE and NKK during the POR. Nippon and SMI had entries but based on our analysis of the supporting documentation, we find that these two companies had no reviewable sales of subject merchandise. Since much of the information and documentation submitted by Nippon and SMI to demonstrate the circumstances of each of their entries is business proprietary, a complete analysis of the Department's determination that none of Nippon and SMI's entries constitute reviewable sales during the POR is set forth in the memorandum from Jun Jack Zhao to Barbara E. Tillman through Dana Mermelstein, *Analysis Memorandum regarding the Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from Japan (A–588–835)*, dated June 19, 2006. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, we intend to rescind the administrative review of all four respondents.

[1] The Department found SMI and Sumitomo Corporation (SC) to be affiliated in a previous review. *See Oil Country Tubular Goods From Japan; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 64 FR 48589, 48591 (September 7, 1999). Neither SMI nor SC has placed information on the record of this review suggesting that the basis for this finding has changed.

**Duty Assessment**

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR § 351.212(b). If we determine in the final results that this review should be rescinded with respect to JFE, NKK, Nippon and SMI because these companies had no sales of subject merchandise to the United States during the POR, we will direct CBP to liquidate all entries of subject merchandise manufactured by these four companies, and entered or withdrawn from warehouse for consumption during the POR, at the ''all others'' rate, 44.20 percent, as all such sales were made by intermediary companies (*e.g.*, resellers) not covered in this review, a prior review, or the less than fair value (LTFV) investigation. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

**Cash Deposit Requirements**

The following cash deposit rates will be effective with respect to all shipments of OCTG from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided for by section 751(a)(1) of the Act: (1) For all four companies, JFE, NKK, Nippon and SMI, the cash deposit rate will remain unchanged and will be the company–specific rate established for the most recent period; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company–specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate shall be the all others rate established in the LTFV investigation, which is 44.20 percent. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Oil Country Tubular Goods from Japan*, 60 FR 155 (August 11, 1995). These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Public Comment**

Pursuant to section 351.309 of the Department's regulations, interested parties may submit written comments in response to this notice of intent to rescind the administrative review. Unless the deadline is extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) A statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with section 351.303(f) of the Department's regulations.

Also, pursuant to section 351.310(c) of the Department's regulations, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Department specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, no later than 120 days after publication of these preliminary results, unless extended. *See* 19 CFR section 351.213(h).

**Notification to Importers**

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: June 15, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6–9880 Filed 6–21–06; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–122–838]**

### Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On April 10, 2006, the Department of Commerce published a notice of initiation of changed circumstances review of the antidumping duty order on certain softwood lumber products from Canada to determine the correct deposit rate for Ivis Partners Ltd. (IVIS). We have preliminarily determined that IVIS is the successor–in-interest to Ivis Wood Products Ltd. (Ivis Wood) and should, therefore, receive Ivis Wood's cash deposit rate.

**EFFECTIVE DATE:** June 22, 2006.

**FOR FURTHER INFORMATION CONTACT:** Constance Handley or David Layton, AD/CVD Enforcement, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0631 or (202) 482–0371, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 16, 2006, in accordance with section 751(b)(1) of the Act and 19 CFR 351.216(b) (2004), IVIS, a Canadian producer of softwood lumber products and interested party in this proceeding, filed a request for a changed circumstances review. In response to this request, the Department of Commerce (the Department) initiated a changed circumstances review of the antidumping duty order on certain softwood lumber from Canada. *See Initiation of Antidumping Duty Changed Circumstances Review: Certain Softwood Products from Canada*, 71 FR 18072 (Arpil 10, 2006) (*Initiation Notice*). On April 4, 2006, the Department issued a questionnaire to IVIS requesting further details on its purchase of Ivis Woods. IVIS' response was received by the Department on April 13, 2006. On May 10, 2006, the Department issued an additional supplemental questionnaire to IVIS. IVIS' response was received on May 17, 2006. The petitioner, the Coalition of Fair Lumber Imports Executive Commission, did not file comments with respect to the request.

**Scope of the Order**

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under subheadings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger–jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood mouldings and wood dowel rods) whether or not planed, sanded or finger–jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise subject to this order is dispositive.

As specifically stated in the Issues and Decision Memorandum accompanying the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002) (see comment 53, item D and comment 57, item B–7) available at www.ia.ita.doc.gov/frn, drilled and notched lumber and angle cut lumber are covered by the scope of this order.

The following softwood lumber products are excluded from the scope of this order provided they meet the specified requirements detailed below:

(1) *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.

(2) *Box–spring frame kits*: if they contain the following wooden pieces - two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius–cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1'' in actual thickness or 83'' in length.

(3) *Radius–cut box–spring-frame components*, not exceeding 1'' in actual thickness or 83'' in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.

(4) *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1'' or less in actual thickness, up to 8'' wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog–eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 inch or more.

(5) *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: 1) the processing occurring in Canada is limited to kiln–drying, planing to create smooth–to-size board, and sanding, and 2) if the importer establishes to the satisfaction of U.S. Customs and Border Protection (CBP) that the lumber is of U.S. origin.

(6) *Softwood lumber products contained in single family home packages or kits*,[1] regardless of tariff classification, are excluded from the scope of this order if the importer certifies to items 6 A, B, C, D, and requirement 6 E is met:

A. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

B. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, sub floor, sheathing, beams, posts, connectors, and if included in the purchase contract, decking, trim, drywall and roof shingles specified in the plan, design or blueprint;

C. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

D. Softwood lumber products entered as part of a single family home package or kit, whether in a single entry or multiple entries on multiple days, will be used solely for the construction of the single family home specified by the home design matching the entry.

E. For each entry, the following documentation must be retained by the importer and made available to CBP upon request:

i. A copy of the appropriate home design, plan, or blueprint matching the entry;

ii. A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

iii. A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;

iv. In the case of multiple shipments on the same contract, all items listed in E(iii) which are included in the present shipment shall be identified as well.

Lumber products that CBP may classify as stringers, radius cut box–spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.45.90, 4421.90.70.40, and 4421.90.97.40.

Finally, as clarified throughout the course of the investigation, the following products, previously identified as Group A, remain outside the scope of this order. They are:

1. Trusses and truss kits, properly classified under HTSUS 4418.90;

[1] To ensure administrability, we clarified the language of exclusion number 6 to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

2. I–joist beams;
3. Assembled box spring frames;
4. Pallets and pallet kits, properly classified under HTSUS 4415.20;
5. Garage doors;
6. Edge–glued wood, properly classified under HTSUS 4421.90.98.40;
7. Properly classified complete door frames;
8. Properly classified complete window frames;
9. Properly classified furniture.

In addition, this scope language was further clarified to specify that all softwood lumber products entered from Canada claiming non–subject status based on U.S. country of origin will be treated as non–subject U.S.-origin merchandise under the antidumping and countervailing duty orders, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[2] The presumption of non–subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

On March 3, 2006 the Department issued a scope ruling that any product entering under HTSUS 4409.10.05 which is continually shaped along its end and/or side edges which otherwise conforms to the written definition of the scope is within the scope of the order.[3]

**Preliminary Results of the Review**

In an antidumping duty changed circumstances review involving a successor–in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada; Preliminary Results of Antidumping Duty Administrative Review*, 57 FR 5128 (February 12, 1992) (*Canada Brass*). Although no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor company if the resulting operations are essentially the same as those of the predecessor company. Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979–980 (March 1, 1999).

In its review request of February 16, 2006, and in its April 13, 2006[4] questionnaire response, IVIS reported that on September 30, 2005, IVIS was incorporated in the Province of British Columbia. On September 30, 2005, IVIS purchased the Ivis Wood business, including equipment and inventory. As a result of the purchase, all lumber–related assets held by Ivis Wood were transferred to IVIS. The purchase and sale agreement between Ivis Wood and IVIS indicates that the business was sold as a going concern. The Board of Directors of Ivis Wood was made up of its owners. Therefore, after the sale, IVIS installed a completely new Board of Directors, and senior management positions were occupied by the new owners. IVIS reported that all of its facilities are those it purchased from Ivis Wood and that it does not own, in whole or in part, any other company involved in the production or sale of subject softwood lumber. IVIS continues to be supplied by the same suppliers as Ivis Wood, and continues to sell to Ivis Wood's customers.

Based on our review of IVIS' questionnaire responses and initial submission, we preliminarily determine that IVIS is the successor–in-interest to Ivis Wood. Although the board of directors and senior management changed significantly, information on the record indicates that Ivis Wood was purchased as a going concern and that IVIS continued to do business with the same suppliers and customers as Ivis Wood, using the same production assets. Therefore, based on the totality of the circumstances, we preliminarily determine that IVIS should be assigned Ivis Wood's cash deposit rate of 3.78 percent, established in the first administrative review.[5]

If the above preliminary results are affirmed in the Department's final results, the cash deposit rate from this changed circumstances review will apply to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. *See Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Changed Circumstances Review*, 68 FR 25327 (May 12, 2003). This deposit rate shall remain in effect until publication of the next administrative review in which IVIS participates.

**Public Comment**

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, which must be limited to issues raised in such briefs, must be filed not later than 37 days after the date of publication of this notice. *See* 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. In accordance with 19 CFR 351.216(e), we will issue the final results of this changed circumstances review no later than December 28, 2006.

This notice is in accordance with sections 751(b) and 777(i)(1) of the Act and section 351.221(c)(3)(i) of the Department's regulations.

Dated: June 15, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6–9879 Filed 6–21–06; 8:45 am]

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[2] *See* the scope clarification message (ι 3034202), dated February 3, 2003, to CBP, regarding treatment of U.S. origin lumber on file in Room B-099 of the Central Records Unit (CRU) of the Main Commerce Building.

[3] *See* memorandum from Constance Handley, Program Manager to Stephen J. Claeys, Deputy Assistant Secretary regarding: Scope Request by the Petitioner Regarding Entries Made Under HTSUS 4409.10.05, dated March 3, 2006.

[4] The dates on IVIS' review request and questionnaire response were February 2, 2006, and April 6, 2006, however, they were not received by the Department until February 16 and April 13, respectively.

[5] *See Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 3358 (January 24, 2005).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–890]**

### Notice of Amended Final Determination of Sales at Less Than Fair Value/Pursuant to Court Decision: Wooden Bedroom Furniture from the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**SUMMARY:** On April 5, 2006, the United States Court of International Trade (''Court'') sustained the final remand determination made by the Department of Commerce (''the Department'') pursuant to the Court's remand of the amended final determination of the investigation of wooden bedroom furniture from the People's Republic of China (''PRC''). *See Guangzhou Maria Yee Furnishings Ltd., et al. v. United States*, Ct. No. 05–00065, Slip Op. 06–44 (Ct. Int'l Trade April 5, 2006) (''*Maria Yee Order*''). This case arises out of the Department's *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313 (November 17, 2004) (''*Final Determination*''), as amended, 70 FR 329 (January 4, 2005) (''*Amended Final Determination*''). Because the litigation in this matter is concluded, the Department is issuing an amended final determination in accordance with the CIT's decision.

**EFFECTIVE DATE:** June 22, 2006.

**FOR FURTHER INFORMATION CONTACT:** Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–0414.

**SUPPLEMENTARY INFORMATION:**

#### Background

On November 17, 2004, the Department published its notice of final determination in the investigation of wooden bedroom furniture from the PRC. *See Final Determination*. On January 4, 2005, the Department published its notice of amended final determination in the investigation of wooden bedroom furniture from the PRC. *See Amended Final Determination*.

In *Guangzhou Maria Yee Furnishings, Ltd., et al. v. United States*, Ct. No. 05–00065, Slip Op. 05–158 (CIT December 14, 2005), the Court remanded the Department's determination to reject, as untimely, certain information submitted by Guangzhou Maria Yee Furnishings Ltd. and Pyla HK Ltd.) (''Maria Yee''). The Court found that the Department's method of notice to parties of the requirement and deadline to submit a response to Section A of the Department's questionnaire was not reasonable, and remanded this case to the Department for further consideration consistent with the Court's opinion, and in light of the Court's decision in *Decca Hospitality Furnishings, LLC v. United States*, 391 F. Supp. 2d 1298 (2005).

The remand redetermination explained that, in accordance with the Court's opinion, the Department must analyze the evidence presented by Maria Yee to determine whether it is eligible for a separate rate. Accordingly, on December 27, 2005, the Department reopened the record and requested that Maria Yee re–submit a copy of its initial July 2, 2004, submission, which it did on December 28, 2005. Additionally, the Department issued one supplemental questionnaire to Maria Yee to address a few deficiencies found in its December 28, 2005, submission. Maria Yee submitted timely and complete responses to these questionnaires. On February 10, 2006, the Department issued its draft results of redetermination pursuant to remand for comment by the interested parties. On February 14, 2006, Maria Yee submitted comments in response to the Department's draft results of redetermination. No other party filed comments. On March 1, 2006, the Department issued its final results of redetermination pursuant to remand to the Court. Based on our analysis of Maria Yee's evidence, we determined that Maria Yee qualifies for a separate rate in the investigation of wooden bedroom furniture from the PRC. *See Final Results of Redetermination Pursuant to Court Remand*, March 1, 2006.

On April 5, 2006, the Court ruled that the Department's remand determination is supported by substantial evidence, and affirmed the Department's remand results in their entirety. *See Maria Yee Order*. Granting a separate rate to Maria Yee changes it's antidumping duty rate from the PRC–wide rate of 198.08 percent to the Section A respondent rate of 6.65 percent.

On April 27, 2006, consistent with the decision in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990), the Department notified the public that the CIT's decision was not ''in harmony'' with the Department's final determination. *See Wooden Bedroom Furniture from the People's Republic of China: Notice of Court Decision Not in Harmony*, 71 FR 24840 (April 27, 2006).

#### Amended Final Determination

There is now a final and conclusive court decision in the court proceeding and we are thus amending the *Amended Final Determination* to reflect the results of our remand determination.

The revised dumping margin is as follows:

| Company | Weighted–Average Margin (Percent) |
|---|---|
| Maria Yee ..... | 6.65 |

U.S. Customs and Border Protection will require a cash deposit rate of 6.65 percent for subject merchandise exported by Maria Yee and entered, or withdrawn from warehouse, for consumption on or after the effective date of this notice. This cash deposit requirement shall remain in effect until publication of the final results of an administrative review of this order.

This notice is published in accordance with sections 735(d) and 777(i) of the Tariff Act of 1930, as amended.

Dated: June 16, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6–9876 Filed 6–21–06; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 041806B]**

### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Surf Zone Testing/ Training and Amphibious Vehicle Training and Weapons Testing

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

**ACTION:** Notice of receipt of an application for an incidental take authorization; notice of proposed incidental harassment authorization; request for comments and information.

**SUMMARY:** On November 29, 2005, NMFS received a request from Eglin Air Force Base (Eglin AFB), for authorization to harass marine mammals, incidental to conducting surf zone testing/training and amphibious vehicle training and weapons testing off the coast of Santa Rosa Island (SRI). As

a result of this request, NMFS is proposing to issue a 1–year authorization to take marine mammals by Level B harassment incidental to this activity. NMFS will propose regulations at a later date that would govern these incidental takes under a Letter of Authorization (LOA) issued to Eglin for a period of up to 5 years after the 1–year IHA expires. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on the Eglin AFB application and NMFS' proposal to issue an authorization to Eglin AFB to incidentally take, by harassment, two species of cetaceans for a period of 1 year.

**DATES:** Comments and information must be postmarked no later than July 24, 2006.

**ADDRESSES:** Comments should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. The mailbox address for providing email comments on this action is *PR1.041806B@noaa.gov*. Comments sent via email, including all attachments, must not exceed a 10–megabyte file size. A copy of the application and a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) and is also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. A copy of the *Santa Rosa Island Mission Utilization Plan Programmatic Environmental Assessment* (SRI Mission PEA) (U.S. Air Force, 2005) is available by writing to the Department of the Air Force, AAC/EMSN, Natural Resources Branch, 501 DeLeon St., Suite 101, Eglin AFB, FL 32542–5133.

**FOR FURTHER INFORMATION CONTACT:** Shane Guan, NMFS, 301–713–2289, ext 137.

**SUPPLEMENTARY INFORMATION:**

## Background

Sections 101(a)(5)(A) and 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (MMPA) direct the Secretary of Commerce (Secretary) 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 regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if 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.''

Subsection 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 marine mammals by harassment. With respect to ''military readiness activities,'' the MMPA defines ''harassment'' 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].

## Summary of Request

On November 21, 2005, Eglin AFB petitioned NMFS for an authorization under section 101(a)(5) of the MMPA for the taking, by harassment, of marine mammals incidental to programmatic mission activities on Eglin's SRI property, including the shoreline of the Gulf of Mexico (Gulf or GOM) to a depth of 30 feet (9.1 meters). The distance from the island shoreline that corresponds to this depth varies from approximately 0.5 mile (0.8 km) at the western side of the Air Force property to 1.5 miles (2.4 km) at the eastern side, extending out into the inner continental shelf.

Activities conducted within the sound are addressed in the *Estuarine and Riverine Areas Programmatic Environmental Assessment* (U.S. Air Force, 2003a). The proposed action is for the 46th Test Wing Commander to establish a mission utilization plan for SRI based on historical and anticipated future use. Current and future operations are categorized as either testing or training and include: (1) Surf Zone Testing/Training; (2) Landing Craft Air Cushion (LCAC) Training and Weapons Testing; (3) Amphibious Assaults; and (4) Special Operations Training.

*Description of Activities*

Surf Zone Testing/Training

Eglin AFB proposes to establish Surf Zone Test Areas (SZTAs) on SRI to support major surf zone test exercises. Specific and dedicated areas on SRI would be utilized to perform these exercises. Major surf-zone test exercises include neutral (inert) systems and live (containing explosive material) systems, which would be detonated in shallow water.

Current and proposed future surf zone activities would involve detonations of mine clearing line charges and bombs for obstacle clearing. These activities include line-charge mine clearance testing, shallow water assault breaching (SABRE) mine clearing testing, and beach obstacle clearing and neutralization.

In the line-charge mine clearance testing, the Naval Surface Warfare Center Panama City (NSWCPC) conducted a line-charge test in the past as a precursor to other tests to evaluate the effectiveness of underwater mine countermeasure and clearing techniques.

The Navy's SABRE explosive net clearing weapon is in development with testing ongoing at Eglin's Shallow Water Mine Pond Facility. Testing of the SABRE system would involve launching of a line charge subsystem propelled by rocket motors. This could require closure of some areas of the GOM and Choctawhatchee Bay waters to accommodate a 2.5–mile, 110–degree safety fan if these tests are conducted on the eastern portion of SRI.

The beach obstacle clearing and neutralization involve simultaneous detonations of multiple bombs in the surf zone, which NSWCPC would evaluate to assess their effects on obstacles and mines as a potential beach-clearing tactic.

Concentrating surf zone detonation activities within specified areas may reduce the environmental impacts associated with these activities as well as standardize the logistics, operational planning, and safety procedures. The designated test/training areas would accommodate both historical and expanded activities. Navy personnel would establish the areas within current usage guidelines similar to the numerous test areas as described in the *AAC Technical Facilities Manual (Volume II Land Test Areas)* (U.S. Air Force, 1996).

Amphibious Vehicle Training and Weapon Testing

Amphibious vehicles include the LCAC and the Amphibious Assault Vehicle (AAV). Both of these vehicles have the capability to transit through the land/water interface and are utilized in a variety of mission types.

The LCAC is a high-speed fully amphibious landing craft capable of traveling over both land and water, providing transition of personnel and equipment over the land-water interface. The LCAC is also used in the neutralization of beach obstacles and hostile watercraft, with test/training activities typically involving live/inert testing of various firing mechanisms in concert with travel through the land-water interface and across beach environments. In 1998 and 2000, the Navy conducted LCAC training and weapon testing on SRI involving live fire and tank transport.

The proposed expansion of LCAC training and testing is related to the need for expanded special operations and amphibious assault training and testing activities. Expanded LCAC activities would involve increased use of the LCAC for both inert training activities and live fire testing and training. The LCAC would utilize specific areas for crossing between the Gulf to Santa Rosa Sound, and for firing weapons systems.

In addition, several organizations have a need to initiate or expand their current work in or around the SRI. The Marine Corps has a need to use the island to perform amphibious assault exercises. These activities would typically involve a coordinated mission utilizing large landing craft such as AAVs and LCACs, varying numbers of troops and personnel, and aircraft. Landing craft and personnel would be dropped into the ocean several miles or several thousand yards off shore and traverse to the island. Upon reaching the island, the assault force would breach the shoreline, set up a perimeter or staging area, and either proceed to an objective or remain on site.

Special Operations Training

Eglin proposes to increase Special Operations training within established maneuver areas and the additional establishment of LCAC live fire and crossover areas on the island. Increased special operations training would involve covert beach landings and assaults and other mission training activities. These exercises could involve full-scale beach assaults involving dozens of troops and landing craft, or small-scale exercises involving dropping off personnel in rubber boats within the proposed action area. Personnel would navigate in, conduct a covert landing on the beach, and capture a target on the island or proceed to transit the island and go to the mainland.

Surf zone testing/training activities and amphibious vehicle testing/training activities would be intermittent yet ongoing, and therefore Eglin AFB has also made a request for a take authorization under section 10(a)(5)(A) of the MMPA for a time period of five years. These activities would occur within the proposed action area, which includes the Gulf-side shoreline of SRI seaward to a depth of 30 feet (91 m). The distance from the shoreline that corresponds to this depth varies from approximately 0.5 mile (0.8 km) at the western side of the Air Force property to 1.5 miles (2.4 km) at the eastern side, extending into the inner continental shelf.

Training involving live fire exercises would be carried out a maximum twice per year (one during daytime and/or one at night). These missions would involve special operations personnel, an LCAC, or an AAV on the north shore of the island or in Santa Rosa Sound firing a at target located on SRI. The target would be a hardended structure of steel or wood. The angle of firing would be toward the ground and ricocheting would be minimal due to the sandy substrate. The NSWCPC would use low-range, high-fragmentation munitions at the maneuver areas to allow for more realistic training scenarios. The NSWCPC would direct live fire toward the Gulf.

**Description of Marine Mammals Affected by the Activity**

Marine mammal species potentially occurring within the proposed action area include the Atlantic bottlenose dolphin (*Tursiops truncatus*), the Atlantic spotted dolphin (*Stenella frontalis*), and the Florida manatee (*Trichechus manatus latirostris*). General information on Florida manatee can be found in the *Florida Manatee Recovery Plan* (US Fish and Wildlife Service, 2001).

Atlantic bottlenose dolphins are distributed continuously throughout the continental shelf, coastal, and bay-sound waters of the northern GOM and along the U.S. mid-Atlantic coast. The identification of a biologically-meaningful ''stock'' of bottlenose dolphins in the GOM is complicated by the high degree of behavioral variability exhibited by this species (Wells, 2003). Currently, bottlenose dolphins in the U.S. GOM are managed as 38 different stocks: one northern GOM oceanic stock, one northern GOM continental shelf stock, three northern GOM costal stocks (western, northern, and eastern Gulf), and 33 bay, sound, and estuarine stocks (NMFS, 2005). The identification of these stocks is based on descriptions of relatively discrete dolphin communities in these waters. A community includes resident dolphins that regularly share large portions of their ranges, exhibit similar distinct genetic profiles, and interact with each other to a much greater extent than with dolphins in adjacent waters. Bottlenose dolphin communities do not constitute closed demographic populations, as individuals from adjacent communities are known to interbreed. Nevertheless, the geographic nature of these areas and long-term stability of residency patterns suggest that many of these communities exist as functioning units of their ecosystems, and under the MMPA must be maintained as such.

Within the proposed action area, at least three Atlantic bottlenose dolphin stocks are expected to occur: the northern GOM northern coastal, the Pensacola Bay/East Bay stock, and the Choctawhatchee Bay stock (NMFS, 2005). There has been no population assessment for any of these stocks for more than eight years. The relatively high number of bottlenose dolphin deaths that occurred during mortality events (mostly from stranding) since 1990 raises a concern that some of the stocks are stressed. Each of these stocks is listed as a strategic stock under the MMPA.

The Atlantic spotted dolphin is endemic to the Atlantic Ocean in temperate to tropical waters (Perrin *et al.*, 1994). In the GOM, this species occurs primarily from continental shelf waters 10–200 m (32.8 – 656.2 ft) deep to slope waters <500 m (1,640 ft) deep (Fulling *et al.*, 2003). Atlantic spotted dolphins were seen in all seasons during GulfCet aerial surveys of the northern GOM from 1992 to 1998 (Hansen et al., 1996; Mullin and Hoggard, 2003). It has been suggested that this species may move inshore seasonally during spring, but data supporting this hypothesis are limited (Fritts et al., 1983). The best available abundance estimate for the northern GOM stock of the Atlantic spotted dolphin is 30,947 (NMFS, 2005).

More detailed information on the Atlantic bottlenose and spotted dolphins can be found in the NMFS Stock Assessment Reports at: *http://www.nmfs.noaa.gov/pr/sars/species.htm*.

**Potential Impacts to Marine Mammals**

Potential impacts to marine mammals may occur due to underwater noise and direct physical impacts (DPI). Noise is produced by underwater detonations in the surf zone and by the operation of amphibious vehicles. DPI could result from collisions with amphibious vehicles and from ordnance live fire. However, with implementation of the mitigation actions discussed later in this document, the potential for impacts to marine mammals are anticipated to be de minimus (U.S. Air Force, 2005).

Explosive criteria and thresholds for assessing impacts of explosions on marine mammals were discussed by NMFS in detail in its issuance of an IHA for Eglin's Precision Strike Weapon testing activity (70 FR 48675, August 19, 2005) and are not repeated here. Please refer to that document for this background information.

**Estimation of Take and Impact**

*Surf Zone Detonation*

Surf zone detonation noise impacts are considered within two categories: overpressure and acoustics. Underwater explosive detonations produce a wave of pressure in the water column. This pressure wave potentially has lethal and injurious impacts, depending on the proximity to the source detonation. Humans and animals receive the acoustic signature of noise as sound. Beyond the physical impacts, acoustics may cause annoyance and behavior modifications (Goertner, 1982).

Estimating the impacts to marine mammals from underwater detonations were discussed by NMFS in detail in its notice of receipt of application for an IHA for Eglin's Air-to-Surface Gunnery mission in the Gulf (71 FR 3474, January 23, 2006) and is not repeated here. Please refer to that document for this background information.

A maximum of one surf zone testing/training mission would be completed per year. The impact areas of the proposed action are derived from mathematical calculations and models that predict the distances to which threshold noise levels would travel. The equations for the models consider the amount of net explosive, the properties of detonations under water, and environmental factors such as depth of the explosion, overall water depth, water temperature, and bottom type.

The end result of the analysis is an area known as the Zone of Influence (ZOI). A ZOI is based on an outward radial distance from the point of detonation, extending to the limit of a particular threshold level in a 360–degree area. Thus, there are separate ZOIs for mortality, injury (hearing-related injury and slight, non-fatal lung injury), and harassment (temporary threshold shift, or TTS, and sub-TTS). Given the radius, and assuming noise spreads outward in a spherical manner, the entire area ensonified (i.e., exposed to the specific noise level being analyzed) is estimated.

The radius of each threshold is shown for each shallow water surf zone mine clearing system in Table 1. The radius is assumed to extend from the point of detonation in all directions, allowing calculation of the affected area.

The number of takes is calculated by applying marine mammal density to the ZOI (area) for each detonation type. Species density for most cetaceans is based on adjusted GulfCet II aerial survey data, which is shown in Table 2. GulfCet II data were conservatively adjusted upward to approximately two standard deviations to obtain 99 percent confidence, and a submergence correction factor was applied to account for the presence of submerged, uncounted animals. However, the actual number of marine mammal takes would be even smaller, since up to half of the ZOI would be over land and very shallow surf, which is not considered marine mammal habitat.

TABLE 1.—ZONES OF IMPACT FOR UNDERWATER EXPLOSIVE FROM FOUR MINE CLEARING SYSTEMS (ACOUSTIC UNITS ARE RE 1 MICROPA$^2$)

| Threshold | Criteria | ZOI Radius (m) | | | |
|---|---|---|---|---|---|
| | | SABRE 232 lb NEW | MK–5 MCS 1,750 lb NEW | DET 130 lb | MK–82 ARRAY 1,372 lb |
| 176 dB 1/3 Octave SEL* | Level B Behavior | 1,440 | 2,299 | 1,252 | 2,207 |
| 182 dB 1/3 Octave SEL | Level B TTS Dual Criterion | 961 | 1,658 | 796 | 1,544 |
| 205 dB SEL | Level A PTS | 200 | 478 | 155 | 436 |
| 23 psi | Level B Dual Criteria | 857 | 1,788 | 761 | 1,557 |
| 13 psi-msec | Level A Injury | 60 | 100 | 58 | 86 |
| 30.5 psi-msec | Mortality | 45 | 68 | 42 | 60 |

* SEL - Sound energy level

TABLE 2.—CETACEAN DENSITIES FOR GULF OF MEXICO SHELF REGION

| Species | Individuals/km$^2$ | Dive profile - % at surface | Adjusted density (Individuals/km$^2$)* |
|---|---|---|---|
| Bottlenose dolphin | 0.148 | 30 | 0.810 |
| Atlantic spotted dolphin | 0.089 | 30 | 0.677 |
| Bottlenose or Atlantic dolphin | 0.007 | 30 | 0.053 |
| Total | 0.244 | | 1.54 |

* Adjusted for undetected submerged animals to approximately two standard deviations.

Table 3 lists the noise-related dolphin take estimates resulting from surf zone detonations associated with the Perferred Alternative of the PEA. The take numbers represent the combined total of Atlantic bottlenose and Atlantic spotted dolphins, and do not consider any mitigation measures. Implementation of mitigation measures discussed below would significantly decrease the number of takes. Discussion of the amount of take reduction is provided below.

TABLE 3.—PREFERRED ALTERNATIVE TAKE ESTIMATES FROM NOISE IMPACTS TO DOLPHINS (ACOUSTIC UNITS ARE RE 1 MICROPA $^2$)

| Threshold | Criteria | SABRE | MK–5 MCS | DET | MK–82 Array | Total Takes * |
|---|---|---|---|---|---|---|
| 176 dB 1/3 Octave SEL | Sub-TTS | 10 | 26 | 8 | 24 | 68 |
| 182 dB 1/3 Octave SEL | Level B Harassment TTS (dual criterion) | 5 | 13 | 3 | 12 | 33 |
| 23 psi | Level B TTS (dual criterion) | 4 | 15 | 3 | 12 | 34 |
| 205 dB Total SEL | Level A PTS | 0 | 1 | 0 | 1 | 2 |
| 13 psi-msec | Level A Non-lethal Injury | 0 | 0 | 0 | 0 | 0 |
| 30.5 psi-msec | Mortality | 0 | 0 | 0 | 0 | 0 |

* Estimated exposure with no mitigation measures in place

*Noise from LCAC*

Noise resulting from LCAC operations was considered under a transit mode of operation. The LCAC uses rotary air screw technology to power the craft over the water, therefore, noise from the engine is not emitted directly into the water. The Navy's acoustic in-water noise characterization studies show the noise emitted from the LCAC into the water is very similar to that of the MH–53 helicopter operating at low altitudes. Based on the Air Force's Excess Sound Attenuation Model for the LCAC's engines under ground runup condition, the data estimate that the maximum noise level (98 dBA) is at a point 45 degrees from the bow of the craft at a distance of 61 m (200 ft) in air. Maximum noise levels fall below 90 dBA at a point less than 122 meters (400 ft) from the craft in air (U.S. Air Force, 1999).

Due to the large difference of acoustic impedance between air and water, much of the acoustic energy would be reflected at the surface. Therefore, the effects of noise from LCAC to marine mammals would be negligible.

*Collision with Vessels*

During the time that amphibious vehicles are operating in (or, in the case of LCACs, just above) the water, encounters with marine mammals are possible. A slight possibility exists that such encounters could result in a vessel physically striking an animal. However, this scenario is considered very unlikely. Dolphins are extremely mobile and have keen hearing and would likely leave the vicinity of any vehicle traffic. The largest vehicles that would be moving are LCACs, and their beam measurement can be used for conservative impact analyses. The operation which potentially uses the largest number of LCACs is Amphibious Ready Group/Marine Expeditionary Unit (ARG/MEU) training. Based on analysis in the *ARG/MEU Readiness Training Environmental Assessment* (U.S. Air Force, 2003b), LCAC activities (over 10 days) could potentially impact 22.25 square miles of the total water surface area. The estimated number of bottlenose dolphins in this area is 6.9, with an approximately equal number of Atlantic spotted dolphins. These species would easily avoid collision because the LCACs produce noise that would be detected some distance away, and therefore would be avoided as any other boat in the Gulf. In addition, AAVs move very slowly and would be easily avoided. The potential for amphibious craft colliding with marine mammals and causing injury or death is therefore considered remote.

Live Fire Operations

Live fire operations with munitions directed towards the Gulf have the potential to impact marine mammals (primarily bottlenose and Atlantic spotted dolphins). Cetacean abundance estimates for the study area are derived from CulfCet II aerial surveys in the eastern Gulf waters (Davis *et al.*, 2000). To provide a more conservative impact analysis, density estimates have been adjusted to account for submerged individuals. The percent of time that an animal is submerged versus at the surface was obtained from Moore and Clarke (1998), and used to determine an adjusted density for each species. The result shows an estimated animal density of 1.54 animals/km$^2$ (Table 2).

A maximum of two live fire operations would be conducted in a year, and are associated with expanded Special Operations training on SRI. Small caliber weapons between 5.56 mm and .50 caliber with low-range munitions would be allowed only within designated live fire areas. The average range of the munitions is approximately 1 km (0.54 nm). If a given live fire area was 1 km (0.54 nm) wide, then approximately 1.5 dolphins could be vulnerable to a munitions strike. However, even the largest live fire area on SRI is considerably less than 1 km (0.54 nm) wide. If live fire is conservatively estimated to originate from a section of beach 0.2 km (0.11 nm) wide, only 0.3 dolphins would be within the area of potential DPI. Finally, the mitigation measures discussed below would further reduces the likelihood of direct impacts to marine mammals due to live fire operations.

In addition, given the infrequency of the surf zone detonation (maximum of once per year) and the amphibious vehicle and weapon testing (maximum of twice per year), NMFS believes there is no potential for long-term displacement or behavioral impacts of marine mammals within the proposed action area.

**Mitigation**

Eglin AFB would employ a number of mitigation measures in an effort to substantially decrease the number of animals potentially affected. Visual monitoring of the operational area can be a very effective means of detecting the presence of marine mammals. This is particularly true of the species most likely to be present (bottlenose and Atlantic spotted dolphins) due to their tendency to occur in groups, their relatively short dive time, and their relatively high level of surface activity. In addition, the water clarity in the northeastern GOM is typically very high. It is often possible to view the entire water column in the water depth that defines the study area (30 feet or 9.1 m).

For the surf zone testing/training, missions would only be conducted under daylight conditions of suitable visibility and sea state of number three or less. Prior to the mission, a trained observer aboard a helicopter would survey (visually monitor) the test area, which is a very effective method for detecting sea turtles and cetaceans. In addition, shipboard personnel would provide supplemental observations when available. The size of the area to be surveyed would depend on the specific test system, but it would correspond to the ZOI for Level B behavior harassment (176 dB 1/3 octave

SEL) listed in Table 1. The survey would be conducted approximately 250 feet (76 m) above the sea surface to allow observers to scan a large distance. If a marine mammal is sighted within the ZOI, the mission would be suspended until the animal is clear of this area. In addition, to reduce the potential impacts to sea turtles and manatees, surf zone testing would be conducted between 1 November and 1 March whenever possible.

Navy personnel (NSWCPC) would only conduct live fire testing with sea surface conditions of sea state 3 or less on the Beaufort scale, which is when there is about 33 – 50 percent of surface whitecaps with 0.6 – 0.9 m (2 – 3 ft) waves. During daytime missions, small boats would be used to survey for marine mammals in the proposed action area before and after the operations. If a marine mammal is sighted within the target or closely adjacent areas, the mission would be suspended until the area is clear. No mitigation for marine mammals would be feasible for nighttime mission, however, given the remoteness of impact, the potential that a marine mammal is injured or killed is unlikely.

**Monitoring and Reporting**

The Eglin AFB will train personnel to conduct aerial surveys for protected species. The aerial survey/monitoring team would consist of an observer and a pilot familiar with flying transect patterns. A helicopter provides a preferable viewing platform for detection of protected marine species. The aerial observer must be experienced in marine mammal surveying and be familiar with species that may occur in the area. The observer would be responsible for relaying the location (latitude and longitude), the species if known, and the number of animals sighted. The aerial team would also identify large schools of fish, jellyfish aggregations, and any large accumulation of Sargassum that could potentially drift into the ZOI. Standard line-transect aerial surveying methods would be used. Observed marine mammals and sea turtles would be identified to species or the lowest possible taxonomic level possible.

The aerial and (potential) shipboard monitoring teams would have proper lines of communication to avoid communication deficiencies. Observers would have direct communication via radio with the lead scientist. The lead scientist reviews the range conditions and recommends a Go/No-Go decision to the Officer in Tactical Command, who makes the final Go/No-Go decision.

Stepwise mitigation procedures for SRI surf zone missions are outlined below. All zones (mortality, injury, TTS) would be monitored.

*Pre-mission Monitoring*

The purposes of pre-mission monitoring are to (1) evaluate the test site for environmental suitability of the mission (e.g., relatively low numbers of marine mammals and turtles, few or no patches of Sargassum, etc.) and (2) verify that the ZOI is free of visually detectable marine mammals, sea turtles, large schools of fish, large flocks of birds, large Sargassum mats, and large concentrations of jellyfish (the latter two are possible indicators of turtle presence). On the morning of the test, the lead scientist would confirm that the test site can support the mission and that the weather is adequate to support observations.

(1) One Hour Prior to Mission

Approximately one hour prior to the mission, or at daybreak, the appropriate vessel(s) would be on-site near the location of the earliest planned mission point. Personnel onboard the vessel would assess the suitability of the test site, based on visual observation of marine mammals and sea turtles. This information would be relayed to the Lead Scientist.

(2) Fifteen Minutes Prior to Mission

Aerial monitoring would commence at the test site 15 minutes prior to the start of the mission. The entire ZOI would be surveyed by flying transects through the area. Shipboard personnel would also monitor the area as available. All marine mammal sightings would be reported to the Lead Scientist, who would enter all pertinent data into a sighting database.

(3) Go/No-Go Decision Process

The Lead Scientist would record sightings and bearing for all protected species detected. This would depict animal sightings relative to the mission area. The Lead Scientist would have the authority to declare the range fouled and recommend a hold until monitoring indicates that the ZOI is and will remain clear of detectable animals.

The mission would be postponed if any marine mammal or sea turtle is visually detected within the ZOI for Level B behavioral harassment. The delay would continue until the marine mammal or sea turtle is confirmed to be outside the ZOI for Level B behavioral harassment on its own.

In the event of a postponement, pre-mission monitoring would continue as long as weather and daylight hours allow. Aerial monitoring is limited by fuel and the on-station time of the monitoring aircraft.

*Post-mission Monitoring*

Post-mission monitoring is designed to determine the effectiveness of pre-mission mitigation by reporting any sightings of dead or injured marine mammals or sea turtles. Post-detonation monitoring would commence immediately following each detonation and continue for 15 minutes. The helicopter would resume transects in the area of the detonation, concentrating on the area down current of the test site.

The monitoring team would attempt to document any marine mammals or turtles that were found dead or injured after the detonation, and, if practicable, recover and examine any dead animals. The species, number, location, and behavior of any animals observed by the observation teams would be documented and reported to the Lead Scientist.

Post-mission monitoring activities would also include coordination with marine animal stranding networks. The NMFS maintains stranding networks along coasts to collect and circulate information about marine mammal and sea turtle standings.

In addition, NMFS proposes to require Eglin to monitor the target area for impacts to marine mammals and to report on its activities on an annual basis. Accordingly, NMFS' Biological Opinion on this action has recommended certain monitoring measures to protect marine life. NMFS proposes to require the same requirements under an IHA:

(1) Eglin will develop and implement a marine species observer-training program in coordination with NMFS. This program will primarily provide expertise to Eglin's testing and training community in the identification of protected marine species during surface and aerial mission activities in the GOM. Additionally, personnel involved in the surf zone and amphibious vehicle and weapon testing/training would participate in the proposed species observation training. Observers would receive training in protected species survey and identification techniques through a NMFS-approved training program.

(2) Eglin would track their use of the surf zone and amphibious vehicle and weapon testing/training for test firing missions and protected resources (marine mammal/sea turtle) observations, through the use of an observer training sheet.

(3) A summary annual report of marine mammal/sea turtle observations

and surf zone and amphibious vehicle and weapon testing/training activities would be submitted to the NMFS Southeast Regional Office (SERO) and the Office of Protected Resources by January 31 of each year.

(4) If any marine mammal or sea turtle is observed or detected to be deceased prior to testing, or injured or killed during live fire, a report must be made to the NMFS by the following business day.

(5) Any unauthorized takes of marine mammals (i.e., serious injury or mortality) must be immediately reported to the NMFS representative and to the respective stranding network representative.

**ESA**

Consultation under section 7 of the ESA on Eglin AFB activities was completed on December 17, 1998. On March 18, 2005, NMFS Southeast Regional Office received a letter from the U.S. Air Force (USAF), Eglin AFB, requesting initiation of formal consultation on all potential environmental impacts to ESA-listed species from all Eglin AFB mission activities on SRI and within the surf zone near SRI. These missions include the surf zone detonation and amphibious vehicle and weapon testing/training. A NMFS Biological Opinion issued on October 12, 2005, concluded that the surf zone and amphibious vehicle and weapon testing/training are unlikely to jeopardize the continued existence of species listed under the ESA that are within the jurisdiction of NMFS or destroy or adversely modify critical habitat. The proposed IHA to Eglin is a federal action; accordingly, prior to issuance of an IHA, NMFS will determine whether additional consultation is necessary.

**NEPA**

In March, 2005, the USAF prepared the *Santa Rosa Island Mission Utilization Plan Programmatic Environmental Assessment* (SRI Mission PEA). NMFS is reviewing this PEA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA and rulemaking. A copy of Eglin's PEA for this activity is available upon written request (see **ADDRESSES**).

**Preliminary Conclusions**

NMFS has preliminarily determined that the surf zone and amphibious vehicle and weapon testing/training that are proposed by Eglin AFB off the coast of SRI, is unlikely to result in the mortality or serious injury of marine mammals (see Tables 2 and 3) and, would result in, at worst, a temporary modification in behavior by marine mammals. While behavioral modifications may be made by these species as a result of these surf zone detonation and amphibious vehicle training activities, any behavioral change is expected to have a negligible impact on the affected species. Also, given the infrequency of these testing/training missions (maximum of once per year for surf zone detonation and maximum of twice per year for amphibious assault training involving live fire), there is no potential for long-term displacement or long-lasting behavioral impacts of marine mammals within the proposed action area. In addition, the potential for temporary hearing impairment is very low and would be mitigated to the lowest level practicable through the incorporation of the mitigation measures mentioned in this document.

**Proposed Authorization**

NMFS proposes to issue an IHA to Eglin AFB for conducting surf zone and amphibious vehicle and weapon testing/training off the coast of SRI in the northern GOM provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity is unlikely to result in serious injury or mortality to 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 stocks for subsistence uses.

**Information Solicited**

NMFS requests interested persons to submit comments and information concerning this proposed IHA and Eglin's application for incidental take regulations (see **ADDRESSES**). NMFS requests interested persons to submit comments, information, and suggestions concerning both the request and the structure and content of future regulations to allow this taking. NMFS will consider this information in developing proposed regulations to authorize the taking.

Dated: June 16, 2006.

**James H. Lecky,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E6–9882 Filed 6–21–06; 8:45 am]

**BILLING CODE 3510–22–S**

## CONSUMER PRODUCT SAFETY COMMISSION

### Submission for OMB Review; Comment Request—Requirements for Electrically Operated Toys and Children's Articles

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** In the **Federal Register** of April 4, 2006 (71 FR 16766), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information required in the Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children (16 CFR Part 1505). No comments were received in response to that notice. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information without change for three years from the date of approval by OMB.

The regulations in Part 1505 establish performance and labeling requirements for electrically operated toys and children's articles to reduce unreasonable risks of injury to children from electric shock, electrical burns, and thermal burns associated with those products. Section 1505.4(a)(3) of the regulations requires manufacturers and importers of electrically operated toys and children's articles to maintain records for three years containing information about: (1) Material and production specifications; (2) the quality assurance program used; (3) results of all tests and inspections conducted; and (4) sales and distribution of electrically operated toys and children's articles.

The records of testing and other information required by the regulations allow the Commission to determine if electrically operated toys and children's articles comply with the requirements of the regulations in Part 1505. If the Commission determines that products fail to comply with the regulations, this information also enables the Commission and the firm to: (i) Identify specific lots or production lines of products which fail to comply with applicable requirements; and (ii) notify distributors and retailers in the event those products are subject to recall.

**Additional Information About the Request for Extention of Approval of a Collection of Information**

*Agency address:* Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

*Title of information collection:* Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children, 16 CFR Part 1505.

*Type of request:* Extension of approval without change.

*General description of respondents:* Manufacturers and importers of electrically operated toys and children's articles.

*Estimated number of respondents:* 40.

*Estimated average number of hours per respondent:* 200 per year.

*Estimated number of hours for all respondents:* 8,000 per year.

*Estimated cost of collection for all respondents:* $343,000.

*Comments:* Comments on this request for extension of approval of information collection requirements should be submitted by July 24, 2006 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 by e-mail at *cpsc-os@cpsc.gov*, or by mail or by facsimile at (301) 504–0127.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7671.

Dated: June 19, 2006.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E6–9884 Filed 6–21–06; 8:45 am]

BILLING CODE 6355–01–P

## CONSUMER PRODUCT SAFETY COMMISSION

### Submission for OMB Review; Comment Request—Safety Standard for Walk-Behind Power Lawn Mowers

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** In the **Federal Register** of March 28, 2006 (71 FR 15388), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information required in the Safety Standard for Walk-Behind Power Lawn Mowers (16 CFR part 1205). No comments were received in response to this notice. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information without change for a period of three years from the date of approval by OMB.

The Safety Standard for Walk-Behind Power Lawn Mowers establishes performance and labeling requirements for mowers to reduce unreasonable risks of injury resulting from accidental contact with the moving blades of mowers. Certification regulations implementing the standard require manufacturers, importers and private labelers of mowers subject to the standard to test mowers for compliance with the standard, and to maintain records of that testing.

The records of testing and other information required by the certification regulations allow the Commission to determine that walk-behind power mowers subject to the standard comply with its requirements. This information also enables the Commission to obtain corrective actions if mowers fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

**Additional Information About the Request for Extension of Approval of a Collection of Information**

*Agency address:* Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

*Title of information collection:* Safety Standard for Walk-Behind Power Lawn Mowers, 16 CFR Part 1205.

*Type of request:* Extension of approval without change.

*General description of respondents:* Manufacturers, importers, and private labelers of walk-behind power lawn mowers.

*Estimated number of respondents:* 20.

*Estimated average number of hours per respondent:* 390 per year.

*Estimated number of hours for all respondents:* 7,800 per year.

*Estimated cost of collection for all respondents:* $334,000.

*Comments:* Comments on this request for extension of approval of information collection requirements should be submitted by July 24, 2006 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, by e-mail at *cpsc-os@cpsc.gov*, or by mail or by facsimile at (301) 504–0127.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7671.

Dated: June 19, 2006.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E6–9885 Filed 6–21–06; 8:45 am]

BILLING CODE 6355–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[IC06–500–001, FERC 500]**

### Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

June 16, 2006.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of March 30, 2006 (71 FR 16132–16133) and has made this notation in its submission to OMB.

**DATES:** Comments on the collection of information are due by July 28, 2006.

**ADDRESSES:** Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to

OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–34, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, and original and 14 copies of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC06–500–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-Filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to this e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

**SUPPLEMENTARY INFORMATION:**

## Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC Form 500 ''Application for License/Relicense for Water Projects with More than 5MW Capacity''.

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0058.

The Commission is now requesting that OMB approve and extend the expiration date for an additional three years with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary for the Commission to carry out its responsibilities in implementing the Statutory provisions consists of the filing requirements as defined 18 CFR 4.32, 4.38, 4.40–41, 4.50–51, 4.61, 4.71, 4.93, 4.107–108, 4.201-.202, 16.1, 16.10, 16.20, 292.203 and 292.208. The information collected under the requirements of FERC–500 is used by the Commission to determine the broad impact of a hydropower license application. In deciding whether to issue a license, the Commission gives equal consideration to full range of licensing purposes related to the potential value of a stream or river. Among these purposes are: hydroelectric development; energy conservation; fish and wildlife resources; including their spawning grounds and habitat; visual resources; cultural resources; recreational opportunities; other aspects of environmental quality; irrigation; flood control and water supply.

Submission of the information is necessary to fulfill the requirements of the Federal Power Act in order for the Commission to make the required finding that the proposal is economically sound is best adapted to a comprehensive plan for improving/developing a waterway or waterways. Under Part I of the Federal Power Act (FPA), 16 U.S.C. 791a *et seq.*), the Commission has the authority to issue licenses for hydroelectric projects on the waters over which Congress has jurisdiction. The Electric Consumers Protection Act (Pub. L. 99–495, 100 Stat. 1243) provides the Commission with the responsibility of issuing licenses for nonfederal hydroelectric plants. ECPA also amended the language of the FPA concerning environmental issues to ensure environmental quality.

In Order No. 2002 (68 FR 51070, August 25, 2003; FERC Statutes and Regulations ¶31,150 at p. 30,688) the Commission revised its regulations to create a new licensing process in which a potential license applicant's pre-filing consultation and the Commission's scoping process pursuant to the National Environmental Policy Act (42 U.S.C. 4321) are conducted concurrently rather than sequentially. The Commission estimated that if an applicant chooses to use the new licensing process, this could result in a reduction of 30% from the traditional licensing process. The reporting burden related to Order No. 2002 would be on average 32,200 hours as opposed to 46,000 hours per respondent in the traditional licensing process or 39,000 hours for the alternative licensing process. It has been nearly three years since Order No. 2002 was issued and applicants have experienced the opportunity to gain the benefits from the revised licensing process. In particular, applicants have benefited from (a) increased public participation in pre-filing consultation; (b) increased assistance from Commission staff to the potential applicant and stakeholders during the development of a license application; (c) development by the potential applicant of a Commission-approved study plan; (d) elimination of the need for post-application study requests; (e) issuance of public schedules and enforcement of deadlines; (f) better coordination between the Commission's processes, including the NEPA document preparation, and those of Federal and state agencies and Indian tribes with authority to require conditions for Commission-issued licenses. It is for these reasons, that the Commission will use the estimates projected in the table below.

The information collected is needed to evaluate license application pursuant to the comprehensive development standard of FPA sections 4(e) and 10(a)(1), to consider the comprehensive development analysis of certain factors with respect to the new license set forth in section 15, and to comply with NEPA, Endangered Species Act (16 U.S.C. 1531 *et seq.*) and the National Historic Preservation Act (16 U.S.C. 470 *et seq.*)

Commission staff conducts a systematic review of the prepared application with supplemental documentation provided by the solicitation of comments from other agencies and the public.

5. *Respondent Description:* The respondent universe currently comprises 13 respondents (on average) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 463,060 total hours, 13 respondents (average), 1 response per respondent, and 35,620 hours per response (average).

7. *Estimated Cost Burden to Respondents:* Estimated cost burden to respondents is $62,430,000. ($7,800,000 (traditional process) + $17,600,000 (alternative process) + $37,030,000 (integrated process). These costs were determined by the percentage of applicants that would be using each of these processes. Annualized costs per project $2,600,000 (traditional);

$2,200,000 (alternative licensing) and $1,610,000 (integrated licensing).

**Statutory Authority:** Statutory provisions of Submission of the information is necessary for the Commission to carry out its responsibilities in implementing the Statutory provisions consists of the filing requirements as defined 18 CFR 4.32, 4.38, 4.40–41, 4.50–51, 4.61, 4.71, 4.93, 4.107–108, 4.201–.202, 16.1, 16.10, 16.20, 292.203 and 292.208.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–9891 Filed 6–21–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[IC06–505–001, FERC 505]**

### Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

June 16, 2006.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of March 28, 2006 (71 FR 15399–15401) and has made this notation in its submission to OMB.

**DATES:** Comments on the collection of information are due by July 28, 2006.

**ADDRESSES:** Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–34, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, and original and 14 copies of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC06–505–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-Filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov.* Comments should not be submitted to this e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676; or for TTY, contact (202) 502–8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC Form 505 ''Application for License for Water Projects with less than 5MW Capacity''.

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0115.

The Commission is now requesting that OMB approve and extend the expiration date for an additional three years with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary for the Commission to carry out its responsibilities in implementing the statutory provisions of Part I of the Federal Power Act (FPA), 16 U.S.C. 791a *et seq.* & 3301–3432, as amended by the Electric Consumers Protections Act (ECPA) (Pub. L. 99–495, 100 Stat. 1234 (1986). The FPA as amended by ECPA provides the Commission with the responsibility of issuing licenses for nonfederal hydroelectric power plants, plus requiring the Commission in its licensing activities to give equal consideration to preserving environmental quality. ECPA also amended sections 10(a) and 10(j) of the FPA to specify the conditions on which hydropower licenses are issued, to direct that the project be adopted in accordance with a comprehensive plan that improves waterways for interstate/foreign commerce and for the protection, enhancement and mitigation of damages to fish and wildlife.

Submission of the information is necessary to fulfill the requirements of Sections 9 and 10(a) of the Act in order for the Commission to make the required finding that the proposal is economically, technically, and environmentally sound, and is best adapted to the comprehensive plan of development of the water resources of the region. Under section 405(c) of the Public Utilities Regulatory Policies Act of 1978, the Commission may in its discretion (by rule or order) grant an exemption in whole or in part from the requirements of Part I of the FPA to small hydroelectric power projects having a proposed installed capacity of 5,000 kilowatts or less. The information collected under designation FERC–505 is in the form of a written application for a license and is used by Commission staff to determine the broad impact of the license application.

In Order No. 2002 (68 FR 51070, August 25, 2003; FERC Statutes and Regulations ¶ 31,150 at p. 30,688) the Commission revised its regulations to create a new licensing process in which a potential license applicant's pre-filing consultation and the Commission's scoping pursuant to the National Environmental Policy Act (NEPA) are conducted concurrently rather than sequentially. The Commission estimated that if an applicant chooses to use the new licensing process, this could result in a reduction of 30% from the traditional licensing process. The reporting burden related to Order No. 2002 would on average be 7,000 hours per respondent as opposed to 10,000 hours per respondent in the traditional licensing process and 8,600 hours in the alternative licensing process. It has been nearly three years since Order No. 2002 was issued and applicants have

experienced the opportunity to gain the benefits from the revised licensing process. In particular, applicants have benefited from (a) increased public participation in pre-filing consultation; (b) increased assistance from Commission staff to the potential applicant and stakeholders during the development of a license application; (c) development by the potential applicant of a Commission-approved study plan; (d) elimination of the need for post-application study requests; (e) issuance of public schedules and enforcement of deadlines, (f) better coordination between the Commission's processes, including the NEPA document preparation, and those of Federal and state agencies and Indian tribes with authority to require conditions for Commission-issued licenses. It is for these reasons, that the Commission will use the estimates projected in the table below.

The information collected is needed to evaluate the license application pursuant to the comprehensive development standard of FPA sections 4(e) and 10(a)(1), to consider the comprehensive development analysis certain factors with respect to the new license as set forth in section 15, and to comply with NEPA, Endangered Species Act (16 U.S.C. 1531 *et seq.*) and the National Historic Preservation Act (16 U.S.C. 470 *et seq.*).

Commission staff conducts a systematic review of the prepared application with supplemental documentation provided by the solicitation of comments from other agencies and the public. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 4.61; 4.71; 4.93; 4.107; 4.108; 4.201; 4.202, 292.203 and 292.208.

5. *Respondent Description:* The respondent universe currently comprises 5 respondents (on average) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 34,795 total hours, 5 respondents (average), 1 response per respondent, and 6,959 hours per response (average).

7. *Estimated Cost Burden to Respondents:* Estimated cost burden to respondents is $8,675,000. ($1,500,000 (traditional process) + $2,975,000 (alternative process) + $4,200,000 (integrated process). These costs were determined by the percentage of applicants that would be using each of these processes. Annualized costs per project $500,000 (traditional); $425,000 (alternative licensing), and $350,000 (integrated licensing).

**Statutory Authority:** Statutory provisions of Part I of the Federal Power Act (FPA), 16 U.S.C. 791a *et seq.* and 3301–3432, as amended by the Electric Consumers Protections Act (ECPA) (Pub. L. 99–495, 100 Stat. 1234 (1986). The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 4.61; 4.71; 4.93; 4.107; 4.108; 4.201; 4.202, 292.203 and 292.208.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–9892 Filed 6–21–06; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP06–365–000; Docket Nos. CP06–366–000; CP06–376–000; CP06–377–000]**

## Bradwood Landing LLC; NorthernStar Energy LLC; Notice of Application

June 15, 2006.

Take notice that on June 5, 2006, Bradwood Landing LLC (Bradwood Landing) 905 Commercial Street, Astoria, Oregon 97103, filed with the Federal Energy Regulatory Commission (Commission), in Docket No. CP06–365–000, an application under section 3 of the Natural Gas Act and part 153 of the Commission's regulations for a certificate of public convenience and necessity seeking authorization to site, construct and operate a liquefied natural gas (LNG) terminal located in Bradwood, Clatsop County, Oregon, for the purpose of importing LNG into the United States. Bradwood Landing also requests approval of the Terminal as the place of entry for imported LNG supplies.

Also, take notice that on June 5, 2006, NorthernStar Energy LLC (NorthernStar), also located at 905 Commercial Street, Astoria, Oregon 97103, filed in Docket Nos. CP06–366–000, CP06–376–000, and CP06–377–000 an application under section 7(c) of the Natural Gas Act and parts 157 and 284 of the Commission's regulations for: (1) A certificate of public convenience and necessity authorizing the construction, installation, ownership, and operation of the Bradwood Landing Pipeline and other facilities, (2) a blanket certificate to construct, operate, and/or abandon certain eligible facilities, and services related thereto; and (3) a blanket certificate to provide open-access firm transportation services. NorthernStar also requests authorization of the initial rates for transportation service and terms and conditions of service proposed in the *pro forma* tariff. The proposed Bradwood Landing Pipeline is an approximately 34-mile long pipeline which will transport natural gas from the Bradwood Landing LNG terminal to the Northwest Pipeline Corporation, an interstate natural gas pipeline in Cowlitz County, Washington.

The application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, 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 should be directed to Gary R. Coppedge, Bradwood Landing LLC and NorthernStar Energy LLC, 905 Commercial Street, Astoria, Oregon 97103, phone (503) 325–3335 or fax (503) 325–9697.

On March 18, 2005, the Commission staff granted Bradwood Landing's and NorthernStar's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF05–10–000 to staff activities involving the Bradwood Landing LNG Terminal. Now, as of the filing of this application on June 5, 2006, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket Nos. CP06–365–000, CP06–366–000, CP06–376–000, and CP06–377–000 as noted in the caption of this Notice.

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 comment date listed below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of this filing and all subsequent filings made with the Commission and must mail a copy of all

filing 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, other persons do 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 this project provide copies of their protests only to the party or parties directly involved in the protest.

Persons may also wish to comment further only on the environmental review of this project. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents issued by the Commission, and will be notified of meetings associated with the Commission's environmental review process. Those persons, organizations, and agencies who submitted comments during the NEPA Pre-Filing Process in Docket No. PF05–10–000 are already on the Commission staff's environmental mailing list for the proceeding in the above dockets and may file additional comments on or before the below listed comment date. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, environmental commenters are also not parties to the proceeding and will not receive copies of all documents filed by other parties or non-environmental documents issued by the Commission. Further, they will not have the right to seek court review of any final order by Commission in this proceeding.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

*Comment Date:* July 6, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–9813 Filed 6–21–06; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP06–392–000]**

### El Paso Natural Gas Company; Notice of Request for Waivers

June 15, 2006.

Take notice that on June 13, 2006, El Paso Natural Gas Company (EPNG) filed to request the Federal Energy Regulatory Commission to permit EPNG to waive and/or discount certain penalties and charges under its Tariff through July 12, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time June 23, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–9802 Filed 6–21–06; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–360–006]**

### Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

June 15, 2006.

Take notice that on June 13, 2006, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 259B, proposed to be effective on June 1, 2006.

Maritimes states that copies of its filing have been mailed to all affected customers of Maritimes and interested state commissions, all parties on the Commission's Official Service List in this proceeding and all parties on the electronic service list established for the hearing in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–9809 Filed 6–21–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. PH06–11–000; PH06–12–000; PH06–13–000; PH06–14–000; PH06–15–000; PH06–16–000; PH06–17–000; PH06–18–000; PH06–19–000; PH06–20–000; PH06–21–000; PH06–22–000; PH06–23–000; PH06–24–000; PH06–25–000; PH06–26–000; PH06–27–000; PH06–28–000; PH06–29–000; PH06–30–000; PH06–31–000; PH06–32–000; PH06–33–000; PH06–34–000; PH06–35–000; PH06–36–000; PH06–37–000; PH06–38–000; PH06–39–000]**

### MGE Energy, Inc.; DTE Energy Company; Energy, Inc.; Alpena Power Resources, LTD; Alaska Energy and Resources Company; National Grid Holdings One Plc; RGC Resources, Inc.; RGC Resources, Inc.; Deutsche Bank AG, et. al.; DTE Energy Company; Consolidated Energy Holdings LLC; Macquarie Bank Limited; IPALCO Enterprises; Utility Pipeline Limited; Alliant Energy Generation, Inc.; Nstar; Maine & Maritimes Corporation; Wisconsin Energy Corporation; Wisconsin Electric Power Company; BayCorp Holdings, Ltd.; UniSource Energy Corporation, et. al.; Alexander & Baldwin, Inc., et. al.; LMB Capital, Inc.; Hawkeye Funding, Inc.; Juniper Capital GP, LLC; JMG Capital, Inc.; Wygen Capital, Inc.; LIC Capital, Inc.; Alexander's of Brooklyn II, LLC; Notice of Effectiveness of Holding Company and Transaction Exemptions and Waivers

June 15, 2006.

Take notice that in May 2006 the holding company and transaction exemptions and waivers requested in the above-captioned proceedings are deemed to have been granted by operation of law pursuant to 18 CFR 366.4.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–9808 Filed 6–21–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP06–291–001]**

### National Fuel Gas Supply Corporation; Notice of Compliance Filing

June 15, 2006.

Take notice that on May 26, 2006, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, with an effective date of April 30, 2006.

National Fuel states that the filing is being made in compliance with the Commission's Order Accepting and Suspending Tariff Sheets issued April 28, 2006 in the above-referenced proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–9810 Filed 6–21–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP06–383–000]**

### Transcontinental Gas Pipe Line Corporation; Notice of Application

June 15, 2006.

Take notice that on June 12, 2006, Transcontinental Gas Pipe Line Corporation (''Transco''), Post Office Box 1396, Houston, Texas 77251, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA), for a certificate of public convenience and necessity authorizing Transco to relocate and replace approximately 740 feet of 30-inch pipeline on its Mobile Bay Lateral in Mobile County, Alabama. This application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202) 502–8659.

Transco states that due to the Alabama Department of Transportation's planned relocation of U.S. Highway 98 in Mobile County, Alabama, Transco must relocate approximately 740 feet of pipeline. Transco estimates that the proposed replacement project will cost approximately $870,000.

Any questions about this application should be directed to Stephen A. Hatridge, Senior Counsel, Transcontinental Gas Pipe Line Corporation, Post Office Box 1396, Houston, Texas 77251–1396, at (713) 215–2312 or *stephen.a.hatridge@williams.com*.

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 comment date listed below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426,

a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of this filing and all subsequent filings made with the Commission and must mail a copy of all filing 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, other persons do 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 this 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, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

*Comment Date:* July 6, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–9803 Filed 6–21–06; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP06–391–000]**

### USGen New England, Inc.; Notice of Petition for Declaratory Order

June 15, 2006.

Take notice that on June 14, 2006, USGen New England, Inc. (USGen), filed a petition for a declaratory order pursuant to Rule 207 of the Commission's Rules and Regulations (18 CFR 385.207) declaring that (1) USGen is not contractually precluded from filing a Section 5 complaint against Tennessee Gas Pipeline Company (Tennessee) challenging the reasonableness of its rates and fuel charges; and (2) Tennessee's tariff does not address the calculation of damages or mitigation of damages arising from a breach by a shipper, and state law consequently governs the determination of the mitigation of damages in the event of a breach.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on June 30, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–9812 Filed 6–21–06; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP06–390–000]**

### Vector Pipeline L.P.; Notice of Proposed Changes in FERC Gas Tariff

June 15, 2006.

Take notice that on June 12, 2006, Vector Pipeline L.P. (Vector), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets with an effective date of July 12, 2006:

Sixth Revised Sheet No. 3.
Third Revised Sheet No. 163.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–9811 Filed 6–21–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP06–385–000, CP89–1718–001]**

### Western Gas Resources, Inc., Western Gas Processors, Ltd.; Notice of Petition and Application

June 16, 2006.

Take notice that on May 26, 2006, Western Gas Resources, Inc. (WGR), successor to Western Gas Processors, Ltd., 1099 18th Street, Suite 1200, Denver, Colorado 80234, filed a petition for clarification and, in the alternative, applied for a limited jurisdiction certificate. In Docket No. CP89–1718–001, pursuant to Rules 204 and 207(a)(5) of the Commission's Rules of Practice and Procedure (section 385.204 and section 385.207, respectively) WGR petitions for clarification that WGR's Midkiff Line, located in Glascock, Midland, Reagan, and Upton Counties, Texas, retains its non-jurisdictional status. Alternatively in Docket No. CP06–385–000, pursuant to section 7(c) of the Natural Gas Act and section 157.7(a)(1) of the Commission's regulations, WGR requests issuance of a limited jurisdiction certificate authorizing WGR's continued operation of the Midkiff Line and waiving certain regulatory requirements, all as more fully set forth in the application which is on file with the Commission and open for public inspection. This filing is accessible online at *http://www.ferc.gov,* using the ''library'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is a ''subscription'' 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.

Any questions regarding this application should be directed to Christine Odell, Western Gas Resources, Inc., 1099 18th Street, Suite 1200, Denver, Colorado 80234; or e-mail: *codell@westerngas.com,* phone: (303) 452–5603, or fax: (303) 252–6240.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. 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 ''defiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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:* July 7, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–9895 Filed 6–21–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

June 14, 2006.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC06–99–000.

*Applicants:* Tor Power, LLC; Tyr Energy, LLC; Lincoln Generating Facility, LLC; Green Country Energy, LLC.

*Description:* Tyr Energy, LLC, Green Country Energy, LLC *et al.* submit an amendment to their application to provide a description of their reorganization.

*Filed Date:* June 6, 2006.

*Accession Number:* 20060609–0045.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 23, 2006.

Take notice that the Commission received the following electric rate filings.

*Docket Numbers:* ER02–298–003; EL05–111–000.

*Applicants:* Thompson River Co-Gen, LLC.

*Description:* Thompson River Co-Gen, LLC submits its revised updated market power analysis to include the generation power market screens.

*Filed Date:* May 30, 2006.

*Accession Number:* 20060606–0453.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 20, 2006.

*Docket Numbers:* ER03–534–002.

*Applicants:* Ingenco Wholesale Power, L.L.C.

*Description:* Ingenco Wholesale Power, L.L.C. submits its triennial market power update analysis pursuant to Commission order issued March 24, 2003.

*Filed Date:* April 27, 2006.

*Accession Number:* 20060427–5031.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 21, 2006.

*Docket Numbers:* ER03–774–003.

*Applicants:* Eagle Energy Partners I, L.P.

*Description:* Eagle Energy Partners I, L.P. submits its updated power market analysis pursuant to the Commission's order issued June 11, 2003.

*Filed Date:* June 12, 2006.

*Accession Number:* 20060614–0110.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 3, 2006.

*Docket Numbers:* ER03–796–004.

*Applicants:* Katahdin Paper Company LLC.

*Description:* Katahdin Paper Co. LLC submits its triennial market power

analysis in compliance with Commission's order.

*Filed Date:* June 12, 2006.

*Accession Number:* 20060614–0109.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 3, 2006.

*Docket Numbers:* ER04–805–005.

*Applicants:* Wabash Valley Power Association, Inc.

*Description:* Wabash Valley Power Association, Inc. submits its notice of non-material change in status in compliance with the requirements adopted by FERC in Order 652.

*Filed Date:* May 30, 2006.

*Accession Number:* 20060602–0332.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 20, 2006.

*Docket Numbers:* ER05–1502–003.

*Applicants:* California Independent System Operator Corporation

*Description:* California Independent System Operator Corp. submits its compliance filing pursuant to FERC's May 12, 2006 Order.

*Filed Date:* June 12, 2006.

*Accession Number:* 20060614–0112.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 3, 2006.

*Docket Numbers:* ER06–436–001.

*Applicants:* Avista Corporation.

*Description:* Avista Corporation submits Non-Conforming Agreements under its OATT, Volume 8 consisting of twelve Network Integration Transmission Service Agreements with Bonneville Power Administration.

*Filed Date:* June 9, 2006.

*Accession Number:* 20060614–0080.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 30, 2006.

*Docket Numbers:* ER06–723–002.

*Applicants:* California Independent System Operator Corporation

*Description:* California Independent System Operator Corp. submits its revised Interim Reliability Requirements Program pursuant to FERC's May 12, 2006 Order.

*Filed Date:* June 12, 2006.

*Accession Number:* 20060614–0111.

*Comment Date:* 5 p.m. Eastern Time on Monday, July 3, 2006.

*Docket Numbers:* ER06–731–002.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc. submits revisions to Module D of its OAT&EM Tariff.

*Filed Date:* June 8, 2006.

*Accession Number:* 20060612–0215.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 29, 2006.

*Docket Numbers:* ER06–959–001.

*Applicants:* Vermont Electric Cooperative, Inc.

*Description:* Vermont Electric Cooperative, Inc. submits a letter clarifying its May 24, 2006 letter and a list of the tariffs that should be withdrawn, pursuant to Commission's amendment to section 201(f) of the Federal Power Act.

*Filed Date:* May 26, 2006.

*Accession Number:* 20060526–5008.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 21, 2006.

*Docket Numbers:* ER06–1118–000.

*Applicants:* ECP Energy, LLC.

*Description:* ECP Energy, LLC submits an application for order accepting initial tariff, waiving regulations and granting blanket approvals.

*Filed Date:* June 8, 2006.

*Accession Number:* 20060612–0216.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 29, 2006.

*Docket Numbers:* ER06–1119–000.

*Applicants:* San Diego Gas & Electric Company.

*Description:* San Diego Gas & Electric Co. submits First Revised Sheet 130 et al. to Rate Schedule FERC 14, Reliability Must Run Service Agreement with California Independent System Operator Corp.

*Filed Date:* June 8, 2006.

*Accession Number:* 20060614–0071.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 29, 2006.

*Docket Numbers:* ER06–1120–000.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc. supplements its March 10, 2006 filing with signature pages, Original Sheet Number 39.

*Filed Date:* June 8, 2006.

*Accession Number:* 20060614–0072.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 29, 2006.

*Docket Numbers:* ER06–1121–000.

*Applicants:* American Electric Power Service Corporation; Ohio Power Company.

*Description:* Ohio Power Co. submits its notice of cancellation of its Amended Interconnection Agreement and Operation Agreement, Second Revised Service Agreement 433, Electric Tariff Third Revised Volume 6, with Lawrence Energy Center, LLC.

*Filed Date:* June 9, 2006.

*Accession Number:* 20060614–0073.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 30, 2006.

*Docket Numbers:* ER06–1122–000.

*Applicants:* High Trail Wind Farm, LLC.

*Description:* High Trail Wind Farm, LLC submits a petition for order accepting market-based rate schedule for filing and granting waivers and blanket approvals.

*Filed Date:* June 9, 2006.

*Accession Number:* 20060614–0074.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 30, 2006.

*Docket Numbers:* ER06–1123–000.

*Applicants:* American Electric Power System; Ohio Power Company.

*Description:* Ohio Power Co. submits its notice of cancellation of its Amended Interconnection Agreement and Operation Agreement, Second Revised Service Agreement 516, Electric Tariff Third Revised Volume 6, with Lawrence Energy Center, LLC.

*Filed Date:* June 9, 2006.

*Accession Number:* 20060614–0075.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 30, 2006.

*Docket Numbers:* ER06–1124–000.

*Applicants:* Kentucky Utilities Company.

*Description:* Kentucky Utilities Co. submits a request for an extension of its contract term for an Interconnection Agreement with Eastern Kentucky Power Cooperative.

*Filed Date:* June 9, 2006.

*Accession Number:* 20060614–0090.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 30, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies

of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St.,NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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. E6–9796 Filed 6–21–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

June 15, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG06–62–000.
*Applicants:* Flat Rock Windpower II LLC.
*Description:* Flat Rock Windpower II, LLC submits its notice of self-certification of exempt wholesale generator status pursuant to 18 CFR Section 366.7.
*Filed Date:* 6/12/2006.
*Accession Number:* 20060614–0197.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 3, 2006.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER01–1305–012.
*Applicants:* Westar Generating, Inc.
*Description:* Westar Generating Inc submits its compliance filing in accordance with Article IV, Informational Filings of the Settlement Agreement.
*Filed Date:* 6/12/2006.
*Accession Number:* 20060614–0199.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 3, 2006.

*Docket Numbers:* ER02–2330–042.
*Applicants:* ISO New England Inc.
*Description:* ISO New England Inc submits its fifteenth quarterly status report in compliance with FERC's 9/20/02 Order.
*Filed Date:* 6/12/2006.
*Accession Number:* 20060614–0200.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 3, 2006.

*Docket Numbers:* ER03–563–059; EL04–102–015.
*Applicants:* ISO New England Inc.
*Description:* ISO New England Inc submits a revised eighth compliance report pursuant to the Commission's 6/2/04 Order.
*Filed Date:* 6/12/2006.
*Accession Number:* 20060615–0114.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 3, 2006.

*Docket Numbers:* ER03–845–002.
*Applicants:* Pinpoint Power, LLC.
*Description:* PinPoint Power, LLC submits its Triennial Updated Market Analysis in compliance with Commission's 6/12/03 Order.
*Filed Date:* 6/12/2006.
*Accession Number:* 20060614–0196.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 3, 2006.

*Docket Numbers:* ER04–230–025.
*Applicants:* New York Independent System Operator, Inc.
*Description:* New York Independent System Operator, Inc submits its compliance filing of the accepted effective date to implement fifteen minute scheduling pursuant to the Commission's 10/25/05 letter order.
*Filed Date:* 6/13/2006.
*Accession Number:* 20060614–0203.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 5, 2006.

*Docket Numbers:* ER04–691–075; EL04–104–067.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest ISO submits a supplement to its 3/27/06 compliance filing regarding the calculation and refund of Marginal Losses Surplus under the Midwest ISO's OAT&EM Tariffs.
*Filed Date:* 6/8/2006.
*Accession Number:* 20060614–0198.
*Comment Date:* 5 p.m. Eastern Time on Thursday, June 29, 2006.

*Docket Numbers:* ER05–719–003.
*Applicants:* Entergy Services Inc.
*Description:* Entergy Services, Inc on behalf of Entergy Arkansas, Inc submits its compliance Refund Report pursuant to Commission's 10/21/05 Order.
*Filed Date:* 6/12/2006.
*Accession Number:* 20060614–0195.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 3, 2006.

*Docket Numbers:* ER05–1452–003.
*Applicants:* Duke Power Company, LLC.
*Description:* Duke Power Co LLC submits replacement pages to its Affected System Operating Agreement reflecting Duke Electric Transmission's name change.
*Filed Date:* 6/13/2006.
*Accession Number:* 20060615–0122.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 5, 2006.

*Docket Numbers:* ER06–451–004; ER06–641–001.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Southwest Power Pool, Inc submits revisions to several provisions of its Tariff related to the incorporation of the executed external market monitor services agreement pursuant to FERC's 4/14/06 Order.
*Filed Date:* 6/13/2006.
*Accession Number:* 20060615–0116.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 5, 2006.

*Docket Numbers:* ER06–800–001.
*Applicants:* Midwest Independent Transmission System Operator, Inc.; FirstEnergy Service Company.
*Description*: Midwest Independent Transmission System Operator, Inc and FirstEnergy Service Co on behalf of American Transmission Systems Inc submits revisions to its Attachment O of its Third Revised Volume No. 1 Tariff.
*Filed Date:* 6/13/2006.
*Accession Number:* 20060615–0118.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 5, 2006.

*Docket Numbers:* ER06–971–001.
*Applicants:* Exelon Business Services Company.
*Description:* Exelon Business Services Co submits a revised tariff sheet reflecting the effective date for the cancellation notice filed 5/8/06.
*Filed Date:* 6/12/2006.
*Accession Number:* 20060615–0113.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 20, 2006.

*Docket Numbers:* ER06–972–001.
*Applicants:* Thornwood Management Company, LLC.
*Description*: Thornwood Management Co, LLC submits an amendment of its petition for acceptance of initial tariff waivers and blanket authority application.
*Filed Date:* 6/13/2006.
*Accession Number:* 20060615–0117.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 5, 2006.

*Docket Numbers:* ER06–1079–001.
Applicants: American Electric Power Service Corporation; Indiana Michigan Power Company.
*Description:* Indiana Michigan Power Co submits Original Sheet 19 to its FERC Rate Schedule 102.
*Filed Date:* 6/13/2006.
*Accession Number:* 20060614–0201.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 5, 2006.

*Docket Numbers:* ER06–1125–000.
*Applicants:* Avista Corporation.
*Description*: Avista Corp submits First Revised Sheets 6 et al. to its FERC Rate Schedule 323, Revised Non-Conforming Long-Term Service Agreement with NorthWestern Corp.
*Filed Date:* 6/13/2006.
*Accession Number:* 20060614–0202.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 5, 2006.

*Docket Numbers:* ER06–1128–000.
*Applicants:* Mankato Energy Center, LLC.
*Description*: Mankato Energy Center, LLC submits its FERC Rate Schedule No. 2, effective 7/14/06.
*Filed Date:* 6/14/2006.
*Accession Number:* 20060615–0115.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 5, 2006.

Take notice that the Commission received the following foreign utility company status filings:

*Docket Numbers:* FC06–8–000.
*Applicants:* Babcock & Brown Infrastructure Limited; BBI Energy Partnership Pty Limited; BBI Networks (Australia) Pty Limited; BBI IEG Australia Holdings Pty Limited.
*Description:* Babcock & Brown Infrastructure Limited submits it's notification of self certification of foreign utility company status pursuant to PUHCA 2005.
*Filed Date:* 6/13/2006.
*Accession Number:* 20060613–5030.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 5, 2006.

*Docket Numbers:* FC06–9–000.
*Applicants:* SUEZ S.A.
*Description:* SUEZ S.A. on behalf its direct and indirect subsidiaries submit its self-certification of Foreign Utility Company Status, pursuant to PUHCA 2005.
*Filed Date:* 6/14/2006.
*Accession Number:* 20060614–5009.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 5, 2006.

*Docket Numbers:* FC06–10–000.
*Applicants:* FortisOntario, Inc.; Newfoundland Power Inc.; Maritime Electric Company, Limited; FortisAlberta Inc.; FortisBC Inc.; Belize Electricity Limited; Caribbean Utilities Company, Ltd.; Princeton Light and Power Company, Limited.
*Description:* FortisOntario submits a notice of self-certification foreign utility company pursuant to PUHCA 2005.
*Filed Date:* 6/14/2006.
*Accession Number:* 20060614–5025.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 5, 2006.

*Docket Numbers:* FC06–11–000.
*Applicants:* Prisma Energy Nicaragua Holdings Ltd.
*Description:* Prisma Energy International Inc., on behalf of Prisma Energy Nicaragua Holdings Ltd., et al., submits its application for Self-Certification of Foreign Utility Company Status of PUHCA 2005.
*Filed Date:* 6/15/2006.
*Accession Number:* 20060614–5092.
*Comment Date:* 5 p.m. Eastern Time on Thursday, July 6, 2006.

Take notice that the Commission received the following public utility holding company filings:

*Docket Numbers:* PH06–75–000.
*Applicants:* TECO Energy, Inc.
*Description:* TECO Energy, Inc. submits a Waiver of Notification of the sections 366.21, et al. of the PUHCA 2005.
*Filed Date:* 6/13/2006.
*Accession Number:* 20060613–5019.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 5, 2006.

*Docket Numbers:* PH06–76–000.
*Applicants:* FPL Group, Inc.
*Description:* FPL Group, Inc. submits a petition for waiver of sections 366.21, 366.22, & 366.23 of PUHCA 2005.
*Filed Date:* 6/14/2006.
*Accession Number:* 20060614–5003.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 5, 2006.

*Docket Numbers:* PH06–78–000.
*Applicants:* Phelps Dodge Corporation.
*Description:* Phelps Dodge Corporation submits an Exemption Notification or, in the alternative, Waiver Notification of pursuant to sections 366.3(b)(2)(ii) or 366.4(b)(1) of PUHCA 2005.
*Filed Date:* 6/14/2006.
*Accession Number:* 20060614–5033.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 5, 2006.

*Docket Numbers:* PH06–79–000.
*Applicants:* The Stanley Works.
*Description:* The Stanley Works submits its Waiver Notification of reporting requirements of PUHCA of 2005.
*Filed Date:* 6/14/2006.
*Accession Number:* 20060614–5050.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, July 5, 2006.

*Docket Numbers:* PH06–80–000.
*Applicants:* Sierra Pacific Resources.
*Description:* Sierra Pacific Resources submits its Waiver Notification of requirements of section 366.21, et al. of PUHCA of 2005.
*Filed Date:* 6/15/2006.
*Accession Number:* 20060614–5086.
*Comment Date:* 5 p.m. Eastern Time on Thursday, July 6, 2006.

*Docket Numbers:* PH06–81–000.
*Applicants:* UnionBanCal Corporation.
*Description:* UnionBanCal Corp. submits its Exemption Notification of section 366(b)(2)(i) of PUHCA of 2005.
*Filed Date:* 6/15/2006.
*Accession Number:* 20060615–5011.
*Comment Date:* 5 p.m. Eastern Time on Thursday, July 6, 2006.

*Docket Numbers:* PH06–82–000.
*Applicants:* UnionBanCal Equities, Inc.
*Description:* UnionBanCal Equities, Inc. submits an Exemption Notification of sections 366.1 and 366.4.
*Filed Date:* 6/15/2006.
*Accession Number:* 20060615–5012.
*Comment Date:* 5 p.m. Eastern Time on Thursday, July 6, 2006.

*Docket Numbers:* PH06–83–000.
*Applicants:* Bankers Commercial Corporation.
*Description:* Bankers Commercial Corp. submits its Exemption Notification of section 366.(b)(2)(1) of PUHCA 2005.
*Filed Date:* 6/15/2006.
*Accession Number:* 20060615–5013.
*Comment Date:* 5 p.m. Eastern Time on Thursday, July 6, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission,

888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–9798 Filed 6–21–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER06–944–001, et al.]**

## M–S–R Public Power Agency, et al.; Electric Rate and Corporate Filings

June 16, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. City of Anaheim, California

[Docket No. ER06–944–001]

Take notice that on May 18, 2006, City of Anaheim, California tendered for filing a Certificate of Concurrence regarding the filing by Public Service Company of New Mexico of the Amended and Restated San Juan Project Participation Agreement.

*Comment Date:* 5 p.m. Eastern Time on June 26, 2006.

### 2. Los Alamos County, New Mexico

[Docket No. ER06–944–001]

Take notice that on May 23, 2006, Los Alamos County, New Mexico tendered for filing a Certificate of Concurrence regarding the filing by Public Service Company of New Mexico of the Amended and Restated San Juan Project Participation Agreement.

*Comment Date:* 5 p.m. Eastern Time on June 26, 2006.

### 3. M–S–R Public Power Agency, *et al.*

[Docket No. ER06–944–001]

Take notice that on May 22, 2006, M–S–R Public power Agency, tendered for filing a Certificate of Concurrence regarding the filing by Public Service Company of New Mexico of the Amended and Restated San Juan Project Participation Agreement.

*Comment Date:* 5 p.m. Eastern Time on June 26, 2006.

### 4. Southern California Public Power Authority

[Docket No. ER06–944–001]

Take notice that on June 1, 2006, Southern California Public Power Authority tendered for filing a Certificate of Concurrence regarding the filing by Public Service Company of New Mexico of the Amended and Restated San Juan Project Participation Agreement.

*Comment Date:* 5 p.m. Eastern Time on June 26, 2006.

### Standard Paragraph

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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–9889 Filed 6–21–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 2513–066]**

## Green Mountain Power Corporation; Notice of Availability of Environment Assessment

June 15, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, the Office of Energy Projects has reviewed the application by the licensee to install a fifth turbine in the project powerhouse, rated at 850 kW, with a maximum hydraulic capacity of 210 cfs. The project is located on the Winooski River in the townships of Essex Junction and Williston, Vermont. An environmental assessment (EA) has been prepared.

In the EA, the Commission's staff concludes that approval of the licensee's application would not produce any significant adverse environmental impacts, consequently the proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a Commission order titled ''Order Amending License and Revising Annual Charges,'' issued June 15, 2006, and is available at the Commission's Public Reference Room. A copy of the EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket numbers (P–2513) in the docket field to access the document. For assistance, call (202) 502–8222 or (202) 502–8659 (for TTY).

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–9807 Filed 6–21–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. CP98–150–006, CP98–150–007, CP98–151–003, CP05–19–000, CP06–5–000, CP06–6–000, CP06–7–000, CP06–76–000, and CP02–31–002]**

## Millennium Pipeline L.L.C., Columbia Gas Transmission Corporation, Empire State Pipeline and Empire Pipeline, Inc., Algonquin Gas Transmission System, Iroquois Gas Transmission System; Notice of Availability of the Draft Supplemental Environmental Impact Statement for the Proposed Northeast-07 Project

June 15, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Draft Supplemental Environmental Impact Statement (DSEIS) on the natural gas pipeline facilities proposed for the Northeast (NE)-07 Project in Genesee, Ontario, Yates, Schuyler, Steuben, Chemung, Tioga, Broome, Delaware, Orange, Rockland, Putnam, and Dutchess Counties, New York; Morris County, New Jersey; and Fairfield and New Haven Counties, Connecticut, proposed by Millennium Pipeline L.L.C. (Millennium), Columbia Gas Transmission Corporation (Columbia), Empire State Pipeline and Empire Pipeline, Inc. (collectively referred to as Empire), Algonquin Gas Transmission System (Algonquin), and Iroquois Gas Transmission System (Iroquois) in the above-referenced dockets.

The DSEIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The staff concludes that approval of the proposed project with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The DSEIS also evaluates alternatives to the proposal, including system alternatives, alternative sites for compressor stations, and pipeline alternatives.

The DSEIS addresses the potential environmental effects of the construction and operation of the following natural gas pipeline facilities:

### Millennium Pipeline Project—Phase I

- Construction of about 181.7 miles of 30-inch-diameter pipeline from Corning, New York, to Ramapo, New York, (from milepost [MP] 190.6 to MP 376.6), with four proposed route modifications within this area;
- Acquisition from Columbia and continued use of about 7.1 miles of 24-inch-diameter Line A–5 pipeline from MP 340.5 to MP 347.7;
- Construction of the new Corning Compressor Station and measuring and regulating (M&R) facilities at MP 190.6;
- Installation of upgrades to the Ramapo M&R station in Ramapo, Rockland County, New York; and
- Construction of the Wagoner M&R station in Deer Park, Orange County, New York, at MP 337.9.

Columbia would abandon certain facilities related to the Millennium Pipeline Project—Phase I. Columbia proposes the following:

- Abandonment in place of about 4.5 miles of 10-inch-, 82.2 miles of 12-inch-, 0.2 mile of 16-inch-, and 2.5 miles of 20-inch-diameter pipeline in Steuben, Chemung, Tioga, Broome, Orange, and Delaware Counties, New York, designated as Line A–5;
- Abandonment by removal (Millennium would remove Columbia's pipeline when it installs its pipeline via same ditch replacement) of about 55.5 miles of 12-inch-, 16.6 miles of 10-inch-, and 8.8 miles of 8-inch-diameter pipeline in Delaware, Sullivan, Orange, and Rockland Counties, New York, designated as Line A–5, and of the Walton Deposit M&R station at MP 276.1 in Delaware County (Millennium would relocate this facility at the landowner's request and to move it closer to Line A–5);
- Abandonment by conveyance to Millennium of:
  - About 3.1 miles of 10- and 12-inch-diameter pipeline in Steuben County, New York, designated as Line 10325;
  - About 0.4 mile of 10-inch-diameter pipeline in Broome County, New York, designated as Line 10356;
  - About 52.5 miles of 10-, 12-, and 24-inch-diameter pipeline in Steuben, Chemung, Broome, and Orange Counties, New York, designated as Line A–5;
  - About 2.6 miles of 6-inch-diameter pipeline in Tioga County, New York, designated as Line AD–31;
  - About 0.1 mile of 12-inch-diameter pipeline in Broome County, New, York, designated as Line N;
  - About 6.7 miles of 24-inch-diameter pipeline in Rockland County, New York, designated as Line 10338;
  - The following M&R stations in New York:
    - —Corning Natural Gas, MP 180.4, Steuben County;
    - —Cooper Planes, MP 182.1, Steuben County;
    - —M Account, MP 187.5, Steuben County;
    - —Corning Glass, MP 188.4, Steuben County;
    - —Spencer, MP 217.3, Tioga County;
    - —Catatonk, MP 228.2, Tioga County;
    - —Owego, MP 231.5, Tioga County;
    - —Union Center, MP 240.2, Broome County;
    - —Endicott, MP 241.7, Broome County;
    - —Westover, MP 245.7, Broome County;
    - —Willis Road, MP 248.1, Broome County;
    - —Port Dickinson, MP 250.8, Broome County;
    - —Kirkwood, MP 253.8, Broome County;
    - —Hancock, MP 285.6, Delaware County;
    - —Hartwood Club, MP 332.1, Sullivan County;
    - —Middletown, MP 347.7, Orange County;
    - —Huguenot, MP 3440.5, Orange County;
    - —Warwick, MP 359.3, Orange County;
    - —Greenwood Lake, MP 364.2, Orange County;
    - —Central Hudson/Tuxedo, MP367.9, Orange County;
    - —Sloatsburg, MP 373.3, Rockland County;
    - —Ramapo, MP 376.4, Rockland County; and
    - —Buena Vista, MP 383.3, Rockland County.

Millennium would replace the facilities Columbia would abandon in place or by removal with its proposed project facilities, or it would continue to use those it would acquire by conveyance.

Millennium proposes to construct Columbia's Line A–5 Replacement Project as part of the Phase I Project.

### Columbia Line A–5 Replacement Project

- Replacement of 8.8 miles of 8- and 16-inch-diameter segments of Columbia's existing Line A–5 pipeline with larger 30-inch-diameter pipeline in Orange and Rockland Counties, New York;
- Modification of three existing M&R stations (the Tuxedo, Sloatsburg, and Ramapo M&R stations) on this segment of Line A–5 to accommodate the larger diameter pipeline; and
- Abandonment in place of about 1.0 mile of the existing Line A–5 pipeline.

### Empire Connector Project

- Construction of about 78 miles of new 24-inch-diameter pipeline and associated facilities in Ontario, Yates, Schuyler, Chemung, and Steuben Counties, New York; and
- Construction of a new compressor station in Genesee County, New York.

### Algonquin Ramapo Expansion Project

- Replacement about 4.9 miles of existing 26-inch-diameter pipeline with 42-inch-diameter pipeline in Rockland County, New York;

• Construction of miscellaneous pipeline modifications and meter station modifications at several locations in Rockland County, New York, and Fairfield County, Connecticut;

• Modifications to three existing compressor stations in Rockland and Putnam Counties, New York, and Morris County, New Jersey; and

• Construction of one new natural gas compressor station in New Haven County, Connecticut.

**Iroquois MarketAccess Project**

• Reduction of the proposed size of the compressor to be constructed in the Town of Brookfield, Connecticut, from 10,000 hp to 7,700 hp;

• Installation of natural gas cooling and related facilities at the Brookfield Compressor Station; and

• Installation of gas cooling and related facilities at Iroquois' existing compressor station in Town of Dover, Dutchess County, New York.

**FERC Comment Procedures**

Any person wishing to comment on the DSEIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send an original and two copies of your comments to:

Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

• Reference.

○ Docket Nos. CP98–150–006 *et al.* and CP98–151–003 *et al.* for the Millennium Pipeline Project—Phase I;

○ Docket No. CP05–19–000 for the Columbia Line A–5 Replacement Project;

○ Docket Nos. CP06–5–000, CP06–6–000, and CP06–7–000 for the Empire Connector Project;

○ Docket No. CP06–76–000 for the Algonquin Ramapo Expansion Project; and

○ Docket No. CP02–31–002 for the Iroquois MarketAccess Project.

• Label one copy of the comments for the attention of Gas Branch 2, PJ11.2; and

• Mail your comments so that they will be received in Washington, DC on or before July 31, 2006.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of the project. However, the Commission strongly encourages electronic filing of any comments or interventions to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created online.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the DSEIS, a final SEIS will be published and distributed by the staff. The final SEIS will contain the staff's responses to timely comments received on the DSEIS.

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

Anyone may intervene in this proceeding based on this DSEIS. You must file your request to intervene as specified above.[1] You do not need intervener status to have your comments considered.

**U.S. Army Corps of Engineers Regulatory Review Comment Procedures**

The U.S. Army Corps of Engineers (COE) will use the notice of availability (NOA) issued by the Commission for the DSEIS as a Public Notice for the COE for the applications for permits under authority of Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344) for the NE–07 Project. The COE is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties, in order to consider and evaluate the impacts of this proposed activity.

If you wish to provide written comments on the proposed activity pertaining to the jurisdiction of the COE, as described in this DSEIS, please provide them to FERC in accordance with its procedures, *as well as to the COE within 30 days* of the date of this notice, to: Margaret Crawford, U.S. Army Corps of Engineers—Buffalo District, Auburn Field Office, 7413 County House Road, Auburn, New York 13021 (or by e-mail to: *Margaret.A.Crawford@usace.army.mil*).

A lack of response will be interpreted by the COE as meaning that there is no objection to the proposed project. Any comments received by the COE will be considered by it to determine whether to issue, modify, condition or deny a permit under its Section 10 and Section 404 authority for this proposal. To make this decision, comments will be used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors. Comments also will be used in the preparation of the final SEIS pursuant to the National Environmental Policy Act. The COE will use comments filed with it to determine the need for the COE to hold a public hearing, and to determine the overall public interest of the proposed activity.

Please note that questions pertaining to the work within the jurisdiction of the COE as described in the DSEIS may be directed to one of the following respective points of contact:

• For the Empire Connector Project (DA Proc. No. LRB–2005–00146) and Millennium Pipeline Project—Phase 1 (DA Proc. No. LRB–2005–02043): Margaret Crawford, U.S. Army Corps of Engineers—Buffalo District, Auburn Field Office, 7413 County House Road, Auburn, New York 13021, (315) 255–8090.

• For the Millennium Pipeline Project—Phase 1 (DA Proc. No. NAN–2005–00138); Columbia Line A–5 Replacement Project, Algonquin Ramapo Expansion Project (DA Proc. No. NAN–2006–00056); or Iroquois Market Access Project, Dover Compressor Station (DA Proc. No. NAN–2006–00232): Heidi Firstencel, U.S. Army Corps of Engineers—New York District, Albany Field Office, 1 Bond Street, Troy, New York 12180, (518) 273–8593.

• For the Algonquin Ramapo Expansion Project, Oxford Compressor Station and Brookfield, Connecticut facilities (DA Proc. No. NAE–2006–1516) and Iroquois Market Access, Brookfield Compressor Station (DA Proc. No. NAE–2006–850): Cori Rose, U.S. Army Corps of Engineers—New England District, 696 Virginia Road, Concord, Massachusetts 017420–2751, (978) 318–8306.

Any person may request, in writing, within the 30-day comment period, that the COE hold a public hearing to consider the application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

The COE's decision whether to issue a permit will be based on an evaluation

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

of the probable impact, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.

**Additional Information**

The DSEIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies are available from the Public Reference Room identified above. In addition, copies of the DSEIS have been mailed to Federal, state, and local agencies; public interest groups; individuals and affected landowners who requested a copy of the DSEIS; libraries; newspapers; and parties to this proceeding.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached toll free at 1–866–208–3676, for TTY at (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to the eSubscription link on the FERC Internet Web site.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–9804 Filed 6–21–06; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2195–011]**

### Clackamas River Hydroelectric Project; Portland General Electric Company, Clackamas County, OR; Notice of Availability of the Draft Environmental Impact Statement for the Clackamas River Hydroeletric Project and Intention To Hold a Public Meeting

June 16, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 FR 47897]) the Office of Energy Projects staff (staff) reviewed the application for a New Major License for the Clackamas River Hydroelectric Project. Staff prepared a draft environmental impact statement (DEIS) for the project which is located on the Clackamas River, Clackamas County, Oregon.

The DEIS contains staff's analysis of the potential environmental effects of the project and concludes that licensing the project, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the DEIS have been sent to Federal, state, and local agencies; public interest groups; and individuals on the Commission's mailing list.

A copy of the DEIS is available for review at the Commission's Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number (P–2195), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–2376, or for TTY, contact (202) 502–8659.

Comments should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All comments must be filed by August 7, 2006, and should reference Project No. 2195–011. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site at *http://www.ferc.gov* under the eLibrary link.

In addition to or in lieu of sending written comments, you are invited to attend a public meeting that will be held to receive comments on the draft EIS. The time and location of the meeting is as follows:

*Date:* July 28, 2006.

*Time:* 9:30 a.m.–4:30 p.m.

*Place:* 2-World Trade Center—Plaza Room-Ground Floor.

*Address:* 121 S.W. Salmon Street, Portland, Oregon.

At this meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the draft EIS. The meeting will be recorded by a court reporter, and all statements (verbal and written) will become part of the Commission's public record for the project.

*For further information, please contact:* John Blair at (202) 502–6092 or at *john.blair@ferc.gov.*

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–9806 Filed 6–21–06; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2195–011]**

### Clackamas River Hydroelectric Project, Portland General Electric Company, Clackamas County, OR; Notice of Availability of the Draft Environmental Impact Statement for the Clackamas River Hydroeletric Project and Intention To Hold a Public Meeting

June 16, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 FR 47897]) the Office of Energy Projects staff (staff) reviewed the application for a New Major License for the Clackamas River Hydroelectric Project. Staff prepared a draft environmental impact statement

(DEIS) for the project which is located on the Clackamas River, Clackamas County, Oregon.

The DEIS contains staff's analysis of the potential environmental effects of the project and concludes that licensing the project, with staff's recommended measures, would not constitute a major Federal action significantly affecting the quality of the human environment. Copies of the DEIS have been sent to Federal, State, and local agencies; public interest groups; and individuals on the Commission's mailing list.

A copy of the DEIS is available for review at the Commission's Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number (P–2195), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–2376, or for TTY, contact (202) 502–8659.

Comments should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All comments must be filed by August 7, 2006, and should reference Project No. 2195–011. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site at *http://www.ferc.gov* under the eLibrary link.

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At this meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the draft EIS. The meeting will be recorded by a court reporter, and all statements (verbal and written) will become part of the Commission's public record for the project.

*For further information, please contact:* John Blair at (202) 502–6092 or at *john.blair@ferc.gov.*

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–9894 Filed 6–21–06; 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

June 16, 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.

b. *Project No.:* 190–097.

c. *Date Filed:* March 27, 2006.

d. *Applicant:* Moon Lake Electric Association, Inc.

e. *Name of Project:* Uintah Hydroelectric Project.

f. *Location:* The project is located on the Uintah River, Big Spring, and Pole Creek, within Ashley National Forest, in Duchesne County, Utah, and occupies lands of the Uintah and Ouray Indian Reservation of the Ute Indian Tribe.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Kenneth A. Winder, Manager—Engineering, Moon Lake Electric Association, Inc., 188 West 2nd North, Roosevelt, Utah 84066, telephone: (435) 722–5400.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Anumzziatta Purchiaroni at (202) 502–6191, or e-mail address: *anumzziatta.purchiaroni@ferc.gov.*

j. *Deadline for filing comments and or motions:* July 17, 2006.

k. *Description of Request:* In the filing, Moon Lake Electric Association, Inc., (Moon Lake) explains that Moon Lake and the Ute Indian Tribe have now entered into an agreement to adjust the annual charges assessed for the use and occupancy of tribal lands, pursuant to Article 201.c of the license. Therefore, Moon Lake is requesting an amendment of the license to revise the annual charges as set forth in the agreement.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. Information about this filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. 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. E6–9893 Filed 6–21–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IS06–259–000]**

### Platte Pipe Line Company; Notice of Technical Conference

June 15, 2006.

Take notice that the Commission will convene a technical conference on Friday, July 14, 2006, at 9 a.m. (EDT), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The technical conference will address all aspects of Platte's Supplement No. 7 to its FERC Tariff No. 1456 proposing to establish a new prorationing policy for crude oil volumes moving east of Guernsey, Wyoming, as discussed in the Commission's Order issued on May 19, 2006.[1] Platte's current prorationing methodology allocates capacity monthly on the basis of shippers' nominations as a percentage of available capacity. The provisions of Supplement No. 7 would allocate capacity among Historic Shippers and New Shippers, which are defined as those moving injection volumes in four or less months of the six months used in the historical calculation. Platte proposes to base the revised calculation on a past six-month period and also proposes to allocate New Shippers 10 percent of available capacity, with no individual New Shipper allocated more than three percent of available capacity.

FERC conferences 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) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Jenifer Lucas at (202) 502–8362 or e-mail *jenifer.lucas@ferc.gov*.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–9805 Filed 6–21–06; 8:45 am]

BILLING CODE 6717–01–P

[1] *Platte Pipe Line Company*, 115 FERC ¶ 61,215 (2006).

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM06–11–000]**

### Financial Accounting, Reporting and Records Retention Requirements Under the Public Utility Holding Company Act of 2005; Notice of New Date for Technical Conference

June 16, 2006.

On April 21, 2006, the Federal Energy Regulatory Commission (Commission) announced a staff technical conference in the above-referenced proceeding to be held at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in the Commission Meeting Room on June 21, 2006, from 9 a.m. until 4:30 p.m. EDT. This conference was rescheduled for July 11, 2006. It is now being rescheduled for July 18, 2006, in the interest of having the largest possible participation. All interested persons are invited to attend. There is *no* registration fee or requirement to register in order to attend.

The purpose of the conference remains the same. It is to identify the issues associated with the proposed Uniform System of Accounts for Centralized Service Companies, the proposed records retention requirements for holding companies and service companies, and the revised Form No. 60. The technical conference will develop information for use by Commission staff in preparing a final rule in this proceeding.

Interested persons wishing to participate as a speaker in the technical conference are asked to notify Commission staff electronically at *https://www.ferc.gov/whats-new/registration/usoa-06-21-speaker-form.asp* by June 20, 2006.

Prospective attendees and participants are urged to watch for further notices; a detailed agenda will be issued in advance of the conference.

FERC conferences 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) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

Questions about the conference should be directed to: Julia A. Lake, Office of the General Counsel—Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8370. *Julia.lake@ferc.gov.*

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–9890 Filed 6–21–06; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PL04–3–000]**

### Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly; Natural Gas Interchangeability; Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs

Issued June 15, 2006.

**I. Introduction**

1. In this proceeding, the Commission has been exploring natural gas quality and interchangeability issues and the impact of those issues on the natural gas companies subject to the Commission's jurisdiction, as well as on natural gas producers, shippers and end-users. Based upon the information developed during this proceeding, which will be discussed below, the Commission today announces its policy on natural gas quality and interchangeability issues.

2. The Commission's intention in issuing this statement of generic policy is to provide direction for addressing gas quality and interchangeability concerns, as well as to provide guidance to individual companies that have concerns about these issues. The Commission's policy embodies five principles: (1) Only natural gas quality and interchangeability specifications contained in a Commission-approved gas tariff can be enforced; (2) pipeline tariff provisions on gas quality and interchangeability need to be flexible to allow pipelines to balance safety and reliability concerns with the importance of maximizing supply, as well as recognizing the evolving nature of the science underlying gas quality and interchangeability specifications; (3) pipelines and their customers should develop gas quality and interchangeability specifications based on technical requirements; (4) in negotiating technically based solutions, pipelines and their customers are strongly encouraged to use the Natural Gas Council Plus (NGC+) interim guidelines filed with the Commission

on February 28, 2005 [1] (discussed below) as a common reference point for resolving gas quality and interchangeability issues; and, (5) to the extent pipelines and their customers cannot resolve disputes over gas quality and interchangeability, those disputes can be brought before the Commission to be resolved on a case-by-case basis, on a record of fact and technical review.

## II. Background

3. The Commission has seen interest in natural gas quality and interchangeability issues escalate for several years, and these issues have come before the Commission in complaints, proposed tariff provisions and certificate proceedings. Historically, gas quality is one of many terms and conditions of service stated in individual pipelines' FERC-jurisdictional tariffs. The Commission has no generic policy in this area, and individual pipelines have different standards, practices, and enforcement mechanisms.

4. Principally methane, natural gas is commonly found in nature mixed with other hydrocarbons and varying amounts of contaminants.[2] The exact composition of natural gas is chiefly dependent upon the geological source from which it is extracted. At typical interstate pipeline operating pressures and temperatures, ''pipeline quality'' natural gas remains in a gaseous state and pipelines, distribution facilities, and end-user equipment are all designed to handle and burn this gas. The term ''pipeline quality'' natural gas is defined in each individual pipeline's tariff, and these definitions vary widely from pipeline to pipeline.

5. Depending on the relative prices of these hydrocarbon fractions, producers may have an economic incentive to process gas and deliver mostly pure methane as ''pipeline quality'' gas to interstate pipelines. However, when economics favor sales of natural gas over other hydrocarbons, producers may choose not to process.[3] As it is transported and distributed, unprocessed natural gas may experience changes in temperature and pressure which cause the heavy hydrocarbons to assume a liquid form. When this happens, pipelines and other downstream equipment may experience inefficient operations and unsafe conditions. This problem is known as hydrocarbon liquid dropout, and the potential for this problem to occur can be measured in terms of cricondentherm hydrocarbon dew point (CHDP). Gas quality, as discussed in this policy statement, is concerned with the impact of non-methane hydrocarbons on the safe and efficient operation of pipelines, distribution facilities, and end-user equipment.[4]

6. Gas pipelines have taken different approaches to dealing with hydrocarbon liquid dropout, as reflected in a number of pipelines' tariffs. The HDP Report cites three examples.[5] First, about one-third of interstate pipeline tariffs specify a maximum heating value, but this has proven to be an inadequate predictor of hydrocarbon liquid drop out.[6] Second, some pipelines have addressed the potential for hydrocarbon liquid dropout by specifying concentration limits for heavy hydrocarbons (using $C_5$+ gallons per standard cubic feet [7] or $C_5$+ GPM) to establish the concentration limits above which the heavy hydrocarbon level might be detrimental to pipeline operational integrity. This measure may in some instances indicate the potential for liquid hydrocarbon drop out, but it is not as reliable in isolation as it is in conjunction with hydrocarbon dew point. Third, a number of pipelines have elected to establish CHDP limits to control liquid dropout.

7. Natural gas interchangeability is also a significant consideration in the discussion of tariff specification of ''pipeline quality'' gas. As used by the gas industry historically, ''interchangeability'' means the extent to which a substitute gas can safely and efficiently replace gas normally used by an end-use customer in a combustion application.[8] Much of the available science and research on interchangeability that exists today originated in the 1930s and 1940s when the interstate transportation of natural gas began to supplant manufactured gas.[9] Technological innovation since that time has created more efficient, more environmentally benign equipment, such as gas-fired turbines. Other technological innovations, such as liquefied natural gas (LNG) storage facilities, have inherent design limitations based on the quality of natural gas available at the time the facilities were originally designed. How well they will operate if future gas supply characteristics differ from those available today is unknown.

8. Several indices have been developed over time to characterize the interchangeability of different natural gases. One widely accepted measure of interchangeability is the Wobbe Index, which is based on energy input and specific gravity. Other indices incorporate fundamental combustion phenomena in their calculations. Examples include the AGA Bulletin 36 Indices and the Weaver Indices. These indices were created using different measurable characteristics of natural gas and combustion experiments to measure and predict interchangeability. However, each index has limits to the predictive value of its application. The importance of measuring interchangeability, regardless of the index used, is that it provides a predictive correlation between the specific measurable physical characteristics of natural gas and burner tip performance.

9. During the 2000/01 winter heating season, rising natural gas prices led producers to stop processing natural gas. As a result, pipelines began to receive a richer quality gas containing a higher proportion of liquid and liquefiable hydrocarbons, and a higher energy density, as measured in Btus per cubic foot of natural gas. A number of pipelines reacted by invoking tariff

[1] *Report on Liquid Hydrocarbon Drop Out in Natural Gas Infrastructure* (HDP Report) and *Report on Natural Gas Interchangeability and Non-Combustion End Use* (Interchangeability Report).

[2] The hydrocarbon gases that can be found in natural gas are (and the number of carbon atoms in each): Methane ($C_1$), ethane ($C_2$), propane ($C_3$), butanes ($C_4$), pentanes ($C_5$), hexanes ($C_6$), heptanes ($C_7$), octanes ($C_8$) and nonanes plus ($C_9$+). Non-hydrocarbons in natural gas can include nitrogen ($N_2$), carbon dioxide ($CO_2$), helium (He), hydrogen sulfide ($H_2S$), water vapor ($H_2O$), oxygen ($O_2$), other sulfur compounds and trace gases.

[3] When delivered, natural gas is measured in terms of its thermal value, usually measured in British thermal units (Btus), and billed on that basis. When deciding whether to process natural gas, producers look to the relative thermal values of the different hydrocarbons that might be extracted in processing to determine which product will generate the most revenue.

[4] Other materials commonly found in natural gas, include contaminants, such as water, sand, sulfur compounds, oxygen, carbon monoxide, carbon dioxide, nitrogen, helium and other materials. While this policy statement does not address these materials, the Commission understands that jurisdictional pipeline tariffs already include specifications to control these elements within acceptable limits.

[5] HDP Report, at sections 3.1.2–3.1.3, at 16.

[6] The Report notes that maximum heating value alone is not a good predictor of whether hydrocarbon liquid drop out will occur because different gases with the same gross heating value may have different propensities for hydrocarbon liquid drop out. The paper notes the examples of a gas with a relatively low heating value but a high hexane concentration that may have a high probability of hydrocarbon liquid drop out in contrast to a gas with a high heating value due to a high ethane content with a very low probability of hydrocarbon liquid drop out.

[7] Gallons per Million cubic feet is abbreviated GPM. *See, e.g.*, HDP Report at sections 1.2.7 and 3.1.

[8] *See, e.g.*, *Cove Point LNG Limited Partnership*, 97 FERC ¶ 61,043, at 61,197 (2001), *order on reh'g*, 97 FERC ¶ 61,276 (2001).

[9] Interchangeability Report, at section 3.1.1.

provisions that authorize pipelines to issue operational flow orders (OFOs), which required the gas to be processed before being delivered to the pipelines. Producers objected, arguing that pipelines were attempting to impose more stringent quality standards on some producers, but not on others.

10. Interchangeability issues have also been raised in proceedings to authorize the siting and operation of LNG import terminals. In September, 2001, the Commission issued an order reauthorizing the receipt of LNG imports at Dominion's Cove Point LNG facility.[10] Among the issues raised was the interchangeability of this LNG with the historic quality of gas delivered to Washington Gas Light (WGL). Ultimately, the Commission approved a settlement between Dominion, WGL and others that specified a maximum Btu heating content.[11]

## III. Procedural History

11. In September 2003, the National Petroleum Council (NPC) completed a report on the natural gas industry, which contained a number of findings and policy recommendations and highlighted the increased importance of LNG in meeting expected demand growth over the ensuing decade.[12] The Commission explored the findings and recommendations of the NPC report in an October 14, 2003 technical conference. The Summary Report recommended that the natural gas interchangeability standards be updated: ''FERC and DOE should champion the new standards effort to allow a broader range of LNG imports. This should be conducted with participation from LDCs [local distribution companies], LNG purchasers, process gas users, and original equipment manufacturers (OEMs).'' [13]

12. By the time the NPC report was issued, the Commission already had pending before it a number of proceedings that raised natural gas quality or interchangeability issues. Since that time, other proceedings involving natural gas quality or interchangeability have been initiated. Procedurally, the gas quality and interchangeability issues have arisen in the context of complaint proceedings,[14] certificate proceedings,[15] and proposed tariff changes.[16] Although each case involves unique circumstances, collectively, these cases reveal a growing tension between the desire of natural gas pipelines and distributors to ensure the quality of gas entering their facilities, and the desire of producers and shippers to have their product transported without onerous or unduly discriminatory processing requirements. Another recurring theme is the desire of end-use customers to receive gas that will not harm their gas-fueled equipment nor cause inefficient operations.

13. The Commission held a public conference to discuss gas quality and interchangeability issues on February 18, 2004. Many industry participants, representing industry sectors from wellhead to burner tip, provided the Commission with information on the range of complex operational concerns and issues that the market was facing.

14. Subsequent to the February 2004 technical conference the natural gas industry, under the auspices of the Natural Gas Council, initiated a collaborative effort to seek consensus on industry-wide standards for gas quality and interchangeability. This collaborative effort made tremendous progress in identifying the underlying science, identifying measurement techniques, and characterizing the different perspectives on the problems different sectors face with changing or uncertain natural gas quality and interchangeability.

15. On February 28, 2005, the Natural Gas Council filed with the Commission two technical papers entitled: *Natural Gas Interchangeability and Non-Combustion End Use and Liquid Hydrocarbon Drop Out in Natural Gas Infrastructure* (collectively, NGC+ Reports). These papers represent the culmination of nearly a year of work by a large group of natural gas industry stakeholders—the NGC+ Group [17]—which worked to reach a consensus understanding of these problems and recommendations about how they might be managed. Both Reports suggest interim recommendations and urge additional research.

16. The Interchangeability Report defines interchangeability as:

> The ability to substitute one gaseous fuel for another in a combustion application without materially changing operational safety, efficiency, performance or materially increasing air pollutant emissions.[18]

The paper goes on to provide background information on the history of the industry's experience with gas quality issues, and the changes it has experienced, and then reviews various measures that have been employed to measure interchangeability. After a review of the impacts of variable fuel quality on gas-fired appliances, the paper provides an overview of past industry efforts to measure, predict and monitor the interchangeability of natural gases, and examines several options for managing interchangeability.

17. Recognizing that more research is needed, the NGC+ Interchangeability Work Group makes interim recommendations, to be implemented pending further study and deliberation. These interim guidelines provide for: (1) Use of the local average historical Wobbe Index average with an allowable range of variation of plus or minus four percent; (2) subject to a maximum Wobbe Index level of 1,400; (3) a maximum heating value limit of 1,110 Btu/scf; (4) a limit on butanes and heavier hydrocarbons (butanes+ or C4+) of 1.5 mole percent; and (5) an upper limit on the amount of total inert gases (principally nitrogen and carbon dioxide) of up to four mole percent. The Interchangeability Report also recommends an exception from these interim guidelines for service territories

[10] *Cove Point LNG Limited Partnership, supra* n. 8.

[11] *Cove Point LNG Limited Partnership,* 102 FERC ¶ 61,227 (2003). In the context of Dominion's proposal to expand the capacity at Cove Point, WGL now claims that the low heavy hydrocarbon content of LNG delivered by Cove Point led to drying and cracking seals in distribution facilities, which eventually led to gas leaks. *See Dominion Cove Point LNG, L.P.,* Docket No. CP05–130–000.

[12] The National Petroleum Council (NPC) is an oil and natural gas advisory committee to the Secretary of Energy.

[13] National Petroleum Council, *Balancing Natural Gas Policy: Fueling the Demands of a Growing Economy, Volume I, Summary of Findings and Recommendations,* September 2003, at 64.

[14] *See, e.g., The Toca Producers* v. *Southern Natural Gas Co.,* Docket No. RP03–484–001; *Amoco Production Company,* Docket No. RP01–208–000; Southern Natural Gas Co., Docket No. RP04–42–000 (collectively, the Toca Proceedings); *Indicated Shippers* v. *Trunkline Gas Company, LLC,* Docket No. RP04–64–000; *Indicated Shippers* v. *ANR Pipeline Company,* Docket No. RP04–65–000; *ANR Pipeline Company,* Docket No. RP04–216–000 and RP04–435–000 (the ANR Proceedings); *Indicated Shippers* v. *Columbia Gulf Transmission Company,* Docket No. RP04–98–000, *Indicated Shippers* v. *Tennessee Gas Pipeline Company,* Docket No. RP04–99–000; and, *AES Ocean Express LLC* v. *Florida Gas Transmission Company,* Docket No. RP04–249–000/–001.

[15] *See, e.g., Dominion Cove Point LNG, L.P.,* Docket No. CP05–130–000; *Pearl Crossing Pipeline LP,* Docket No. CP04–376–000.

[16] *See, e.g., Natural Gas Pipeline Company of America,* Docket Nos. RP01–503–002, –003, 102 FERC ¶61,234 (2003) and 103 FERC ¶ 61,322 (2003). A December 20, 2005 Initial Decision in this proceeding is pending before the Commission.

[17] The Natural Gas Council is an organization made up of the representatives of the trade associations of the different sectors of the natural gas industry, such as the producers, pipelines, and local distribution companies. The NGC+ group included many industry volunteers from the member companies of the various trade associations as well as other industry participants interested in these issues.

[18] Interchangeability Report, (February 28, 2005; refiled on March 3, 2005, and resubmitted with appendices June 30, 2005), at 2. *http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=10644164.*

that could demonstrate experience with supplies exceeding these Wobbe Index levels, Heating Value and/or Composition Limits. Companies in these service territories could continue to use non-conforming supplies as long as use of these supplies does not unduly jeopardize the safety of or create utilization problems for end use equipment.[19]

18. NGC+ Group recommends that these guidelines be employed until research can be completed filling in major data gaps for modern end-use appliances and the industry forges a consensus on improved interchangeability requirements. The NGC+ Reports originally forecast that it would take 2 to 3 years to complete this additional work. The interim guidelines are for gases delivered to points in the gas transportation system most closely associated with end users: Gases delivered to local distribution companies (LDCs). The guidelines do not necessarily apply directly to points upstream in the transportation system where blending, gas processing, and other factors may be utilized to allow gases outside the ranges of the guidelines to satisfy the guidelines at LDC city gates. The NGC+ Group is continuing to investigate development of guidelines for points upstream.

19. The second paper, *Liquid Hydrocarbon Drop Out in Natural Gas Infrastructure,* addresses the issue of controlling hydrocarbon drop out in natural gas pipeline and distribution facilities, and other gas industry infrastructure downstream of producing areas. The NGC+ interim recommendation on this issue is to adopt interim standards that translate historic experience into terms of CHDP or C6+ GPM methodologies,[20] taking best available historical data into account. The NGC+ also recommends that additional research be conducted to better understand gas composition, and to develop improved analytic equipment suitable for daily operational use.

20. In addition to Commission action on gas quality and interchangeability, The North American Energy Standards Board (NAESB) has considered requests that it adopt Business Practice Standards to address natural gas quality and interchangeability. On September 20, 2004, the Wholesale Gas Quadrant Executive Committee of NAESB adopted standards for electronic posting of certain gas quality parameters on pipeline websites. One month later, these standards were ratified by the NAESB membership. On May 9, 2005, the Commission issued an order amending its regulations governing standards for conducting business practices with interstate natural gas pipelines to incorporate by reference the NAESB standards related to gas quality, which are part of Version 1.7 of the NAESB consensus standards.[21]

21. On May 16, 2005, the Natural Gas Supply Association (NGSA) filed a petition for rulemaking seeking a Commission notice of proposed rulemaking (NOPR) to establish natural gas quality and interchangeability standards. By order issued contemporaneously with this Policy Statement in Docket No. RM06–17–000, the Commission is denying this petition. Instead of proceeding to address gas quality and interchangeability issues through a rulemaking proceeding, the Commission instead establishes herein the regulatory policy it will apply in individual proceedings before the Commission.

## IV. Summary of Comments

22. The Commission solicited written comments on the NGC+ Reports and subsequently convened a technical conference on May 17, 2005 to allow for further public comment on and discussion of the issues raised by the Reports. In addition, the Commission solicited comments on the Natural Gas Supply Association's (NGSA) May 16, 2005 petition for rulemaking. Appendix A to this Policy Statement lists commenters on the Reports and comments received after the May 17 technical conference addressing issues in the Reports and the NGSA Petition.

23. Appendix B to this Policy Statement is a summary of the comments received on the NGC+ Reports and the NGSA Petition. Briefly, commenters articulate conflicting views on whether mandatory nationwide standards are warranted, and if so, which standards should be adopted. While there is a great deal of consensus on how to articulate the problem in technical terms, opinion is divided among a number of preferred solutions. The Interstate Natural Gas Association of America (INGAA), for example, believes that there is no national problem with gas quality and interchangeability that warrants a rulemaking. While urging the Commission to address gas quality and interchangeability issues as they arise, INGAA favors a policy statement if the Commission decides to address the issues generically. There was no unanimity within the producer segment. The Independent Petroleum Association of America (IPAA) supports a rulemaking and the NGSA proposal, while the Appalachian Producers and the Independent Petroleum Association of Mountain States oppose mandatory national standards for gas quality. The American Gas Association (AGA), the American Public Power Association of America (APGA), and a number of LDCs ask that the Commission require pipeline tariffs to contain merchantability standards. The Process Gas Consumers endorse a rulemaking and the NGSA petition. The Edison Electric Institute and Siemens Westinghouse raise concerns about the impact of interchangeability standards on DLE turbines. Gas appliance manufacturers point out the importance of basing gas quality standards on local historical gas characteristics.

## V. Discussion

### *A. The Problem in a Nutshell*

24. Most, if not all, interstate natural gas companies have provisions in their tariffs governing gas quality. But as the NGC+ Reports note, ''at no time has there ever been a common set of specifications for [hydrocarbon] components such as there has been for $CO_2$, $H_2S$, and water.'' [22] Each pipeline established its own terminology, standards, controls, and conditions for waiver. Until relatively recently, this approach appears to have worked reasonably well. However, gas quality and interchangeability controversies have become more frequent.[23] The Commission's policy guidance recognizes the importance of encouraging rather than impeding the development of natural gas infrastructure and the movement of gas to the grid and to ultimate consumers. Thus, the Commission believes that the policy adopted here achieves a balanced approach by providing certainty, ensuring the safety and reliability of the nation's gas grid, and recognizing concerns about natural gas quality and interchangeability, while providing pipelines and their customers the flexibility necessary to maximize the introduction of new supply into the grid.

[19] Interchangeability Report at 26.

[20] The phrase ''C6+ GPM'' stands for hexanes and heavier hydrocarbons, as measured in gallons per million cubic feet of natural gas. Measuring and controlling for the amount of these heavier hydrocarbons in the natural gas stream is an alternative to the CHDP method.

[21] *Order No. 587–S, Standards for Business Practices of Interstate Natural Gas Pipelines,* 18 CFR part 284 (2005); FERC Statutes and Regulations ¶ 31,179.

[22] HDP Report at section 3.1.1.

[23] *Supra* note 13.

25. The Commission believes that there are compelling reasons to provide policy guidance on these issues. Three factors suggest that there is a need to act now. First, processing economics can create hydrocarbon dew point problems whenever the economics shift to favor decisions not to process natural gas. Second, establishing a sound policy on gas quality and interchangeability issues now would lower a potential barrier to expected increases in LNG imports.[24] Third, acting now will provide a firm regulatory policy basis for additional research and development on gas quality and interchangeability issues.

26. The natural gas industry, through the efforts of the NGC, has produced the NGC+ Reports that represent consensus on these topics. They offer interim approaches that can be put in place now, to the extent well-functioning gas quality and interchangeability provisions are not already in place in individual pipelines' tariffs. These interim recommendations provide a common language for discussion of these issues, and a reasonable framework to establish market-specific standards.

27. However, these same consensus Reports highlight the need for additional research and development before any more permanent consensus may be forged.[25] The Commission believes that a generic policy on gas quality and interchangeability would help guide the industry in the right direction. But given the areas of additional research that is required, it would be premature to take more prescriptive actions such as prescribing gas quality and interchangeability standards or prescribing specific levels of the constituent elements of, or the heating values for, the natural gas transported in pipelines.

28. In the face of these challenges, the accomplishment of the NGC+ group in achieving consensus to submit two technical papers addressing hydrocarbon dew point and interchangeability is worthy of praise. The Commission commends those members of the natural gas industry who participated in these efforts. The Commission's policy statement is based in large part on the foundation of this group's work, and the comments filed in this generic proceeding.

*B. Statement of General Policy Regarding Interstate Pipeline Tariff Provisions Governing Gas Quality and Interchangeability*

29. The Commission's policy on gas quality and interchangeability embodies five principles. First, only natural gas quality and interchangeability specifications contained in a Commission-approved gas tariff can be enforced. The Commission's authority to address questions about tariff provisions on gas quality and interchangeability arises under sections 4, 5 and 7 of the NGA. By law, the Commission is responsible for ensuring that rates, charges, rules and regulations of service are just, reasonable and not unduly discriminatory or preferential, and that initial rates, terms and conditions of service are required by the public convenience and necessity.[26] Unless these specifications are stated in the tariff, the Commission will not be able to address gas quality and interchangeability concerns. Where gas quality and interchangeability issues are of concern to the transporting pipeline, tariff standards are essential terms and conditions of service.

30. Second, pipeline tariff provisions on gas quality and interchangeability need to be flexible. Pipelines operate in dynamic environments that frequently require quick responses to rapidly changing situations. For example, a pipeline may be asked to transport gas that does not meet a particular gas quality or interchangeability specification in the pipeline's tariff. Nevertheless, if the pipeline has the ability to transport such out-of-spec gas without jeopardizing system operations, its tariff should be flexible enough to allow it to do so. The Commission believes that flexible tariff provisions on natural gas quality and interchangeability will allow pipelines to balance safety and reliability concerns with the importance of maximizing supply, while recognizing the evolving nature of the science underlying gas quality and interchangeability specifications.

31. Third, pipelines and their customers should develop gas quality and interchangeability specifications. The Commission expects that specifications for natural gas quality and interchangeability will be based upon sound technical, engineering and scientific considerations. In addition, the Commission encourages pipelines and their customers to resolve gas quality and interchangeability issues on their own, either prior to or outside of formal Commission proceedings. This will facilitate mutually beneficial outcomes for all parties and should not have a detrimental impact on either current or prospective shippers.[27]

32. Fourth, in negotiating technically based solutions, pipelines and their customers are strongly encouraged to use the NGC+ interim guidelines as a common scientific reference point for resolving gas quality and interchangeability issues. The interim guidelines suggest a process for applying scientific principles to individual markets but do not address the specifics of individual pipeline circumstances or tariff provisions. Furthermore, the interim guidelines recognize that additional research and development are needed to arrive at more clearly defined limits to interchangeability specifications and to address the need for better and more timely operational information on natural gas quality and pipeline operations. The Commission's policy will keep step with improved knowledge on gas quality and interchangeability.

33. Finally, to the extent pipelines and their customers cannot resolve disputes over gas quality and interchangeability, those disputes can be brought before the Commission to be resolved on a case-by-case basis, on a record of fact and technical review. In resolving any such disputes, the Commission will give significant weight to the NGC+ interim guidelines. In addressing disputes, the Commission will develop a factual record, with sound technical underpinnings, which will provide the Commission with a good foundation for resolving disputes. The Commission recognizes that regional variation and differing local needs cannot be accommodated with an inflexible generic policy on gas quality and interchangeability. Rigid gas quality and interchangeability requirements could unnecessarily restrict the introduction of new sources of supply, which is inconsistent with the Commission's policy of encouraging new supplies and the construction of

[24] The Energy Information Administration projects that by the year 2030, 4.4 trillion cubic feet equivalent (Tcf) of LNG will be imported to meet approximately 27 Tcf in annual demand for natural gas—an eight-fold increase over the roughly 0.5 Tcf of LNG imported in 2003. Energy Information Administration, *Annual Energy Outlook 2006,* at 86 (February 2006). *http://www.eia.doe.gov/oiaf/aeo/pdf/0383(2006).pdf.*

[25] We are encouraged by the efforts of the Department of Energy in pursuing research and development in this area. Along with the efforts of the industry, and continued voluntary collaboration, we look forward to the improvements that will become possible with a better understanding provided by these research efforts.

[26] 15 U.S.C. 717c, 717d and 717f (2000).

[27] In this regard, the Commission notes the ''Joint Statement of the American Gas Association and the Interstate Natural Gas Association of America,'' filed on June 2, 2006, which outlines their agreement on developing gas quality and interchangeability specifications on a pipeline-by-pipeline basis, where needed, within the next year. On June 8, APGA filed a response to the AGA-INGAA joint statement.

infrastructure to bring new supplies to market.[28] The following discussion will elaborate on how we envision this general policy being applied in individual cases.

1. Gas Quality

34. The Reports' interim recommendations identify two valid methods that might be used to control hydrocarbon liquid dropout—the CHDP method, and the C6+ GPM method.[29] As a matter of policy, the Commission believes that jurisdictional tariffs should contain provisions that govern the quality of gas received for transportation when necessary to manage hydrocarbon liquid dropout within acceptable levels. Pipelines with existing tariff provisions that adequately control hydrocarbon dropout may continue to rely on their existing tariff.[30] Pipelines that wish to add provisions to their tariffs, or modify existing provisions, to control hydrocarbon dropout are strongly encouraged to use one of the two methods found by the NGC+ to be valid. If a pipeline wishes to propose a different method, the pipeline must provide an explanation of how the proposed method differs from the CHDP method described in the HDP Report. In addition, the pipeline will be required to include in any filing to revise its gas quality standards a comparison, in equivalent terms, of its proposed gas quality specifications and those of each interconnecting pipeline.

35. In application, either of the two methods suggested by the NGC+ task group offers a process for arriving at appropriate gas quality specifications for natural gas accepted for transportation by a pipeline. However, the specifications themselves must be derived to fit the specific circumstances of each pipeline.[31] The appropriate gas quality specifications for different pipelines may vary depending upon a number of factors, including pipeline configuration, geographic location of the pipeline, access to and location of processing facilities, flowing gas temperatures and pressures, average ambient and ground temperatures and source of gas supply.[32] This is a fact-intensive exercise, and is not one that lends itself to generic specifications. The Commission will examine the appropriate circumstances in each individual case. That being said, the Commission will give appropriate weight to the gas quality and interchangeability requirements of interconnecting pipelines as well as the requirements of markets directly served. The Commission wishes to ensure that natural gas wholesale trade across markets is not unduly impeded by the tariff requirements of individual pipelines. In addition, the tariff should state the natural gas quality specifications for gas that the pipeline will deliver to its customers.

2. Interchangeability

36. In its report, the NGC+ Interchangeability Work Group recommend interim guidelines based on a range of plus and minus four percent of the Wobbe number based on either local historical average gas or an established ''adjustment or target'' gas for the service territory at issue. This basic guideline was subject to additional parameters limiting: The maximum Wobbe number to 1,400; the maximum heating value to 1,110 Btu/scf; maximum butanes+ to 1.5 mole percent; and maximum total inert gases to four mole percent. These interim guidelines also included a specific exception for service territories with demonstrated experience with gas supplies exceeding any of the ''additional parameters.''

37. The Interchangeability Report contains a methodology for arriving at an appropriate interchangeability specification, based in part on historical experience. Pipelines with existing tariff provisions which adequately characterize interchangeability limits may continue to rely on their existing tariff.[33] Pipelines that wish to add provisions to their tariffs, or modify existing provisions, to characterize interchangeability specifications are encouraged to use the interim guidelines proposed by the NGC+ Interchangeability Task Group. To the extent a pipeline wishes to propose a different method, it must explain how the proposed method differs from the interim guidelines. In addition, the pipeline will be required to include in any filing to revise its interchangeability standards a comparison, in equivalent terms, of its proposed interchangeability specifications and those of each interconnecting pipeline.

38. As is the case with gas quality specifications, selection of interchangeability limits is a fact-based exercise. In application, either of the two methods suggested by the NGC+ task group offers a process for arriving at appropriate limits for the interchangeability characteristics of natural gas that may be accepted for transportation by a pipeline. However, the limits themselves must be derived to fit within the specific circumstances of each pipeline.[34] The appropriate interchangeability specifications for different pipelines may vary depending on a number of factors, including: The historic characteristics of natural gas delivered by the pipeline to the markets it serves; local market practices for the use of target or adjustment gases used to install and adjust equipment in that market; historic variability in the characteristics of gas delivered to the market; whether there are customer loads with special gas quality requirements, such as a large process gas user; the type and gas quality tolerances of the end-use equipment (including ''legacy'' equipment); and, the tariff requirements of downstream pipelines.[35] This fact-intensive exercise does not lend itself to generic specifications. The Commission will examine the appropriate circumstances in each individual case. That being said, the Commission will give appropriate weight to the gas quality and interchangeability requirements of interconnected pipelines as well as the requirements of markets directly served. The Commission wishes to ensure that natural gas wholesale trade across markets is not unduly impeded by the tariff requirements of individual pipelines. In addition, the tariff should state the natural gas quality specifications for gas that the pipeline will deliver to its customers.

3. Blending

39. Given the complexity of operating an interstate pipeline, there is substantial discretion given a pipeline to decide when and how much to allow

[28] *See e.g., Northern Natural Gas Company,* 108 FERC ¶ 61,083, at P. 24 (2004) (''* * * the Commission must ensure that proposals that are intended to address system integrity do not unnecessarily discourage new sources of supply or impose unreasonable costs on shippers and consumers.''), and *Hackberry LNG Terminal,* 101 FERC ¶ 61,294 (2002).

[29] For a technical description of either of these methods, *see* HDP Report, especially sections 4 through 6.

[30] To the extent a complaint is filed alleging that an existing pipeline tariff is not just and reasonable, the Commission will evaluate the complaint on its specific merits.

[31] *See* HDP Report, Appendix A *Parameters to be Considered in Establishing CHDP or C6+ GPM Based Limits,* and Appendix B *Process for Establishing a Cricondentherm Hydrocarbon Dew Point (CHDP) Limit.*

[32] *See, e.g.*, El Paso at 6 (''A policy statement would allow the Commission to tailor its approach to reflect the complexities that each pipeline faces in addressing HDP issues, including, for example, reticulated pipeline systems that have bidirectional flows and as such may not be able to easily engage in pairing, blending, or aggregation.''), and Questar at 3–4.

[33] To the extent a complaint is filed alleging that an existing pipeline tariff is not just and reasonable, the Commission will evaluate the complaint on its specific merits.

[34] *See* Interchangeability Report at 24–26.

[35] *See, e.g.*, The Florida Utilities April 1, 2005 comments.

exceptions to gas quality and interchangeability specifications to accommodate production that may not have convenient access to gas processing. In addition, some pipelines will waive gas quality limitations when operating circumstances allow, enforcing strict compliance with the tariff only when necessary. For example, a pipeline may be able to accept rich gas containing more of the heavier hydrocarbons than its tariff would otherwise permit by blending that gas with leaner gas that contains very little of the heavier hydrocarbons. However, there may be more such lean gas available for blending on some parts of the pipeline's system than on other parts. Furthermore, a pipeline's ability to blend supplies of varying quality will depend on the supplies' proximity to market.

40. Pragmatically, this discretion allows the pipeline to maximize the gas supply available to its customers while maintaining its ability to manage gas quality and interchangeability within acceptable limits. The Commission has found in at least one case that such actions are ''not necessarily undue discrimination under the NGA [Natural Gas Act].'' [36] Operational constraints in particular parts of a pipeline's system may justify treating shippers on those parts of the system differently than shippers on other parts of the system.[37]

41. The Commission continues to believe that it is appropriate to allow pipelines to exercise their discretion to waive strict gas quality limits when operating conditions allow, and to enforce such limits when operating conditions require stricter measures, as long as it is done in a not unduly discriminatory manner.[38] The Commission wishes to encourage pipelines to allow blending, pairing,[39] and other strategies, to the extent these can be implemented on a non-discriminatory basis and in a manner that is consistent with safe and reliable operations. This is consistent with the Commission's policy of minimizing any unnecessary restrictions on the supplies available to the national gas market. Pipelines may consider ''safe harbor'' provisions and informational posting requirements as means of minimizing the potential for undue discrimination.[40]

4. Merchantability

42. AGA urges the Commission to require pipelines to include a merchantability provision in their tariffs.[41] AGA defines the term ''merchantable'' as gas that is:

> consistently commercially free from objectionable matter including odors, bacteria, dust, gums, water, hydrocarbon liquids, other liquid or gaseous constituents that may preclude supply from being interchangeable with historically acceptable supplies delivered into a market area and will not cause injury or interference with operation of existing end use equipment, pipelines and the gas transmission and distribution infrastructure.[42]

43. The Commission will not require such provisions. We do not believe that mandating additional merchantability requirements would provide any additional value at this time.[43] In addition, we are concerned that adoption of a general merchantability requirement could come into conflict with the specifications of gas quality and interchangeability that would be quantified under the interim processes recommended in the NGC+ Reports. Pipeline tariff provisions that contain detailed technical specifications for gas quality and interchangeability may be sufficient without the addition of a general merchantability provision; technical specifications and general descriptions, to the extent they are present, must work together if they are to function as intended. Neither of the NGC+ Reports included in their consensus recommendations the adoption of a merchantability clause. Some pipelines have merchantability provisions in their current tariffs and some do not. As a policy matter, the Commission will neither mandate nor prohibit such provisions.

*C. Applicability to Section 311 Transporters*

44. The Commission intends to apply this policy to statements of operating conditions filed by entities which provide interstate transportation services pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA). As a general principle, the Commission expects that each section 311 transporter will include specific provisions in its statement of operating conditions governing gas quality and interchangeability.[44]

*D. New Companies Authorized Under Section 7 of the Natural Gas Act*

45. The Commission intends to apply this policy in its review of *pro forma* tariffs filed as part of section 7(c) certificate applications. Applicants should ensure that their Exhibit P *pro forma* tariff includes general terms and conditions addressing gas quality and interchangeability. Recognizing that new entrants do not have historic markets upon which to base their analysis of gas quality and interchangeability specifications, the Commission expects section 7 applicants to include relevant information about the gas quality and interchangeability specifications of interconnecting pipelines, and of the competing pipelines serving customers to be served directly by the new entrant, as well as the relevant information about the gas supplies to be received by the new entrant for transportation or storage. Applicants must show how they derived their gas quality and interchangeability specifications stated in their *pro forma* tariffs.

*E. New Companies Authorized Under Section 3 of the Natural Gas Act*

46. The Commission intends to apply this policy in its review of proposals to construct and operate new facilities for the importation of natural gas. Applicants should include information

[36] Natural Gas Pipeline Company of America, 102 FERC ¶ 61,234 at P. 27, and *see* discussion at PP. 25–33 (2003).

[37] *Consolidated Edison Company of New York* v. *FERC,* 165 F.3d 992, 1013 (D.C. Cir. 1999).

[38] The Commission's regulations require that pipelines strictly enforce the provisions of their tariffs if those provisions do not permit the use of discretion. In instances where the tariff provides the pipeline with discretion, it must keep a written log detailing the circumstances and manner in which it has exercised discretion under its tariff, and this information must be posted on the pipeline's website within 24 hours of when the pipeline exercised its discretion. *See* 18 CFR 385.5(c)(1) and 385.5(c)(4).

[39] The *HDP Report* does not use the term ''pairing,'' but instead refers to the practice of ''contractual blending.'' It is a paper transaction allowing a producer of gas that does not meet a pipeline's gas quality requirements to contract to blend this gas with the gas of another producer whose gas is in compliance with the pipeline's gas quality specifications. These two producers' volumes may enter the gas stream at different points and thus may not blend directly in the pipeline. Section 3.2.5 describes contractual blending. *See also* comments of El Paso Corporation's Pipeline Group at 2 and 10; NGSA Petition at 4 n.2; and, Selected Processors at 2.

[40] *See National Gas Pipeline Company of America,* 102 FERC ¶ 61,234 at PP. 43, 48 (2003).

[41] *See, e.g.,* AGA comments at 25–29.

[42] *Id.* at 27–8.

[43] The Commission notes that AGA also suggested an alternative approach in its comments, stating that ''delivered gas will be 'merchantable' gas and will meet certain specifications, such as those set out for interchangeability, CHDP and other constituent limits.'' AGA comments at 28. The Commission sees no value to adding the label ''merchantable'' to gas that otherwise meets the gas quality and interchangeability specifications set forth in the tariff.

[44] Section 284.224, subpart G, of the Commission's regulations authorizes LDCs and Hinshaw pipelines to perform the same types of transactions that intrastate pipelines are authorized to perform under section 311 of the NGPA and subpart C and D of Part 284 of the Commission's regulations. The Commission intends that the requirements imposed by this policy statement on section 311 intrastate pipelines would also apply to Hinshaw pipelines.

in their application which demonstrates the compatibility of their imports with the gas quality and interchangeability requirements of all interconnecting pipelines. To the extent service is provided pursuant to Parts 157 or 284 of the Commission's regulations, the applicant should make specific reference to tariff or contract provisions governing gas quality and interchangeability and demonstrate their compliance with this policy statement.

47. Some commenters ask the Commission to impose specific obligations on LNG project developers regarding merchantability, identification of adverse impacts, compensation for negative impacts, and mitigation.[45] However, the Commission believes that these are issues that should be addressed, if and when problems are identified, in specific cases.

By the Commission.

**Magalie R. Salas,**

*Secretary.*

## Appendix A

Commenters
American Gas Association (AGA)
American Public Gas Association (APGA)
Appalachian Producers:
  Kentucky Oil & Gas Association, Ohio Oil and Gas Association, and the Independent Oil & Gas Association of Pennsylvania
Aux Sable Liquid Products, L.P. (Aux Sable)
BHP Billiton LNG International (BHP Billiton)
Calpine Corporation (Calpine)
Consolidated Edison Company of New York, Inc. and Orange & Rockland Utilities, Inc.
Constellation Energy Group, Inc.
Devon Energy Corporation
Dow Chemical Company
Duke Energy Gas Transmission
Edison Electric Institute (EEI)
Electric Power Supply Association (EPSA)
El Paso Corporation's Pipeline Group
EMS Pipeline Services
Fertilizer Institute
Florida Power & Light
Florida Utilities:
  Tampa Electric Company; Peoples Gas System, a Division of Tampa Electric Company; the Associated Gas Distributors of Florida (AGDF); and the Florida Municipal Natural Gas Association (FMNGA). The AGDF consists of Florida Public Utilities Company; Central Florida Gas Company; Indiantown Gas Company; Sebring Gas Systems, Inc.; St. Joe Natural Gas Company, Inc.; and Florida City Gas. The FMNGA consists of the City of Chattahoochee; City of Clearwater Gas System; Crescent City Natural Gas; City of DeFuniak Springs; Geneva County Gas District; Lake Apopka Natural Gas District; City of Leesburg; City of Live Oak; City of Madison; Okaloosa Gas District; Palatka Gas Authority; City of Perry; Southeast Alabama Gas District; and City of Sunrise.
Gas Appliance Manufacturers Association (GAMA)
Gas Processors Association
General Electric Company (GE)
Gulf South Pipeline Company, LP (Gulf South)
Independent Petroleum Association of Mountain States (IPAMS)
Interstate Natural Gas Association of America (INGAA)
Independent Petroleum Association of America (IPAA)
KeySpan Corporation
Michigan Consolidated Gas Company
National Fuel Gas Supply Corporation and National Fuel Gas Distribution Corporation
Natural Gas Supply Association (NGSA)
NiSource, Inc.
Pacific Gas and Electric Company
Process Gas Consumers Group (PGC)
Producer Coalition:
  Devon Energy Corporation, Dominion Exploration & Production, Inc., Forest Oil Corporation, The Houston Exploration Company, Kerr-McGee Oil & Gas Corporation, Newfield Exploration Company, Spinnaker Exploration Company, and TOTAL E&P U.S.A., Inc.
Progress Energy
Questar Pipelines
Selected Processors:
  Enterprise Products Operating L.P., Williams Midstream, Dynegy Midstream Services, Limited Partnership and Duke Energy Field Services, LLC
Sempra Global
Shell NA LNG LLC and Shell US Gas & Power, LLC
Siemens Westinghouse Power Corporation
South Carolina Electric & Gas Company, SCANA Energy Marketing, Inc. and Public Service Company of North Carolina, Inc. (SCANA)
South Carolina Pipeline Company and SCG Pipeline, Inc.
South Coast Air Quality Management District (SCAQMD)
Southeastern End Users Group:
  Florida Cities—City of Tallahassee, Florida Gas Utility, Gainesville Regional Utilities, JEA, Lakeland Electric, and Orlando Utilities Commission, Florida City Gas, Florida Municipal Natural Gas Association—Cities of Chattahoochee, DeFuniak Springs, Leesburg, Madison, Perry and Sunrise, City of Clearwater Gas System, Crescent City Natural Gas, Geneva County Gas District, Lake Apopka Natural Gas District, Okaloosa Gas District, Palatka Gas Authority, Southeast Alabama Gas District, Florida Power & Light Company, Florida Public Utilities Company, Progress Energy, Peoples Gas System, a Division of Tampa Electric Company, Seminole Electric Cooperative, Inc., Southern Cities—Georgia Cities of Cartersville, Cordele, Cuthbert, Dublin, Hawkinsville, LaGrange and Tallapoosa and the Florida City of Tallahassee, Tampa Electric Company
Southern California Gas Company and San Diego Gas & Electric Company
Suez Energy North America
TransCanada Pipelines Limited
Utah Department of Public Utilities (UDPU)
Williston Basin Interstate Pipeline Company
Wisconsin Distributor Group:
  Wisconsin Power & Light Company, City Gas Company, Madison Gas & Electric Company, Wisconsin Gas LLC, and Wisconsin Electric Power Company—Collectively, We Energy, and Wisconsin Public Service Corporation

## Appendix B

### Summary of Comments

*A. Natural Gas Producers*

1. NGSA urges the Commission to move quickly to initiate a rulemaking to adopt its proposals. NGSA also would establish a presumption of interchangeability (with historical gas supplies) for all gas that meets the interchangeability specifications in the NGSA rulemaking proposal. In addition, NGSA does not support efforts by local distribution companies (LDCs) to require pipelines to include merchantability clauses[46] in their tariffs.

2. Among independent producers, the Independent Petroleum Association of America (IPAA) supports the NGSA proposal for a NOPR, including the CHDP safe harbor and the interchangeability levels. In addition, IPAA advocates a *de minimis* exemption for production from small wells, where such exceptions will not affect pipeline operations. Devon Energy, a small producer and processor, supports the NGSA petition and supports the *de minimis* exemption for small volumes, so long as the quality of delivered gas remains within the tariff limits.[47]

3. The Independent Petroleum Association of Mountain States (IPAMS), an association of small producers in the Rocky Mountains, opposes any rigid national standard for gas quality, citing the different needs of customers in Salt Lake City and Denver, where its members' gas is delivered. IPAMS also supports a small producer *de minimis* exemption. However, it does not address the NGSA proposal directly. The Appalachian Producers oppose the NGSA proposal and assert that the presumption of interchangeability, for example, ''could easily be transformed into a requirement that natural gas *must* meet those standards * * * changing the *presumptive* specifications into prescriptive ones.''[48]

4. Finally, the Producer Coalition[49] supports adoption of natural gas quality and interchangeability standards through a formal

[45] *See, e.g.*, AGA, APGA, Constellation at 3, and KeySpan's April 1 comments at 10–13.

[46] Several LDC commenters, including the American Gas Association (AGA), urge the Commission to require pipelines to include merchantability provisions in their tariffs. The issue of merchantability is discussed in the context of LDC comments beginning at P 37.

[47] Devon at 4.

[48] Appalachian Producers comments at 2.

[49] The Producer Coalition is an *ad hoc* group of natural gas producers consisting of Devon, Dominion E&P, Forest Oil, Houston Exploration, Kerr-McGee, Newfield Exploration, Spinnaker Exploration and TOTAL E&P.

rulemaking proceeding rather than through a policy statement. The Producer Coalition asserts that much of the controversy in setting gas quality standards ''would be eliminated if the Commission, by rule or policy statement, would (i) establish a uniform method for determining CHDP limits for interstate pipelines; and (ii) determine who pays—producers or downstream customers—for conditioning or handling gas to accommodate the downstream temperature and pressure cuts between the interstate pipeline grid and the gas burner tip.'' [50]

*B. LNG Operators*

5. Four LNG facility operator/developer companies filed comments on the NGSA proposal. Both Shell and Sempra urge the Commission to move quickly to adopt standards in order to maintain momentum from the NGC+ efforts. Shell favors a Commission policy statement, while Sempra supports action via a NOPR, along the lines advocated by NGSA. Both support the interchangeability interim guidelines in the Report instead of the NGSA proposal, because NGSA does not adopt the ± 4% range in the Report or the 1,110 Btu limit. In addition, Sempra opposes a mandate for pipeline blending, aggregation and other operational techniques for dealing with non-standard gas. Both favor requiring pipelines to adopt gas quality and interchangeability standards in their tariffs. Suez Energy North America (Suez) supports a rulemaking based on the proposals in the Reports, and it asserts that the Commission should ''craft rules that will encourage some degree of standardization while also leaving distinct pipeline service territory issues for determination on each pipeline system.'' [51]

6. The issue of federal—state cooperation in standard-setting is the focus of comments by BHP Billiton LNG International (BHP Billiton), an Australian energy company that plans to build a floating storage and regasification unit for LNG imports offshore California to bring gas into California. BHP Billiton opposes a proposal pending before the California Public Utilities Commission (CPUC) [52] in the CPUC's ongoing proceeding examining gas quality issues. In that proceeding, a California utility has proposed that LNG suppliers be subject not only to the quality specifications in utility tariffs but also to the quality specifications of any other Federal, state or local agency having ''subject matter'' jurisdiction over natural gas quality. BHP states that gas quality and interchangeability ''should not be subject to the whim or caprice of governmental agencies that do not have direct regulatory authority over utilities.'' [53]

*C. Gas Processors*

7. The Selected Processors [54] support a NOPR that considers three issues: Uniform CHDP standards across interconnecting pipelines; CHDP specifications in pipeline tariffs; and fair and non-discriminatory application of the CHDP standards for all gas supplies. The Selected Processors would exempt interstate pipelines that do not directly serve an end-use market from the CHDP standards. It believes that the NGSA proposal is ''vague,'' and may not resolve the need for uniform CHDP standards across interconnecting pipelines, long-term certainty through clear CHDP standards in pipeline tariffs and the fair and non-discriminatory application of gas quality standards for all gas supplies. [55] The Selected Processors advocate a formal rulemaking proceeding and mandatory measures for pipeline blending or pairing of non-compliant gas. They are concerned that discretionary blending and pairing by pipelines pose the potential for discrimination.

8. Aux Sable Liquid Products (Aux Sable), which operates a gas processing plant at the terminus of the Alliance Pipeline near Chicago, Illinois, supports the adoption of gas quality and interchangeability standards through a rulemaking proceeding, but it disagrees with the detailed regulatory text contained in the NGSA proposal. Nevertheless, Aux Sable supports the Report recommendations, including a CHDP safe harbor, [56] and the establishment of the Wobbe Index as the basic means of determining interchangeability.

9. In an October 27, 2005 letter to the Chairman, the Gas Processors Association (GPA) encourages swift resolution of the issues involved in setting gas quality specifications to ease uncertainty in the industry with respect to the outcome of these proceedings. Citing the loss of infrastructure that occurred in the Gulf following last year's hurricanes, GPA states that regulatory uncertainty adversely affects decisions on new investment to rebuild damaged infrastructure. ''The gas processing industry desperately needs to know that fair, consistent application of gas quality specifications will be applied for the long-term.'' [57]

*D. Interstate Pipelines*

10. The Interstate Natural Gas Association of America (INGAA) opposes NGSA's NOPR proposal, stating that gas quality and interchangeability issues are not a nationwide problem. Rather, problems with gas quality and interchangeability can be addressed on a pipeline-specific basis as problems arise. [58] However, if the Commission is going to address these issues in a generic proceeding, INGAA believes it should do so through a policy statement. It supports a presumptive 15 degree CHDP safe harbor but wants pipelines to have the flexibility to accept gas at receipt points at different CHDP levels (higher or lower than the NGSA proposal). INGAA would apply the CHDP standards at pipeline receipt points rather than at delivery points. The 1,400 Wobbe Index level standard proposed by NGSA is missing critical technical parameters (heating value, use of historical average gas supply, and the plus or minus 4% Wobbe Index range). INGAA would evaluate the need for a *de minimis* exemption for small producers on a pipeline-by-pipeline basis. Finally, INGAA opposes a requirement for merchantability provisions, saying that these could be used to ''trump'' pipeline gas quality and interchangeability tariff provisions.

11. Several pipeline companies filed individual comments on the Reports and the NGSA proposal. Pipeline commenters oppose merchantability requirements, and, to the extent any procedural tool is favored, the pipeline commenters oppose a generic rulemaking along the lines proposed by NGSA. Instead, most support the development of a policy statement governing gas quality and interchangeability issues. Duke Energy Gas Transmission takes another view, arguing that these issues should be handled on a complaint-driven basis and not through generic national standards. On providing an exemption for small producers advocated by some producers, ANR, Southern Natural and El Paso all assert that they have such exceptions in their gas quality tariff provisions.

12. Other pipelines point to specific constraints or supply issues on their systems that would make a generic approach particularly difficult. For example, Gulf South Pipeline states that, due to its reticulated nature, gas cannot be pathed on its system, nor can gas molecules be traced. This would make it very difficult for Gulf South to apply a single CHDP minimum standard to its entire system.[59]

13. Questar and Williston Basin both cite their ability to transport high HDP gas or coal bed methane as being essential to meeting the requirements of downstream markets. In Questar's case, some of the gas it treats is delivered to its affiliated LDC. Questar has made significant investment in liquid handling facilities and processing plants in order to provide transportation service for gas coming from growing supply sources in the Green River, Uinta and Piceance basins. Although the question of who should pay for these facilities is the subject of an ongoing dispute with the Utah Division of Public Utilities, Questar asserts that its ability to

[50] Producer Coalition at 6.

[51] Suez at 5.

[52] CPUC Docket No. 04–01–025.

[53] BHP Billiton at 4.

[54] The Selected Processors consist of Enterprise, Williams Midstream, Dynegy Midstream and Duke Energy Field Services.

[55] Selected Processors at 1.

[56] While Aux Sable states that it supports the ''minimum safe harbor'' CDHP method of controlling liquid drop out, the Report itself does not include a ''safe harbor'' recommendation.

[57] Letter from Mark F. Sutton, Executive Director of GPA to Chairman Kelliher and officials at the Energy Information Administration and the Minerals Management Service, at 2 (October 27, 2005).

[58] In this regard, the Commission notes the ''Joint Statement of the American Gas Association and the Interstate Natural Gas Association of America,'' filed on June 2, 2006, which outlines their agreement on developing gas quality and interchangeability specifications on a pipeline-by-pipeline basis, where needed, within the next year. On June 8, APGA filed a response to the AGA–INGAA joint statement. Subsequent comments on the joint statement were filed by NGSA (on June 12) urging the Commission to establish a policy for developing natural gas quality and interchangeability standards, and by Washington Gas Light (June 13), who urged the Commission to recognize the infrastructure impacts of changes in supply compositions in addressing interchangeability issues.

[59] Gulf South at 11–12.

transport high HDP gas on its system would be adversely affected by the CHDP safe harbor proposed in the NGSA petition.[60] Similarly, Williston Basin states that the gas it has transported on its system historically exceeds the levels in both the Reports and the NGSA petition. In addition, Williston Basin states that applying an inflexible gas quality standard at delivery points would impose a tremendous hardship on the pipeline, which has 53 receipt points but over 3,100 delivery points.[61]

*E. LDCs*

14. AGA and the American Public Gas Association (APGA), the major LDC trade associations, oppose the NGSA petition. AGA's original position on the NGSA petition supported a NOPR mandating pipeline tariff provisions on gas quality and interchangeability. AGA pointed to many flaws in the NGSA proposal, most of which stem from the differences between the NGSA proposal and the Reports' proposed interim guidelines. AGA believes that the Commission should allow pipelines to require gas to be processed, and it believes the CHDP should be set at the receipt points on the pipeline system instead of at delivery points as proposed by NGSA.

15. AGA proposed an alternative to the NGSA rulemaking proposal, outlining its own rulemaking procedure: pipelines would amend their tariffs to adopt a CHDP level or safe harbor CHDP developed through a pipeline-by-pipeline consensus process initiated by the Commission's NOPR and modeled on the collaborative process that led to the development of the Report. AGA would rely on the Interchangeability Report's interim guidelines implemented in a Commission-mandated consensus process in setting interchangeability standards.[62] Since filing its comments on the NGSA petition, AGA has collaborated with INGAA to develop an agreement on how industry stakeholders could negotiate natural gas quality and interchangeability specifications on a pipeline-by-pipeline basis, where needed, within the next year. This proposal, styled as a ''joint statement,'' was filed on June 2, 2006.[63]

16. Both AGA and APGA support requiring pipelines to include a merchantability provision in their tariffs to protect pipeline customers from the effects of gas that is not in compliance with tariff standards gas. This will provide pipelines flexibility to accept gas that is not in compliance with the tariff but through blending or other means is ''merchantable'' when delivered to LDCs and other end-use customers. KeySpan also strongly endorses a requirement that pipeline tariffs include a merchantability provision.

17. A significant number of LDCs filed comments on the Reports, the May 17 technical conference and the NGSA proposal, which most LDC commenters explicitly oppose. Their comments are largely encompassed in the comments of AGA and APGA, and most LDC commenters explicitly endorsed the trade association comments. Constellation, for example, endorsed the comments of AGA and EEI. Standards based on historical gas quality and mandatory merchantability requirements in pipeline tariffs are supported by most LDCs. Most favor a rulemaking procedure, although NiSource favors a policy statement for gas quality and interchangeability standards.

18. National Fuel Gas Distribution Corporation, which has a pipeline affiliate that receives substantial quantities of Appalachian production, expresses concern about the proposal for exempting *de minimis* production from gas quality standards. National Fuel points out that the location along the pipeline and availability of blending are also important considerations when determining whether *de minimis* production volumes should be exempt from gas quality standards. ''Processing requirements should be imposed on *de minimis* producers as necessary, on a pipeline-by-pipeline, market-by-market basis to maintain the historical content of gas introduced into commerce and minimize liquid dropout.''[64]

19. SCANA opposes the NGSA petition and proposes another process for developing gas quality and interchangeability standards. Additional research would focus on developing a nationwide baseline gas quality specification, and the industry should have a 10 to 15 year transition period to accommodate a new nationwide baseline gas standard. Additional focus should also be given on providing guidance to equipment manufacturers for complying with the new nationwide baseline gas standard. SCANA asserts that pipeline tariffs should be required to contain merchantability provisions, which would supersede any CHDP level in the tariff. CHDP levels would be set on a pipeline-by-pipeline basis.

20. The Wisconsin Distributors Group[65] states that the NGSA's proposed 15 degree CHDP safe harbor minimum might not work in the service territories of their members. The NGSA proposal is based on average ambient ground temperatures, and in Wisconsin, a 15 degree safe harbor might not be low enough to prevent liquid drop out. In its comments on the Reports, the Wisconsin Distributors Group points out that much of Wisconsin is served by Canadian gas, which has a CHDP of minus 30 degrees. However, recognizing the interconnectedness of the interstate pipeline grid, more gas now is coming into Wisconsin from sources other than Canada. The onus should be on each pipeline, and its tariff should prescribe the CHDP and other gas quality criteria. Each pipeline should ensure uniformity across its system, and each tariff should include a merchantability provision.

21. The importance of interchangeability issues in the context of LNG project development was raised by several LDC commenters. AGA asserts that the Commission should require that LNG terminal developers be responsible for ensuring that their product meets standards for interchangeability and that this responsibility should be incorporated as part of the NGA section 3 or section 7 certificate processes for the review of individual applications. APGA states that the Commission should require pipelines that utilize LNG in their supply mix to develop tariff provisions for monitoring and compensating for the costs incurred by communities that are near the injection of vaporized LNG into the pipeline system. However, a couple of individual LDCs raised issues on LNG and interchangeability that were not mentioned by the trade groups. For example, Constellation states that it should not have to bear the cost of any modifications to its LNG peak shaving facility that are necessary to accommodate elevated ethane content from LNG imported into Dominion's Cove Point LNG facility.[66]

22. KeySpan proposes that the Commission require a new Gas Supply Resource Report be included in each NGA section 3 and section 7 application,[67] a proposal endorsed by SCANA and SCANA's pipeline affiliates. This resource report would identify all gas composition changes associated with the introduction of new gas supplies from the proposed facilities and all adverse impacts on end-users associated with the change in gas quality. In addition, the report would consider whether specific mitigation measures would be required to address potential adverse impacts from the new gas stream on such facilities as LNG peak shaving facilities and dry-low-emissions (DLE) natural gas turbines.

*F. Industrial Gas Users*

23. Among industrial gas users, Process Gas Consumers (PGC), Dow Chemical and the Fertilizer Institute filed comments. PGC and Dow Chemical approached the NGSA petition from completely different perspectives. PGC endorses virtually every aspect of the proposal. It would condition its support of the 15 degree CHDP on the Commission not ''grandfathering'' existing pipeline CHDP standards without additional opportunity for comment, and it would subject ''grandfathered'' pipelines to the same complaint process NGSA proposes for all other pipeline tariff standards. It also advocates a 15 to 18 month ''reopener'' to evaluate how the standards have worked. PGC avers that its members ''are prepared to shoulder the burden'' of system modifications to accommodate a 1,400 Wobbe Index level ''to increase gas supplies.''[68]

24. By contrast, Dow Chemical urges the Commission to be cautious in moving

[60] Questar at 3–4.

[61] Williston Basin at 4.

[62] AGA at 32–36.

[63] Supra at n.57. On June 8, AGPA filed a response to the AGA–INGAA joint statement essentially agreeing with the process but opining that the parties should be able to complete their negotiations within six months.

[64] National Fuel at 3.

[65] The Wisconsin Distributors Group (WDG) is an *ad hoc* group of LDCs serving natural gas customers in Wisconsin. For purposes of this proceeding, the Wisconsin Distributors Group comprises the following: Alliant Energy—Wisconsin Power & Light Company, City Gas Company, Madison Gas & Electric Company, Wisconsin Gas LLC and Wisconsin Electric Power Company (collectively doing business as We Energies) and Wisconsin Public Service Corporation.

[66] Constellation at 3.

[67] KeySpan April 1 comments at 10–13.

[68] PGC at 7.

forward on the NGSA proposal. It points to the severe economic consequences for petrochemical plants when producers bypass processing their gas in order to ''preserve their entrained liquefiables for sale to downstream gas markets,'' thereby depriving petrochemical plants of critical feedstocks, such as ethane and propane.[69] The Fertilizer Institute takes no position on the NGSA proposal but states that the determination as to where on the pipeline system gas quality standards are imposed, whether at pipeline delivery points, as advocated by NGSA or at pipeline receipt points, as advocated by INGAA, will have significant consequences for members of the Fertilizer Institute. Many members of the Fertilizer Institute are directly connected to interstate pipelines upstream of LDC city gates. If gas quality standards are imposed on gas at the LDC city gate, these customers would not be protected.

*G. Electric Utilities, Generators and Power Marketers*

25. The Edison Electric Institute (EEI) and the Electric Power Supply Association (EPSA) filed extensive comments in support of a NOPR process. However, both express fundamental disagreement with NGSA's petition and proposals for CHDP and interchangeability standards. Both disagree with the 15 degree CHDP minimum and the 1,400 Wobbe Index level for reasons expressed by other commenters. EPSA observes that NGSA's proposed complaint process is tilted against those filing complaints and states that the Commission already has in place regulations for filing complaints under section 5 of the NGA.

26. EEI supports the establishment of natural gas quality and interchangeability standards through a Commission rulemaking, but it asserts that the NGSA CHDP and Wobbe levels are ''not workable.'' [70] Although EEI agrees with NGSA that a NOPR is the preferable procedural framework for setting standards, it believes that natural gas composition requirements must be based on historical deliveries, and that gas composition requirements must be set regionally or on a pipeline-by-pipeline basis and not nationally, as proposed by NGSA. EEI's comments also included a lengthy study by Combustion Science & Engineering, ''Effect of Fuel Composition on Gas Turbine Operability and Emissions.'' Among its conclusions is that turbine operators have reported numerous operational difficulties attributed to changes in gas composition. Because there is an inherent trade-off between $NO_X$ and combustion dynamics for the latest generation of gas turbines, when changes in gas composition lead to increases in $NO_X$ emissions, turbine operators will have to make operational changes to remain in compliance with air permits.

27. The Southeastern End Users Group, an ad hoc group of LDCs and users of gas turbines in Florida and Georgia,[71] opposes the NGSA petition and endorses AGA's proposed process for developing gas quality and interchangeability standards. Of particular concern is the impact of gas quality and interchangeability parameters on operators of DLE natural gas turbines. The Southeastern End Users Group is concerned about whether DLEs can accept wide variations in gas quality and yet remain in compliance with emissions requirements without having to add expensive automatic tuning and heating controls. The Southeastern End Users Group also expresses concern about ''legacy'' gas equipment and asserts that any gas quality and interchangeability standards ultimately adopted must ensure that ''legacy'' equipment will not be adversely affected. They request that any generic policy adopted by the Commission not replace case-specific decisions, such as the ongoing AES proceeding (Docket No. RP04–249–000 *et al.*) [72]

28. Calpine and Florida Power & Light oppose the NGSA petition. Progress Energy opposes implementation of the interim guidelines in the Reports and expresses concern that the fuel constituent values in the interim guidelines on interchangeability could have an adverse effect on DLE turbines. Progress Energy also believes that EPA should be brought into the process of developing gas quality and interchangeability standards.

*H. Gas Equipment Manufacturers*

29. The Gas Appliance Association of America (GAMA) and Siemens Westinghouse represent consumer appliance manufacturers and turbine manufacturers, respectively. Neither supports the specific Wobbe levels advocated by NGSA, supporting instead the interim measure recommended in the report. GAMA points out that the report cited a 1992 GRI study that showed an average Wobbe Index of 1,345, and it urges the Commission to adopt the Report's interchangeability guidelines and its ± 4% Wobbe Index range, instead of NGSA's. GAMA also points out that the lack of a heating value standard in the NGSA proposal as another critical flaw. Other than to oppose NGSA's petition, GAMA takes no position on what procedural vehicle the Commission should employ.

30. Siemens Westinghouse requests that several of the interchangeability criteria set forth in the Report interim guidelines be modified: (1) Siemens Westinghouse would set a limit of 2.5 percent for propanes and one percent for butanes+ (compared with the interim guideline of 1.5 percent for butanes+); (2) it requests that an additional limit be set on the rate of change in the Wobbe Index of gas delivered to no more than two percent per minute; (3) Siemens Westinghouse suggests that tariff provisions take into account changes in gas quality that affect air quality; and, (4) it asks the Commission to consider a mechanism to provide for cost recovery related to equipment failure caused by gas quality or interchangeability issues. Finally, Siemens Westinghouse states that the levels in NGSA's proposal may be ''too narrow'' for certain end users, such as fuel cell applications or natural gas vehicles.[73]

31. GE states that the heavy-duty turbines it manufactures have a gas fuel specification that defines the allowable ranges for fuel physical properties, constituents, and contaminants, but this specification ''was not written with the intent of addressing continuous fuel variability within the allowable ranges.'' [74] GE states that fuel variations of more than 5 percent from the Wobbe Index level established for the particular gas turbine may result in the need to re-tune the combustion system. Because significant or frequent variability may require constant monitoring with manual intervention (*i.e.*, re-tuning), GE is working on turbine upgrade packages that allow turbines to operate with automatic combustion tuning for acoustic dynamics and emissions. This effort has been spurred in part by GE's support for LNG and the desire to develop retro-fit equipment that will allow continuous operation by gas turbines over a range of Wobbe Index levels ''consistent with GE expected ranges for [natural gas] and LNG for the North American Market.'' [75]

*I. Governmental Entities*

32. The Utah Department of Public Utilities (UDPU) and the South Coast Air Quality Management District (SCAQMD) filed comments on the Reports. UDPU's focus is on the quality of gas being transported by Questar Pipeline, the measures and facilities employed by Questar to render the high HDP gas suitable for downstream customers (including its affiliated LDC), and who should pay these costs. It complains that Questar's tariff requirements are set so broadly as to accommodate transporting as much gas as possible. UDPU's solution is for pipeline tariffs to specify quality standards for gas that is delivered onto the system and to require the pipeline to ensure ''a constant quality'' that meets the needs of the end users. UDPU would require the pipeline to control the quality of gas entering its system.

33. SCAQMD characterizes the Report on interchangeability as ''a good start'' to understanding the issues, and it agrees that there are significant data gaps that must be investigated. In this vein, SCAQMD recommends expedited research in these areas:

a. Emission studies of the impacts of high Btu gas on combustion equipment, particularly larger combustion and power generation sources.

b. Effects of inert gas addition on large and small equipment.

c. Regional air quality impact analysis of LNG imports.

d. Cost analysis of different mitigation measures.

SCAQMD states that the natural gas quality standards that apply in its area are inadequate. They allow a heating value of up to 1,150 Btu/scf and indirectly a Wobbe Index of approximately 1,433. In addition, SCAQMD is concerned about the air quality impacts of high Btu LNG.[76]

[69] Dow at 3.

[70] EEI at 3.

[71] The members of the Southeastern End Users Group are listed in Appendix A.

[72] Southeastern End Users Group at 8.

[73] Siemens Westinghouse at 3.

[74] GE comments (May 12, 2005) at 1.

[75] *Id.* at 2.

[76] SCAQMD at 3–4.

*J. Pipeline/LNG Industry Service Providers*

34. EMS Pipeline Services provides a broad array of pipeline operations and maintenance services, including field measurement, pipeline integrity testing, asset management, communications, and web-based data management. EMS is the only provider of pipeline services that filed comments, which generally support the Reports' approaches on both gas quality and interchangeability. EMS asserts that the Commission should encourage the industry to develop better and more comprehensive ways of measuring gas quality and interchangeability.

[FR Doc. 06–5582 Filed 6–21–06; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OA–2006–0513; FRL–8185–6]**

## Agency Information Collection Activities: Request for Renewal of Information Collection for EPA's National Environmental Performance Track Program, EPA ICR Number 1949.05, OMB Control Number 2010–0032

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on August 31, 2006. The request will be to renew the existing approved collection (EPA ICR Number 1949.03, OMB Control Number 2010–0032, National Environmental Performance Track Program). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

**DATES:** Comments must be submitted on or before August 21, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OA–2006–0513 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: docket.oei@epa.gov.*
- *Fax:* 202–566–0224.
- *Mail:* Office of Administrator Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, EPA West, Room B–102, 1301 Constitution Ave, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m. M–F), special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OA–2006–0513. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov,* or via e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov index.* Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Administrator Docket is (202) 566–1752).

**FOR FURTHER INFORMATION CONTACT:** Robert D. Sachs, Office of Policy, Economics and Innovation, Mail Code 1807T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–2884; fax Number: (202) 566–0966; e-mail address: *Sachs.Robert@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has established a public docket for this ICR under Docket ID Number EPA–HQ–OA–2006–0513, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search'' then key in the docket ID number identified in this document.

### What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In

particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

**What Should I Consider When I Prepare My Comments for EPA?**

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**What Information Collection Activity or ICR Does This Apply to?**

*Affected entities:* Entities potentially affected by this action are facility members of EPA's National Environmental Performance Track program.

*Title:* Request for Renewal of Information Collection for EPA's National Environmental Performance Track Program.

*ICR Numbers:* EPA ICR No. 1949.03, OMB Control No. 2010–0032.

*ICR Status:* This ICR is currently scheduled to expire on August 31, 2006. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* EPA's National Environmental Performance Track is a voluntary program that recognizes and rewards private and public facilities that demonstrate top environmental performance beyond current requirements. The program is based on the premise that government should complement existing programs with new tools and strategies that not only protect people and the environment, but also capture opportunities for reducing cost and spurring technological innovation.

Performance Track is a facility based program (not company-wide) that solicits and receives applications and makes acceptance decisions twice per year from February through April, and August through October. Applying facilities must meet four basic criteria: (1) A history of sustained compliance with environmental regulations; (2) an Environmental Management System (EMS) in place that has undergone an assessment by an independent third party; (3) past and future environmental achievements, and a commitment to quantified continuous environmental improvement; and (4) public involvement and annual reporting. Once accepted, members remain in the program for three years, as long as they continue to meet the program criteria. After three years, they may apply to renew their membership through a streamlined application process.

In this request, EPA proposes to renew ICR 1949.03, set to expire on August 31, 2006. This ICR requests approval to collect information from applicants and members of the National Environmental Performance Track program. A total of 401 facilities are current members.

No confidential information is requested in this notice. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 16.4 hours per facility per year. This includes all applications, compliance screens, annual reporting, incentives participation, and site visits.

*The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:*

*Estimated total number of respondents:* 476.

*Frequency of response: Annually, biennially, and triennially.*

*Estimated total average number of responses for each respondent:* 2 or 3.

*Estimated total annual burden hours:* 7,805.

*Estimated total annual costs:* $514,521. This includes an estimated burden cost of $514,521, and an estimated cost of $0.00 for capital investment or maintenance and operational costs.

EPA estimates that all facilities who voluntarily respond to this information collection by electing to participate in the Performance Track program have determined that the expected benefits of participation outweigh any burdens associated with preparing the response.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

**Are There Changes in the Estimates From the Last Approval?**

This renewal ICR 1949.05 estimates annualized burden hours to be 7,805. This is a reduction of 105,634 hours from the previous reportable burden to OMB of 113,439 hours. The primary reason for this decrease is the burden hour estimate in ''program

participation'' under ICR 1949.03. The estimated hours for program participation were dramatically overestimated in the previous ICR, and EPA has determined therefore that these hours were incorrect. Specifically, EPA estimated significant burden for ''compliance demonstration, EMS documentation and reporting, continuous performance demonstration, and reporting and public outreach.'' This burden was not correctly estimated, nor attributable to information collection requirements of the Performance Track Program. Other areas that contributed to the decrease in burden hours are application and renewal application hours, incentives hours, and annual performance reporting hours. Estimated burden hours per facility for the customer satisfaction survey have not changed. Finally, EPA has gained tremendous experience in the last three years about implementing its Performance Track Program, and assessing information collection burden in ICR amendments 1949.03 and 1949.04. As a result of this experience, EPA believes that current estimates in ICR 1949.05 to be significantly more accurate than previous estimates.

**What Is the Next Step in the Process for This ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: June 14, 2006.

**David W. Guest,**

*Acting Director, Performance Incentives Division.*

[FR Doc. E6–9870 Filed 6–21–06; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8187–8]**

### Proposed Cercla Administrative Cost Recovery Settlement; Chester Realty Trust and Warren W. Kean, Mohawk Tannery Superfund Site, Nashua, NH

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed settlement; request for public comment.

**SUMMARY:** In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of costs concerning the Mohawk Tannery Superfund Site in Nashua, New Hampshire (''Site''). The settlement resolves the liability of Chester Realty Trust, which is the owner of the Site, and Warren W. Kean (''Settling Parties'') for the recovery of costs incurred and to be incurred by the United States and the State of New Hampshire (''Government Parties'') in response to releases and threatened releases of hazardous substances at the Site pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9606 and 9607(a). EPA has incurred $3,452,311.00 in response costs relating to this Site. This is an ability to pay settlement based upon EPA's review of financial documentation provided to the United States by the Settling Parties. This settlement calls for the liquidation of all property owned by Chester Realty Trust, including the Site property, and payment of net insurance proceeds from claims made against insurance carriers. In addition, Warren W. Kean will make a cash payment to the Government Parties. The settlement includes a covenant not to sue the Settling Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

The Agency's response to any comments received will be available for public inspection at One Congress Street, Boston, MA 02214–2023 (Telephone No. 617–918–1089).

**DATES:** Comments must be submitted on or before July 24, 2006.

**ADDRESSES:** Comments should be addressed to Eve Vaudo, Senior Enforcement Counsel, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100 (SES), Boston, Massachusetts 02114–2023 (Telephone No. 617–918–1089) and should refer to: In re: Mohawk Tannery Superfund Site, U.S. EPA Docket No. 01–2005–0053.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed settlement may be obtained from Tina Hennessy, U.S. Environmental Protection Agency, Region I, Office of Site Remediation & Restoration, One Congress Street, Suite 1100 (HBR), Boston, MA 02114–2023 (Telephone No. 617–918–1216; E-mail *hennessy.tina@epa.gov*).

Dated: April 28, 2006.

**Susan Studlien,**

*Director, Office of Site Remediation & Restoration, EPA Region 1.*

[FR Doc. E6–9871 Filed 6–21–06; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Solicitation of Nomination for Appointment to the Chronic Fatigue Syndrome Advisory Committee

**AGENCY:** Office of Public Health and Science, Office of the Secretary, HHS.

**ACTION:** Notice.

**Authority:** 42 U.S.C. 217a, section 222 of the Public Health Service (PHS) Act, as amended. The committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

**SUMMARY:** The Office of Public Health and Science, HHS, is seeking nominations of qualified candidates to be considered for appointment as a member of the Chronic Fatigue Syndrome Advisory Committee (CFSAC). CFSAC provides science-based advice and recommendations to the Secretary of Health and Human Services, through the Assistant Secretary for Health, on a broad range of issues and topics pertaining to chronic fatigue syndrome (CFS). CFSAC, which was formerly known as the Chronic Fatigue Syndrome Coordinating Committee, was established by the Secretary of Health and Human Services on September 5, 2002. The appointments of five Committee members are scheduled to end on September 30, 2006. Nominations of qualified candidates are being sought to fill these scheduled vacancies.

**DATES:** Nominations for membership on the Committee must be received no later than 5 p.m. EST on July 12, 2006, at the address listed below.

**ADDRESSES:** All nominations should be mailed or delivered to Dr. John Eckert, Acting Executive Secretary, Chronic Fatigue Syndrome Advisory Committee;

Office of Public Health and Science; Department of Health and Human Services; 200 Independence Avenue, SW., Room 716G; Washington, DC, 20201.

**FOR FURTHER INFORMATION CONTACT:** Ms. Olga Nelson; Committee Management Officer, OPHS; Department of Health and Human Services; 200 Independence Avenue, SW., Washington, DC 20201; Telephone: (202) 690–5205.

A copy of the Committee charter and list of the current membership can be obtained by contacting Ms. Nelson or by accessing the CFSAC Web site, *http://www.hhs.gov/advcomcfs.*

**SUPPLEMENTARY INFORMATION:**

1. The Committee shall advise and make recommendations to the Secretary, through the Assistant Secretary for Health, on a broad range of topics including: (1) The current state of knowledge and research about the epidemiology and risk factors relating to chronic fatigue syndrome, and identifying potential opportunities in these areas; (2) current and proposed diagnosis and treatment methods for chronic fatigue syndrome; and (3) development and implementation of programs to inform the public, health care professionals, and the biomedical, academic, and research communities about chronic fatigue syndrome advances.

**2. Nominations**

The Office of Public Health and Science is requesting nominations to fill five positions for the CFSAC. The positions are scheduled to become vacant in September 30, 2006. The Committee is composed of seven biomedical research scientists with demonstrated expertise in biomedical research and four individuals with demonstrated expertise in health care delivery, private health care services or insurer, or voluntary organizations concerned with the problems of individuals with CFS. The vacant positions include both categories. To qualify for consideration of appointment to the Committee, an individual must possess demonstrated experience and expertise in the designated fields or discipline, as well as expert knowledge of the broad issues and topics pertinent to chronic fatigue syndrome.

Individuals selected for appointment to the Committee will serve as voting members. Individuals selected for appointment to the Committee can be invited to serve terms of up to four years. Committee members receive a stipend for attending Committee meetings and conducting other business in the interest of the Committee, including per diem and reimbursement for travel expenses incurred.

Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee; (2) the nominator's name, address, and daytime telephone number, and the home and/or work address, telephone number, and email address of the individual being nominated; and (3) a current copy of the nominee's curriculum vitae. The names of Federal employees should not be nominated for consideration of appointment to this Committee.

The Department makes every effort to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that a broad representation of geographic areas, females, ethnic and minority groups, and the disabled are given consideration for membership on HHS Federal advisory committees. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status. Nominations must state that the nominee is willing to serve as a member of CFSAC and appears to have no conflict of interest that would preclude membership. Potential candidates are required to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

Dated: June 12, 2006.

**John Eckert,**

*Acting Executive Secretary, Chronic Fatigue Syndrome Advisory Committee.*

[FR Doc. E6–9859 Filed 6–21–06; 8:45 am]

BILLING CODE 4150–42–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the Chronic Fatigue Syndrome Advisory Committee

**AGENCY:** Office of Public Health and Science, Office of the Secretary, DHHS.

**ACTION:** Notice.

**SUMMARY:** As stipulated in the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the Chronic Fatigue Syndrome Advisory Committee (CFSAC) will hold a meeting. The meeting is open to the public.

**DATES:** The meeting will be held on Monday, July 17, 2006, from 9 a.m. to 5 p.m.

**ADDRESSES:** Department of Health and Human Services; Room 800 Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** CDR John Eckert; Acting Executive Secretary, Chronic Fatigue Syndrome Advisory Committee, Department of Health and Human Services, 200 Independence Avenue, SW., Room 716G, Washington, DC 20201; (202) 690–7694.

**SUPPLEMENTARY INFORMATION:** CFSAC was established on September 5, 2002 to advise, consult with, and make recommendations to the Secretary through the Assistant Secretary for Health, on a broad range of topics including (1) the current state of knowledge and research about the epidemiology and risk factors relating to chronic fatigue syndrome, and identifying potential opportunities in these areas; (2) current and proposed diagnosis and treatment methods for chronic fatigue syndrome; and (3) development and implementation of programs to inform the public, health care professionals, and the biomedical, academic, and research communities about chronic fatigue syndrome advances.

The agenda for this meeting is being developed and will be posed on the CFSAC Web site, *http://www.hhs.gov/advcomcfs,* when it is finalized.

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Members of the public will have the opportunity to provide comments at the meeting. Pre-registration is required for public comment by July 12, 2006. Any individual who wishes to participate in the public comment session should call the telephone number listed in the contact information to register. Public comment will be limited to five minutes per speaker. Any member of the public who wishes to have printed material distributed to CFSAC members should submit materials to the Acting Executive Secretary, CFSAC, whose contact

information is listed above prior to the close of business July 12, 2006.

Dated: June 12, 2006.

**John J. Eckert,**

*Acting Executive Secretary, Chronic Fatigue Syndrome Advisory Committee.*

[FR Doc. E6–9869 Filed 6–21–06; 8:45 am]

**BILLING CODE 4150–42–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–06–0255]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Resources and Services for the CDC National Prevention Information Network—(OMB Control No. 0920–0255)—Extension—National Center for HIV, STD, & TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The National Center for HIV, STD, and TB Prevention (NCHSTP) proposes to continue data collection for the Resources and Services Database on CDC National Prevention Information Network.

The CDC, NCHSTP program has the primary responsibility within the CDC and the U.S. Public Health Service for the prevention and control of HIV infection, sexually transmitted diseases (STDs), tuberculosis (TB), and related infections, as well as for community-based HIV prevention activities, syphilis and TB elimination programs. To support NCHSTP's mission and to link Americans to prevention, education, and care services, the CDC National Prevention Information Network (NPIN) serves as the U.S. reference, referral, and distribution service for information on HIV/AIDS, STDs, and TB. NPIN is a critical component of the network of government agencies, community organizations, businesses, health professionals, educators, and human services providers that educate the American public about the grave threat to public health posed by HIV/AIDS, STDs, and TB, and provides services for persons infected with human immunodeficiency virus (HIV).

Established in 1988, the NPIN Resources and Services Database contains entries on approximately 15,000 organizations and is the most comprehensive listing of HIV/AIDS, STD and TB resources and services available throughout the country. This database describes national, state and local organizations that provide services related to HIV/AIDS, STDs, and TB, services such as; counseling and testing, prevention, education and support. The NPIN reference staff relies on the Resources and Services Database to respond to thousands of requests each year for information or referral from community based organizations, state and local health departments, and health professionals working in HIV/AIDS, STD and TB prevention. The CDC–INFO (formerly the CDC National AIDS Hotline) staff also uses the NPIN Resources and Services Database to refer up to 500,000 callers each year to local programs for information, services, and treatment. The American public can also access the NPIN Resources and Services database through the NPIN Web site. More than 24 million hits by the public to the Web site are recorded annually.

A representative from each new organization identified will be administered the resource organization questionnaire via the telephone. Representatives may include registered nurses, social and community service managers, health educators, or social and human service assistants. As part of the verification process for organizations currently included in the Resources and Services Database, about 30 percent of the organization's representatives will receive a copy of their current database entry by electronic mail, including an introductory message and a list of instructions. The remaining 70 percent will receive a telephone call to review their database record. This request is for a 3-year renewal of clearance. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Form | Respondents | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Telephone Script | Registered Nurses | 120 | 1 | 20/60 | 40 |
| | Social and Community Service Managers | 20 | 1 | 10/60 | 3 |
| | Health Educators | 20 | 1 | 13/60 | 4 |
| | Social and Human Service Assistants | 160 | 1 | 15/60 | 40 |
| Subtotal | | 320 | | | 88 |
| Telephone Verification | Registered Nurses | 6,000 | 1 | 10/60 | 1,000 |
| | Social and Community Service Managers | 1,050 | 1 | 10/60 | 175 |
| | Health Educators | 1,050 | 1 | 10/60 | 175 |
| | Social and Human Service Assistants | 8,400 | 1 | 9/60 | 1,260 |

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Form | Respondents | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Subtotal | | 16,500 | | | 2,610 |
| E-mail Verification | Registered Nurses | 2,350 | 1 | 10/60 | 392 |
| | Social and Community Service Managers | 450 | 1 | 12/60 | 90 |
| | Health Educators | 450 | 1 | 10/60 | 75 |
| | Social and Human Service Assistants | 3,600 | 1 | 10/60 | 600 |
| Subtotal | | 6,850 | | | 1,157 |
| Total | | 23,670 | 3,854 | | |

Dated: June 15, 2006.

**Joan F. Karr,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E6–9849 Filed 6–21–06; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

*Title:* Form OCSE–396A: Financial Report; Form OCSE–34A: Quarterly Report of Collections.

*OMB No.:* 0970–0181.

*Description:* Each State agency administering the Child Support Enforcement Program under Title IV–D of the Social Security Act is required to provide information to the Office of Child Support Enforcement concerning its administrative expenditures and its receipt and disposition of child support payments from non-custodial parents. These quarterly reporting forms enable each State to provide that information, which is used to compute both the quarterly grants awarded to each State and the annual incentive payments earned by each State. This information is also included in a published annual statistical and financial report, which is available to the general public.

The Administration for Children and Families received no comments concerning these reporting forms in response to an earlier **Federal Register** Notice (71 FR 19190). In addition, on February 8, 2006, Public Law 109–171, the ''Deficit Reduction Act of 2005'' was enacted, which contains several amendments to the Social Security Act that will directly affect the financial reporting for this program. Most of these amendment changes will be effective October 2007 and October 2008.

For these reasons, we are requesting that the existing forms be reapproved, without changes, through September 2008. During that time, we will continue to review the statutory changes and develop revisions to these forms that will comply with those changes.

*Respondents:* State agencies administering the Child Support Enforcement Program.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| OCSE–396A | 54 | 4 | 8 | 1,728 |
| OCSE–34A | 54 | 4 | 8 | 1,728 |

*Estimated Total Annual Burden Hours:* 3,456.

*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, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: June 15, 2006.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 06–5604 Filed 6–21–06; 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:* Evaluation to Determine the Effectiveness of the Public Assistance Reporting Information System (PARIS).

*OMB No.* New Collection.

*Description:* The PARIS program is a voluntary information exchange system that allows States and other entities (counties or jurisdictions like the District of Columbia) to submit Medical Assistance, Medicaid, Food Stamp, and Temporary Assistance for Needy Families (TANF) participant data to the

Administration for Children and Families (ACF) to be matched with Federal and participating States' databases to detect potential dual participation and improper payments. Launched by ACF in 1997, the PARIS project was developed to provide States with usable data by which they could identify and correct erroneous payments and to promote State partnerships and matching of cross-state data to improve program integrity. There are currently 36 entities participating in the PARIS project. (Member States). ACF is encouraging the expansion of PARIS via a grantee program by providing funds to Member States to partner with nonparticipating States to develop the internal organization and mechanisms needed for PARIS participation. An implementation and outcome evaluation of the PARIS program will determine the effectiveness of the program and the resulting impact on reducing improper payments. Data collected will determine factors affecting program participation, relevant PARIS administrative and implementation information, challenges in implementation, cost of program participation and estimated savings through identified and resolved participant matches.

*Respondents:* Fifteen States and one county will comprise the sample, with a maximum of six respondents from each State or County.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| State-level PARIS Admistrator Survey | 16 | 1 | 1.5 | 24 |
| Medicaid, Food Stamp and TANF Program Officials Key-Informant Interviews | 32 | 1 | 1 | 32 |
| State Cost-Accounting Forms | 13 | 1 | 1.5 | 20 |
| Field Follow-up Staff | 32 | 1 | 1 | 32 |
| State PARIS Technical Staff | 16 | 1 | .5 | 8 |
| Fiscal Administrator Telephone Interviews | 26 | 1 | 1.5 | 39 |

*Estimated Total Annual Burden Hours:* 155.

*Additional Information:* 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.

*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: June 15, 2006.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 06–5605 Filed 6–21–06; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

**Proposed Projects**

*Title:* Title IV–E Foster Care Eligibility Reviews; Child and Family Services Reviews; Anti-Discrimination Enforcement.

*OMB No.* 0970–0214.

*Description:* The Administration for Children and Families (ACF) is requesting authority to renew an existing information collection that is expiring October 31, 2006. The initial information collection was contained in the final rule transmitting the Department's monitoring protocols for assessing title IV–E eligibility and payment accuracy, the Child and Family Services Reviews (CFSR), enforcement of the title IV–E anti-discrimination requirements, and certain provisions of the Adoption and Safe Families Act of 1997. Five separate activities are associated with this information collection.

The collection of information for review of Federal payments to States for foster care maintenance payments (45 CFR 1356.71(i)) is authorized by title IV–E of the Social Security Act (the Act), section 474 [42 U.S.C. 674]. The Foster Care Eligibility Reviews (FCER) ensure that States claim title IV–E funds on behalf of title IV–E eligible children.

The collection of information for review of State child and family services programs (45 CFR 1355.33(b), 1355.33(c) and 1355.35(a)) to determine whether such programs are in substantial conformity with State plan requirements under parts B and E of the Act is authorized by section 1123(a) [42 U.S.C. 1320a–1a] of the Act. The CFSR looks at both the outcomes related to safety, permanency and well-being of children served by the child welfare system and at seven systemic factors that support the outcomes.

Section 474(d) of the Act [42 U.S.C. 674] deploys enforcement provisions (45 CFR 1355.38(b) and (c)) for the requirements at section 471(a)(18) [42 U.S.C. 671], which prohibit the delay or denial of foster and adoptive placements based on the race, color, or national origin of any of the individuals involved. The enforcement provisions include the execution and completion of corrective action plans when a State is in violation of section 471(a)(18).

*The information collection is needed:* (1) To conduct Federal onsite eligibility reviews of the title IV–E foster care program; (2) to monitor State plan requirements under titles IV–B and IV–E of the Act, as required by Federal statute; and (3) to enforce the title IV–E anti-discrimination requirements through State corrective action plans. The resultant information will allow ACF to determine if States are in compliance with State plan requirements and are achieving desired outcomes for children and families, as well as ensure that claims by States for title IV–E funds are made on behalf of

title IV–E eligible children. These reviews not only address compliance with eligibility requirements, but also assist States in enhancing their capacities to serve children and families. In computing the number of burden hours for this information collection, ACF based the annual burden estimates on ACF's and States' experiences in conducting reviews and developing program improvement plans.

*Respondents:* State Agencies.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| 45 CFR 1356.71(i) Program improvement plan (FCER) | 5 | 1 | 90 | 450 |
| 45 CFR 1355.33(b) State agency statewide assessment (CFSR) | 13 | 1 | 240 | 3,120 |
| 45 CFR 1355.33(c) On-site review (CFSR) | 13 | 1 | 1,170 | 15,210 |
| 45 CFR 1355.35(a) Program improvement plan (CFSR) | 13 | 1 | 240 | 3,120 |
| 45 CFR 1355.38(b) and (c) Corrective action plan (Anti-discrimination enforcement) | 1 | 1 | 780 | 780 |

*Estimated Total Annual Burden Hours:* 22,680.

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 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: *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: June 15, 2006.

**Robert Sargis,**

*Report Clearance Officer.*

[FR Doc. 06–5606 Filed 6–21–06; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2006N–0239]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Infectious Disease Issues in Xenotransplantation

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information contained in the Public Health Service (PHS) guideline entitled ''PHS Guideline on Infectious Disease Issues in Xenotransplantation'' dated January 19, 2001.

**DATES:** Submit written or electronic comments on the collection of information by August 21, 2006.

**ADDRESSES:** Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Infectious Disease Issues in Xenotransplantation (OMB Control Number 0910–0456)—Extension**

The statutory authority to collect this information is provided under sections 351 and 361 of the PHS Act (42 U.S.C. 262 and 264) and the provisions of the Federal Food, Drug, and Cosmetic Act that apply to drugs (21 U.S.C. 301 *et seq.*). The PHS guideline recommends procedures to diminish the risk of transmission of infectious agents to the xenotransplantation product recipient and the general public. The PHS guideline is intended to address public health issues raised by xenotransplantation, through identification of general principles of prevention and control of infectious diseases associated with xenotransplantation that may pose a hazard to the public health. The collection of information described in this guideline is intended to provide general guidance to sponsors in the following ways: (1) The development of xenotransplantation clinical protocols, (2) the preparation of submissions to FDA, and (3) the conduct of xenotransplantation clinical trials. Also, the collection of information will help ensure that the sponsor maintains important information in a cross-referenced system that links the relevant records of the xenotransplantation product recipient, xenotransplantation product, source animal(s), animal procurement center, and significant nosocomial exposures. The PHS guideline describes an occupational health service program for the protection of health care workers involved in xenotransplantation procedures, caring for xenotransplantation product recipients, and performing associated laboratory testing. The guideline also describes a public health need for a national xenotransplantation database, which is currently under development by PHS. The PHS guideline is intended to protect the public health and to help ensure the safety of using xenotransplantation products in humans by preventing the introduction, transmission, and spread of infectious diseases associated with xenotransplantation.

The PHS guideline also recommends that certain specimens and records be maintained for 50 years beyond the date of the xenotransplantation. These include the following information, as recommended by the specific PHS guideline sections: (1) Records linking each xenotransplantation product recipient with relevant health records of the source animal, herd or colony, and the specific organ, tissue, or cell type included in or used in the manufacture of the product (3.2.7.1); (2) aliquots of serum samples from randomly selected animal and specific disease investigations (3.4.3.1); (3) source animal biological specimens designated for PHS use (3.7.1); animal health records (3.7.2), including necropsy results (3.6.4); and (4) recipients' biological specimens (4.1.2). The retention period is intended to assist health care practitioners and officials in surveillance and in tracking the source of an infection, disease, or illness that might emerge in the recipient, the source animal, or the animal herd or colony after a xenotransplantation.

The recommendation for maintaining records for 50 years is based on clinical experience with several human viruses that have presented problems in human to human transplantation and are therefore thought to share certain characteristics with viruses that may pose potential risks in xenotransplantation. These characteristics include long latency periods and the ability to establish persistent infections. Several also share the possibility of transmission among individuals through intimate contact with human body fluids. Human immunodeficiency virus (HIV) and Human T-lymphotropic virus are human retroviruses. Retroviruses contain ribonucleic acid that is reverse-transcribed into deoxyribonucleic acid (DNA) using an enzyme provided by the virus and the human cell machinery. That viral DNA can then be integrated into the human cellular DNA. Both viruses establish persistent infections and have long latency periods before the onset of disease, 10 years and 40 to 60 years, respectively. The human hepatitis viruses are not retroviruses, but several share with HIV the characteristic that they can be transmitted through body fluids, can establish persistent infections, and have long latency periods, e.g., approximately 30 years for Hepatitis C.

In addition, the PHS guideline recommends that a record system be developed that allows easy, accurate, and rapid linkage of information among the specimen archive, the recipient's medical records, and the records of the source animal for 50 years. The development of such a record system is a one-time burden. Such a system is intended to cross-reference and locate relevant records of recipients, products, source animals, animal procurement centers, and nosocomial exposures.

Respondents to this collection of information are the sponsors of clinical studies of investigational xenotransplantation products under investigational new drug applications (INDs) and xenotransplantation product procurement centers, referred to as source animal facilities. There are an estimated 12 respondents who are sponsors of INDs that include protocols for xenotransplantation in humans. Other respondents for this collection of information are an estimated 18 source animal facilities which provide source xenotransplantation product material to sponsors for use in human xenotransplantation procedures. These 18 source animal facilities keep medical records of the herds/colonies as well as the medical records of the individual source animal(s). The total annual reporting and recordkeeping burden is estimated to be approximately 156 hours. The burden estimates are based on FDA's records of xenotransplantation-related INDs and estimates of time required to complete the various reporting and recordkeeping tasks described in the guideline. FDA does not expect the level of clinical studies using xenotransplantation to increase significantly in the next few years.

FDA is requesting an extension of OMB approval for the following reporting and recordkeeping recommendations in the PHS guideline:

TABLE 1.—REPORTING RECOMMENDATIONS

| PHS Guideline Section | Description |
|---|---|
| 3.2.7.2 | Notify sponsor or FDA of new archive site when the source animal facility or sponsor ceases operations |
| 3.4 | Standard operating procedures (SOPs) of source animal facility should be available to review bodies |
| 3.5.1 | Include increased infectious risk in informed consent if source animal quarantine period of 3 weeks is shortened |
| 3.5.4 | Sponsor to make linked records described in section 3.2.7 available for review |
| 3.5.5 | Source animal facility to notify clinical center when infectious agent is identified in source animal or herd after xenotransplantation product procurement |

TABLE 2.—RECORDKEEPING RECOMMENDATIONS

| PHS Guideline Section | Description |
|---|---|
| 3.2.7 | Establish records linking each xenotransplantation product recipient with relevant records |
| 4.3 | Sponsor to maintain cross-referenced system that links all relevant records (recipient, product, source animal, animal procurement center, and nosocomial exposures) |
| 3.4.2 | Document results of monitoring program used to detect introduction of infectious agents which may not be apparent clinically |
| 3.4.3.2 | Document full necropsy investigations including evaluation for infectious etiologies |

TABLE 2.—RECORDKEEPING RECOMMENDATIONS—Continued

| PHS Guideline Section | Description |
|---|---|
| 3.5.1 | Justify shortening a source animal's quarantine period of 3 weeks prior to xenotransplantation product procurement |
| 3.5.2 | Document absence of infectious agent in xenotransplantation product if its presence elsewhere in source animal does not preclude using it |
| 3.5.4 | Add summary of individual source animal record to permanent medical record of the xenotransplantation product recipient |
| 3.6.4 | Document complete necropsy results on source animals (50-year record retention) |

TABLE 2.—RECORDKEEPING RECOMMENDATIONS—Continued

| PHS Guideline Section | Description |
|---|---|
| 3.7 | Link xenotransplantation product recipients to individual source animal records and archived biologic specimens |
| 4.2.3.2 | Record base-line sera of xenotransplantation health care workers and specific nosocomial exposure |
| 4.2.3.3 and 4.3.2 | Keep a log of health care workers' significant nosocomial exposure(s) |
| 4.3.1 | Document each xenotransplant procedure |
| 5.2 | Document location and nature of archived PHS specimens in health care records of xenotransplantation product recipient and source animal |

FDA estimates the burden for this collection of information as follows:

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| PHS Guideline Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 3.2.7.2[2] | 1 | 1 | 1 | 0.5 | 0.5 |
| 3.4[3] | 12 | 0.33 | 4 | 0.08 | 0.32 |
| 3.5.1[4] | 12 | 0.08 | (0–1) 1 | 0.25 | 0.25 |
| 3.5.4[5] | 12 | 1 | 12 | 0.5 | 6.0 |
| 3.5.5[4] | 18 | 0.06 | (0–1) 1 | 0.2 | 0.2 |
| Total | | | | | 7.27 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]No animal facility or sponsor has ceased operations in the last 3 years, however, we are using 1 respondent for estimation purposes.
[3]FDA's records indicate that an average of 4 INDs are expected to be submitted per year.
[4]To our knowledge, has not occurred in the past 3 years and is expected to continue to be a rare occurrence.
[5]Based on an estimate of 36 patients treated over a 3 year period, the average number of xenotransplantation product recipients per year is estimated to be 12.

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| PHS Guideline Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Record | Total Hours |
|---|---|---|---|---|---|
| 3.2.7[2] | 1 | 1 | 1 | 16 | 16.0 |
| 4.3[3] | 12 | 1 | 12 | 0.83 | 9.96 |
| 3.4.2[4] | 12 | 11 | 132 | 0.25 | 33.0 |
| 3.4.3.2[5] | 18 | 4 | 72 | 0.3 | 21.6 |
| 3.5.1[6] | 12 | 0.08 | (0–1) 1 | 0.5 | 0.5 |
| 3.5.2[6] | 12 | 0.08 | (0–1) 1 | 0.25 | 0.25 |
| 3.5.4 | 12 | 1 | 12 | 0.17 | 2.04 |

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]—Continued

| PHS Guideline Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Record | Total Hours |
|---|---|---|---|---|---|
| 3.6.4[7] | 12 | 2 | 24 | 0.25 | 6.0 |
| 3.7[7] | 18 | 1.33 | 24 | 0.08 | 1.92 |
| 4.2.3.2[8] | 12 | 25 | 300 | 0.17 | 51.0 |
| 4.2.3.2[6] | 12 | 0.08 | (0–1) 1 | 0.17 | 0.17 |
| 4.2.3.3 and 4.3.2[6] | 12 | 0.08 | (0–1) 1 | 0.17 | 0.17 |
| 4.3.1 | 12 | 1 | 12 | 0.25 | 3.0 |
| 5.2[9] | 12 | 3 | 36 | 0.08 | 2.88 |
| Total | | | | | 148.49 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]A one-time burden for new respondents to set up a recordkeeping system linking all relevant records. FDA estimates 1 new sponsor annually.
[3]FDA estimates there is minimal recordkeeping burden associated with maintaining the record system.
[4]Monitoring for sentinel animals (subset representative of herd) plus all source animals. There are approximately 6 sentinel animals per herd x 1 herd per facility x 18 facilities = 108 sentinel animals. There are approximately 24 source animals per year (see footnote 7 of this table); 108 + 24 = 132 monitoring records to document.
[5]Necropsy for animal deaths of unknown cause estimated to be approximately 4 per herd per year x 1 herd per facility x 18 facilities = 72.
[6]Has not occurred in the past 3 years and is expected to continue to be a rare occurrence.
[7]On average 2 source animals are used for preparing xenotransplantation product material for one recipient. The average number of source animals is 2 source animals per recipient x 12 recipients annually = 24 source animals per year (see footnote 5 of table 3 of this document).
[8]FDA estimates there are approximately 12 clinical centers doing xenotransplantation procedures x approximately 25 health care workers involved per center = 300 health care workers.
[9]24 source animal records + 12 recipient records = 36 total records.

Because of the potential risk for cross-species transmission of pathogenic persistent virus, the guideline recommends that health records be retained for 50 years. Since these records are medical records, the retention of such records for up to 50 years is not information subject to the PRA (5 CFR 1320.3(h)(5)). Also, because of the limited number of clinical studies with small patient populations, the number of records is expected to be insignificant at this time.

Information collections in this guideline not included in tables 1 through 4 can be found under existing regulations and approved under the OMB control numbers as follows: (1) ''Current Good Manufacturing Practice for Finished Pharmaceuticals,'' 21 CFR 211.1 through 211.208, approved through 9/30/2008 under OMB control number 0910–0139; (2) ''Investigational New Drug Application,'' 21 CFR 312.1 through 312.160, approved through 5/31/2009 under OMB control number 0910–0014; and (3) information included in a license application, 21 CFR 601.2, approved through 9/30/2008 under OMB control number 0910–0338. (Although it is possible that a xenotransplantation product may not be regulated as a biological product (e.g., it may be regulated as a medical device), FDA believes, based on its knowledge and experience with xenotransplantation, that any xenotransplantation product subject to FDA regulation within the next 3 years will most likely be regulated as a biological product.) However, FDA recognized that some of the information collections go beyond approved collections; assessments for these burdens are included in tables 1 through 4.

In table 5 of this document, FDA identifies those information collection activities that are already encompassed by existing regulations or are consistent with voluntary standards which reflect industry's usual and customary business practice.

TABLE 5.—COLLECTION OF INFORMATION REQUIRED BY CURRENT REGULATIONS AND STANDARDS

| PHS Guideline Section | Description of Collection of Information Activity | 21 CFR Section (Unless Otherwise Stated) |
|---|---|---|
| 2.2.1 | Document off-site collaborations | 312.52 |
| 2.5 | Sponsor ensure counseling patient, family, and contacts | 312.62(c) |
| 3.1.1 and 3.1.6 | Document well-characterized health history and lineage of source animals | 312.23(a)(7)(a) and 211.84 |
| 3.1.8 | Registration with and import permit from the Centers for Disease Control and Prevention | 42 CFR 71.53 |
| 3.2.2 | Document collaboration with accredited microbiology labs | 312.52 |
| 3.2.3 | Procedures to ensure the humane care of animals | 9 CFR parts 1, 2, and 3 and PHS Policy[1] |

TABLE 5.—COLLECTION OF INFORMATION REQUIRED BY CURRENT REGULATIONS AND STANDARDS—Continued

| PHS Guideline Section | Description of Collection of Information Activity | 21 CFR Section (Unless Otherwise Stated) |
|---|---|---|
| 3.2.4 | Procedures consistent for accreditation by the Association for Assessment and Accreditation of Laboratory Animal Care International (AAALAC International) and consistent with the National Research Council's (NRC's) guide | AAALAC international rules of accreditation[2] and NRC guide[3] |
| 3.2.5, 3.4, and 3.4.1 | Herd health maintenance and surveillance to be documented, available, and in accordance with documented procedures; record standard veterinary care | 211.100 and 211.122 |
| 3.2.6 | Animal facility SOPs | PHS Policy[1] |
| 3.3.3 | Validate assay methods | 211.160(a) |
| 3.6.1 | Procurement and processing of xenografts using documented aseptic conditions | 211.100 and 211.122 |
| 3.6.2 | Develop, implement, and enforce SOPs for procurement and screening processes | 211.84(d) and 211.122(c) |
| 3.6.4 | Communicate to FDA animal necropsy findings pertinent to health of recipient | 312.32(c) |
| 3.7.1 | PHS specimens to be linked to health records; provide to FDA justification for types of tissues, cells, and plasma, and quantities of plasma and leukocytes collected | 312.23(a)(6) |
| 4.1.1 | Surveillance of xenotransplant recipient; sponsor ensures documentation of surveillance program lifelong (justify > 2 years (yrs.)); investigator case histories (2 yrs. after investigation is discontinued) | 312.23(a)(6)(iii)(f) and (g), and 312.62(b) and (c) |
| 4.1.2 | Sponsor to justify amount and type of reserve samples | 211.122 |
| 4.1.2.2 | System for prompt retrieval of PHS specimens and linkage to medical records (recipient and source animal) | 312.57(a) |
| 4.1.2.3 | Notify FDA of a clinical episode potentially representing a xenogeneic infection | 312.32 |
| 4.2.2.1 | Document collaborations (transfer of obligation) | 312.52 |
| 4.2.3.1 | Develop educational materials (sponsor provides investigators with information needed to conduct investigation properly) | 312.50 |
| 4.3 | Sponsor to keep records of receipt, shipment, and disposition of investigative drug; investigator to keep records of case histories | 312.57 and 312.62(b) |

[1]The "Public Health Service Policy on Humane Care and Use of Laboratory Animals" (*http://www.grants.nih.gov/grants/olaw/references/phspol.htm*).
[2]AAALAC international rules of accreditation (*http://www.aaalac.org/accreditation/rules.cfm*). (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site address after this document publishes in the **Federal Register**.)
[3]NRC's "Guide for the Care and Use of Laboratory Animals" (1996).

Dated: June 15, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6–9816 Filed 6–21–06; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2005N–0343]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Requesting an Extension to Use Existing Label Stock After the Trans Fat Labeling Effective Date of January 1, 2006

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Requesting an Extension to Use Existing Label Stock After the Trans Fat Labeling Effective Date of January 1, 2006," has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of April 10, 2006 (71

FR 18105), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0571. The approval expires on May 31, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: June 15, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6–9824 Filed 6–21–06; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2004D–0369]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Recommendations for Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Recommendations for Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of February 10, 2006 (71 FR 7048), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0583. The approval expires on April 30, 2009. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: June 15, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6–9826 Filed 6–21–06; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2005N–0457]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Substances Generally Recognized as Safe: Notification Procedure

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Substances Generally Recognized as Safe: Notification Procedure'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of April 7, 2006 (67 FR 17892), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0342. The approval expires on May 31, 2009. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: June 15, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6–9827 Filed 6–21–06; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2006N–0237]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Product Jurisdiction: Assignment of Agency Component for Review of Premarket Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the procedure by which an applicant may obtain an assignment or designation determination.

**DATES:** Submit written or electronic comments on the collection of information by August 21, 2006.

**ADDRESSES:** Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal

agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Product Jurisdiction: Assignment of Agency Component for Review of Premarket Applications—21 CFR Part 3 (OMB Control Number 0910–0523)—Extension**

This regulation relates to agency management and organization and has two purposes. The first is to implement section 503(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(g)), as added by the Safe Medical Devices Act of 1990 (Public Law 101–629), and amended by the Medical Device User Fee and Modernization Act of 2002 (Public Law 107–250), by specifying how FDA will determine the organizational component within FDA assigned to have primary jurisdiction for the premarket review and regulation of products that are comprised of any of the following combinations: (1) A drug and a device; (2) a device and a biological; (3) a biological and a drug; or (4) a drug, a device, and a biological. The second purpose of this regulation is to enhance the efficiency of agency management and operations by providing procedures for classifying and determining which agency component is designated to have primary jurisdiction for any drug, device, or biological product where such jurisdiction is unclear or in dispute.

The regulation establishes a procedure by which an applicant may obtain an assignment or designation determination. The regulation requires that the request include the identity of the applicant, a comprehensive description of the product and its proposed use, and the applicant's recommendation as to which agency component should have primary jurisdiction, with an accompanying statement of reasons. The information submitted would be used by FDA as the basis for making the assignment or designation decision. Most information required by the regulation is already required for premarket applications affecting drugs, devices, biologicals, and combination products. The respondents will be businesses or other for-profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| Part 3 | 43 | 1 | 43 | 24 | 1,032 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: June 15, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6–9900 Filed 6–21–06; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2006O–0232]**

### Over-the-Counter Drug Products; Safety and Efficacy Review; Additional Laxative Ingredient

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of eligibility; request for data and information.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a call-for-data for safety and effectiveness information on the following condition as part of FDA's ongoing review of over-the-counter (OTC) drug products: Sodium picosulfate, up to 10 milligrams (mg), as a laxative single active ingredient. FDA reviewed a time and extent application (TEA) for this condition and determined that it is eligible for consideration in our OTC drug monograph system. FDA will evaluate the submitted data and information to determine whether this condition can be generally recognized as safe and effective (GRAS/E) for its proposed OTC use.

**DATES:** Submit data, information, and comments by September 20, 2006.

**ADDRESSES:** Submit comments, data, and information to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments, data, and information to *http://www.fda.gov/dockets/ecomments*.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Koenig, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., WO Bldg. 22, Mail Stop 5411, Silver Spring, MD 20993, 301–796–2090.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In the **Federal Register** of January 23, 2002 (67 FR 3060), FDA published a final rule establishing criteria and procedures for additional conditions to become eligible for consideration in the OTC drug monograph system. These criteria and procedures, codified in § 330.14 (21 CFR 330.14), permit OTC drugs initially marketed in the United States after the OTC drug review began in 1972 and OTC drugs without any marketing experience in the United States to become eligible for FDA's OTC drug monograph system. The term ''condition'' means an active ingredient or botanical drug substance (or a combination of active ingredients or botanical drug substances), dosage form, dosage strength, or route of administration, marketed for a specific OTC use (§ 330.14 (a)). The criteria and procedures also permit conditions that are regulated as cosmetics or dietary supplements in foreign countries but that would be regulated as OTC drugs in the United States to become eligible for the OTC drug monograph system.

Sponsors must provide specific data and information in a TEA to demonstrate that the condition has been marketed for a material time and to a material extent to become eligible for consideration in the OTC drug monograph system. When the condition is found eligible, FDA publishes a notice of eligibility and request for safety and effectiveness data for the proposed OTC use. The TEA that FDA reviewed (Ref. 1) and FDA's evaluation of the TEA (Ref. 2) have been placed on public display in the Division of Dockets Management (see **ADDRESSES**) under the docket number found in brackets in the heading of this document. Information deemed confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or 21 U.S.C. 331(j) was deleted from the TEA before it was placed on public display.

## II. Request for Data and Information

FDA determined that the information submitted in this TEA satisfies the criteria of § 330.14. FDA will evaluate sodium picosulfate, up to 10 mg, as a laxative single active ingredient for inclusion in the monograph for OTC laxative drug products (21 CFR part 334). Accordingly, FDA invites all interested persons to submit data and information, as described in § 330.14(f), on the safety and effectiveness of this active ingredient for this use so that FDA can determine whether it can be GRAS/E and not misbranded under recommended conditions of OTC use.

The TEA does not include an official or proposed United States Pharmacopeia-National Formulary (USP–NF) drug monograph. According to § 330.14(i) sponsors must include, an official or proposed USP–NF monograph for this ingredient as part of the safety and effectiveness data for this ingredient.

## III. Comments

Interested persons should submit comments, data, and information to the Division of Dockets Management (see **ADDRESSES**). Submit three copies of all comments, data, and information. Individuals submitting written information or anyone submitting electronic comments may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by supporting information. Received submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Information submitted after the closing date will not be considered except by petition under (21 CFR 10.30).

## IV. Marketing Policy

Under § 330.14(h), any product containing the condition for which data and information are requested may not be marketed as an OTC drug in the United States at this time unless it is the subject of an approved new drug application or abbreviated new drug application.

## V. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. TEA for sodium picosulfate submitted by Ropes and Gray LLP on behalf of Boehringer Ingelheim on June 24, 2005.
2. FDA's evaluation and comments on the TEA for sodium picosulfate.

Dated: June 16, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6–9896 Filed 6–21–06; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2004E–0444]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; BONIVA

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for BONIVA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

**ADDRESSES:** Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug application becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product BONIVA (ibandronate sodium). BONIVA is indicated for treatment and prevention of osteoporosis in postmenopausal women. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for BONIVA (U.S. Patent No. 4,927,814) from Hoffmann-La Roche Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 19, 2004, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of BONIVA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for BONIVA is 2,559 days. Of this time, 2,254 days occurred during the testing phase of the regulatory review period,

while 305 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective: May 15, 1996. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 15, 1996.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the act: July 16, 2002. The applicant claims July 15, 2002, as the date the new drug application (NDA) for BONIVA (NDA 21–455) was initially submitted. However, FDA records indicate that NDA 21–455 was initially submitted on July 16, 2002.

3. The date the application was approved: May 16, 2003. FDA has verified the applicant's claim that NDA 21–455 was approved on May 16, 2003.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 337 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by August 21, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 19, 2006. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 17, 2006.

**Jane Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. E6–9817 Filed 6–21–06; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2004E–0413]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; CIALIS

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for CIALIS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

**ADDRESSES:** Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product CIALIS (tadalafil). CIALIS is indicated for treatment of erectile dysfunction. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CIALIS (U.S. Patent No. 5,859,006) from ICOS Corporation, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 19, 2004, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of CIALIS represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CIALIS is 1,943 days. Of this time, 1,067 days occurred during the testing phase of the regulatory review period, while 876 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: July 29, 1998. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on July 29, 1998.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: June 29, 2001. FDA has verified the applicant's claim that the new drug application (NDA) for CIALIS (NDA 21–368) was initially submitted on June 29, 2001.

3. *The date the application was approved*: November 21, 2003. FDA has verified the applicant's claim that NDA

21–368 was approved on November 21, 2003.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 679 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by August 21, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 19, 2006. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 17, 2006.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. E6–9899 Filed 6–21–06; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket Nos. 2006M–0075, 2006M–0009, 2006M–0014, 2006M–0015, 2006M–0163]**

### Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Division of Dockets Management.

**ADDRESSES:** Submit written requests for copies of summaries of safety and effectiveness to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

**FOR FURTHER INFORMATION CONTACT:** Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186, ext. 152.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule that revised 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**. Instead, the agency now posts this information on the Internet on FDA's home page at *http://www.fda.gov*. FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from January 1, 2006, through March 31, 2006. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM JANUARY 1, 2006, THROUGH MARCH 31, 2006

| PMA No./Docket No. | Applicant | Trade Name | Approval Date |
|---|---|---|---|
| P020024/2006M–0075 | AGA Medical Corp. | AMPLATZER DUCT OCCULUDER AND 180 DELIVERY SYSTEM | May 14, 2003 |
| P020001/2006M–0009 | Neoventa Medical AB | STAN S31 FETAL HEART MONITOR | November 1, 2005 |
| P040001/2006M–0014 | St. Francis Medical Technologies, Inc. | X STOP INTERSPINOUS PROCESS DECROMPRESSION SYSTEM | November 21, 2005 |
| P050009/2006M–0015 | Biomet, Inc. | C2 A-TAPER ACETABULAR SYSTEM | December 16, 2005 |

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM JANUARY 1, 2006, THROUGH MARCH 31, 2006—Continued

| PMA No./Docket No. | Applicant | Trade Name | Approval Date |
|---|---|---|---|
| P050007/2006M–0016 | Abbott Vascular Devices (AVD) | STARCLOSE VASCULAR CLOSURE SYSTEM | December 21, 2005 |
| H040005/2006M–0163 | Karl Storz Endoscopy-America, Inc. | KARL STORZ RIGID TTTS FETOSCOPY INSTRUMENT SET WITH 0 AND 12 DEGREE SCOPE, KARL STORZ RIGID TTTS FETOSCOPY INSTRUMENT SET WITH 30 DEGREE SCOPE, AND KARL STORZ SEMI-RIGID TTTS FETOSCOPY INSTRUMENT SET | March 31, 2006 |

## II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cdrh/pmapage.html*.

Dated: June 13, 2006.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. E6–9898 Filed 6–21–06; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Request for Public Comment: 60-Day Proposed Information Collection: Indian Health Service Medical Staff Credentials and Privileges Files

**AGENCY:** Indian Health Service, HHS.

**SUMMARY:** The Indian Health Service (IHS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 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 IHS is providing a 60-day advance opportunity for public comment on a proposed new collection of information to be submitted to the Office of Management and Budget for review.

**Proposed Collection**

*Title:* 0917–0009, ''Indian Health Service Medical Staff''

*Typed of Information Collection Request:* Extension, without revision, of currently approved information collection, 0917–0009, ''Indian Health Service Medical Staff Credentials and Privileges Files.''

*Form Numbers(s):* None.

*Need and Use of Information Collection:* This collection of information is used to evaluate individual health care providers applying for medical staff privileges at IHS health care facilities. The HHS operates health care facilities that provide health care services to American Indians and Alaska Natives. To provide these services, the IHS employs (directly and under contract) several categories of health care providers including: Physicians (M.D. and D.O.), dentists, psychologists, optometrists, podiatrists, audiologists, physician assistants, certified registered nurse anesthetists, nurse practitioners, and certified nurse midwives. The IHS policy specifically requires physicians and dentists to be members of the health care facility medical staff where they practice. Health care providers become medical staff members, depending on the local health care facility's capabilities and medical staff bylaws. There are three types of IHS medical staff applicants: (1) Health care providers applying for direct employment with IHS; (2) contractors who will not seek to become IHS employees; and (3) employed IHS health care providers who seek to transfer between IHS health care facilities.

National health care standards developed by the Center for Medicare and Medicaid Services (formerly the Health Care Financing Administration), the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), and other accrediting organizations required health care facilities to review, evaluate and verify the credentials, training and experience of medical staff applicants prior to granting medical staff privileges. To meet these standards, IHS health care facilities require all medical staff applicants to provide information concerning their education, training, licensure, and work experience and any adverse disciplinary actions taken against them. This information is then verified with references supplied by the applicant and may include: Former employers, educational institutions, licensure and certification boards, the American Medical Association, the Federation of State Medical Boards, the National Practitioner Data Bank, and the applicants themselves.

In addition to the initial granting of medical staff membership and clinical privileges, JCAHO standards require that a review of the medical staff be conducted not less than every two years. This review evaluates the current competence of the medical staff and verifies whether they are maintaining the licensure or certification requirements of their specialty.

The medical staff credentials and privileges records are maintained at the health care facility where the health care provider is a medical staff member. The establishment of these records at IHS health care facilities is not optional; such records must be established and maintained at all health care facilities in the United States that are accredited by JCAHO. Prior to the establishment of this JCAHO requirement, the degree to which medical staff applications were verified for completeness and accuracy varied greatly across America.

*Affected Public:* Individuals and households.

*Type of Respondents:* Individuals.

*Burden Hours:* The table below provides the estimated burden hours for this information collection:

| Data collection | Est. number of respondents | Responses per respondent | Burden per response * | Total annual burden hrs. |
|---|---|---|---|---|
| Application to Medical Staff | 600 | 1 | 1.00 (60 mins) | 600.0 |
| Reference Letter | 1800 | 1 | 0.33 (20 mins) | 594.0 |
| Reappointment Request | 200 | 1 | 1.00 (60 mins) | 200.0 |
| Ob-Gyn Privileges | 25 | 1 | 1.00 (60 mins) | 25.0 |
| Internal Medicine | 387 | 1 | 1.00 (60 mins) | 387.0 |
| Surgery Privileges | 23 | 1 | 1.00 (60 mins) | 23.0 |
| Psychiatry Privileges | 18 | 1 | 1.00 (60 mins) | 18.0 |
| Anesthesia Privileges | 16 | 1 | 1.00 (60 mins) | 16.0 |
| Dental Privileges | 128 | 1 | 0.33 (20 mins) | 42.2 |
| Optometry Privileges | 21 | 1 | 0.33 (20 mins) | 6.9 |
| Psychology Privileges | 23 | 1 | 0.17 (10 mins) | 3.9 |
| Audiology Privileges | 6 | 1 | 0.08 (5 mins) | 0.48 |
| Podiatry Privileges | 6 | 1 | 0.08 (5 mins) | 0.48 |
| Radiology Privileges | 9 | 1 | 0.33 (20 mins) | 2.9 |
| Pathology Privileges | 3 | 1 | 0.33 (20 mins) | .99 |
| Total | 3,265 | | | 1,920.85 |

* For ease of understanding, burden hours are provided in actual minutes.

There are no capital costs, operating costs and/or maintenance costs to respondents.

*Request for Comments:* Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Send Comments and Requests for Further Information:* For the proposed collection or requests to obtain a copy of the data collection instrument(s) and instructions to: Mrs. Christina Rouleau, IHS Reports Clearance Officer, 801 Thompson Avenue, TMP Suite 450, Rockville, MD 20852, call non-toll free (301) 443–5938, send via facsimile to (301) 443–2316, or send your e-mail requests, comments, and return address to: *crouleau@hqe.ihs.gov*.

*Comment Due Date:* Your comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: June 15, 2006.

**Robert G. McSwain,**

*Deputy Director, Indian Health Service.*

[FR Doc. 06–5574 Filed 6–21–06; 8:45 am]

**BILLING CODE 4165–16–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

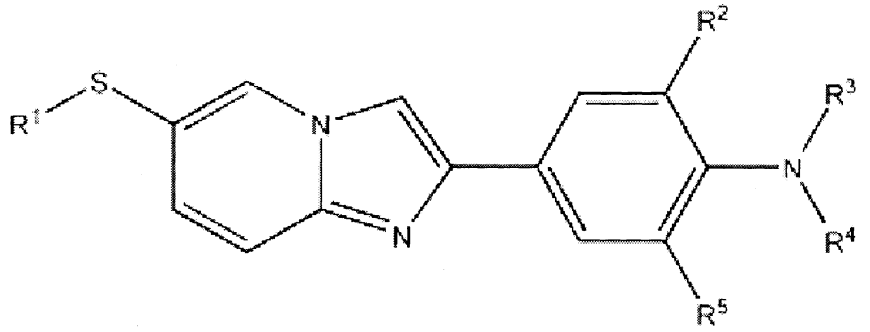
**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

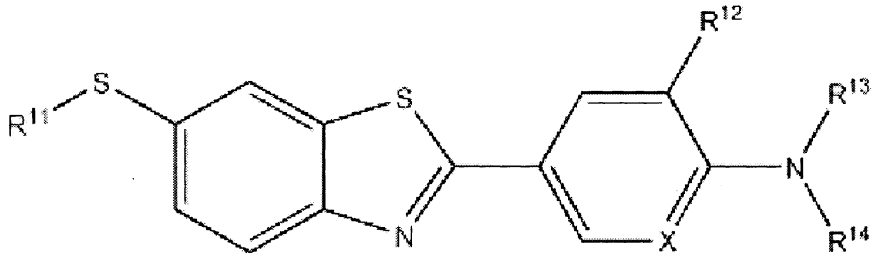
**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Beta-Amyloid PET Imaging Agents**

*Description of Technology:* Available for licensing and commercial development are two novel classes of compounds useful as radioligands for *in vivo* imaging of beta-amyloid ($A_\beta$) peptides and plaques in humans.



(I)



(II)

Beta-amyloid peptide deposition in the brain is a pathological feature of Alzheimer's disease (AD). Early detection of beta-amyloid load in patients with suspected AD is vital to initiating early treatment, which can improve cognitive function and quality of life for many patients.

The invention describes novel derivatives of imidazopyridinylbenzeneamine (IMPY) and benzothizolylbenzeneamine (BTA), which demonstrate high *in vitro* binding affinity to human beta-amyloid. The difference between existing IMPY compounds and the novel derivatives is the substitution of an aryl halide with an aryl thioether group and replacement of a sulfur group of the pyridine ring with a nitrogen group. The new classes of compounds have the potential of providing improved amyloid imaging agents for Positron Emission Tomography (PET) with higher specificity for amyloid, low background noise, better entry into the brain and improved labeling efficiency.

In addition to the novel compounds, the invention also includes: (1) A new method of synthesizing the IMPY derivatives, using palladium as a catalyst, (2) methods of imaging beta-amyloid deposits in the brain by *in vivo* PET, magnetic reasonance imaging (MRI) and other imaging methods involving the use of these compounds, and (3) and methods of labeling these compounds with radiotracers ([11-C] and [18-F]).

*Inventors:* Lisheng Cai (NIMH), Victor Pike (NIMH), and Robert Innis (NIMH).

*Publications:*

1. Nichols L, Pike VW, Cai L, Innis RB. (2006) ''Imaging and In Vivo Quantitation of beta-Amyloid: An Exemplary Biomarker for Alzheimer's Disease?,'' Biol Psychiatry. [E-pub ahead of print].

2. Toyoma H, et al. (2006) ''PET imaging of brain with the beta-amyloid probe, [11C]6-OH-BTA-1, in a transgenic mouse model of Alzheimer's disease,'' Eur J Nucl Med Mol Imaging. 32(5), 593–600.

3. Cai L, et al. (2004) ''Synthesis and Evaluation of Two$^{18}$ F-Labeled 6-Iodo-2-(4′-N,N-dimethylamino)phenylimidazo[1,2-a]pyidine Derivatives as Prospective Radioligands for -Amyloid in Alzheimer's Disease,'' J Med Chem, 47 (9), 2208–2218.

*Patent Status:* U.S. Provisional Application filed 21 Apr 2006 (HHS Reference No. E–156–2006/0–US–01).

*Licensing Status:* Available for non-exclusive or exclusive licensing.

*Licensing Contact:* Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

*Collaborative Research Opportunity:* The NIMH Molecular Imaging Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Beta-Amyloid PET Imaging Agents. Please contact Suzanne Winfield at *winfiels@mail.nih.gov* for more information.

**Carbohydrate-Encapsulated Quantum Dots for Cell-Specific Biological Imaging**

*Description of Technology:* Available for licensing is intellectual property covering carbohydrate-encapsulated quantum dots (QD) for use in medical imaging and methods of making the same. Certain carbohydrates, especially those included on tumor glycoproteins are known to have affinity for certain cell types. One notable glycan used in the present invention is the Thomsen-Freidenreich disaccharide (Galb1-3GalNAc) that is readily detectable in 90% of all primary human carcinomas and their metastases. These glycans can be exploited for medical imaging. Quantum Dots (QDs) are semiconductor nanocrystals (CdSe or CdTe) with detectable luminescent properties. Encapsulating luminescent QDs with target-specific glycans permits efficient imaging of the tissue to which the glycans bind with high affinity. Accurate imaging of diseased cells (e.g., primary and metastatic tumors) is of primary importance in disease management. The inventors describe a method for enhancing the luminescence of carbohydrate-encapsulated QDs by addition of specific functional units in a novel synthesis of hybrid CdTe-based core-shell semiconductor nanocrystals.

*Inventors:* Joseph Barchi and Sergey Svarovsky (NCI).

*Patent Status:* PCT Application No. PCT/US03/34897 filed 05 Nov 2003 (HHS Reference No. E–325–2003/0–PCT–01).

*Licensing Status:* Available for non-exclusive or exclusive licensing.

*Licensing Contact:* Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

*Collaborative Research Opportunity:* The National Cancer Institute, Center for Cancer Research, Laboratory of Medicinal Chemistry is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize carbohydrate-encapsulated quantum dots. Please contact Dr. Melissa Maderia by phone: (301) 846–5465 or fax: (301) 846–6820 or e-mail: *maderiam@mail.nih.gov* for more information.

Dated: June 14, 2006.

**David R. Sadowski,**

*Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 06–5579 Filed 6–21–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Mental Health Special Emphasis Panel, HIV and Psychiatric Comorbidities.

*Date:* July 10, 2006.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606. 301–443–1513. *psherida@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 14, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5571 Filed 6–21–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Electrical Signaling, Ion Transport, and Arrhythmias Study Section, June 22, 2006, 8 a.m. to June 23, 2006, 5 p.m., Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007 which was published in the **Federal Register** on May 11, 2006, 71 FR 27505–27507.

The meeting will be held at the Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: June 13, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5572 Filed 6–21–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Psychiatric Genetics Collaborative R01's

*Date:* June 30, 2006.

*Time:* 2 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

*Contact Person:* Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Bacterial Vaginosis—A Clinical Study.

*Date:* June 30, 2006.

*Time:* 3 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, EMNR Special Emphasis Panel SBIR.

*Date:* July 6–7, 2006.

*Time:* 7 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Review of Member Conflict Applications.

*Date:* July 7, 2006.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

*Contact Person:* Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

*Name of Committee:* AIDS and Related Research Integrated Review Group, AIDS

Discovery and Development of Therapeutics Study Section.

*Date:* July 11, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

*Contact Person:* Shiv A. Prasad, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Review of Fellowships and R03 Applications—Behavioral and Social HIV/AIDS.

*Date:* July 12, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

*Contact Person:* Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, CounterACT SBIR Awards for Therapeutics Research.

*Date:* July 12, 2006.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate cooperative applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Mushtaq A. Khan, DVM PhD, Scientific Review, Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, International Bioethics.

*Date:* July 14, 2006.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Inn, 1310 Wisconsin Avenue, NW., Washington, DC 20007.

*Contact Person:* Dan D. Gerendasy, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892, 301–594–6830, *gerendad@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Sharing Instrumentation Review Panel.

*Date:* July 17–18, 2006.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Park Clarion Hotel, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* John L. Bowers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1725, *bowersj@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Language Development and Auditory Learning in Autism Spectrum Disorders.

*Date:* July 17, 2006.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Biao Tian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflicts: Neuropathic Pain #2.

*Date:* July 18, 2006.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, (301) 435–2212, *josephru@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ICOHRTA.

*Date:* July 19, 2006.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Inn, 1310 Wisconsin Avenue, NW., Washington, DC 20007.

*Contact Person:* Dan D. Gerendasy, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892, 301–594–6830, *gerendad@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflicts: Olfaction and Taste.

*Date:* July 19, 2006.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, (301) 435–2212, *josephru@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, R15 Grant Applications.

*Date:* July 20, 2006.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Michael M. Sveda, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, 301–435–3565, *svedam@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Coagulation Factor Signaling.

*Date:* July 20, 2006.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195, *sur@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Axongrowth/Cranial Motoneurons.

*Date:* July 20, 2006.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892, (301) 435–1224, *husains@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Hormone Replacement Therapy.

*Date:* July 20, 2006.

*Time:* 2:30 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Minority/Disability Predoctoral Fellowships for DCPS.

*Date:* July 20–21, 2006.

*Time:* 6 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Alfonso R. Latoni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, 301–435–1735, *latonia@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Materials Science and Environmental Monitoring.

*Date:* July 21, 2006.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Alexander Gubin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, 301–435–2902, *gubina@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 13, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5573 Filed 6–21–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5037–N–38]**

### Title I Property Improvement and Manufactured Home Loan Programs

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been 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.

Financial institutions obtain insurance on loans for repair/improvement of property; purchase of a manufactured home and/or lot; the purchase of fire safety equipment in existing health care facilities; and the preservation of historic structures.

**DATES:** *Comments Due Date:* July 24, 2006.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0328) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting 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:* Title I Property Improvement and Manufactured Home Loans Programs.

*OMB Approval Number:* 2502–0328.

*Form Numbers:* HUD–637, 646, 27029, 27030, 55013, 55014, 56001,56001–MH, 56002, 56002–MH, 56004, and 92802.

*Description of the Need for the Information and Its Proposed Use:* Financial institutions obtain insurance on loans for repair/improvement of property; purchase of a manufactured home and/or lot; the purchase of fire safety equipment in existing health care facilities; and the preservation of historic structures.

*Frequency of Submission:* On occasion, Monthly.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting burden | 14,522 | 9.40 | | 0.233 | | 31,838 |

*Total Estimated Burden Hours:* 31,838.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 15, 2006.

**Lillian L. Deitzer,**

*Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.*

[FR Doc. E6–9828 Filed 6–21–06; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5037–N–39]**

### Opinion of Counsel to the Mortgagor

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been 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.

The opinion is required to provide comfort to HUD and the mortgagee in multifamily rental and health care facility mortgage insurance transactions and similarly to HUD and owners in the capital advance transactions.

**DATES:** *Comments Due Date:* July 24, 2006.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2510–0010) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a

toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting 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:* Opinion of Counsel to the Mortgagor.

*OMB Approval Number:* 2510–0010.

*Form Numbers:* HUD–91725, 91725–inst.

*Description of the Need for the Information and Its Proposed Use:* The opinion is required to provide comfort to HUD and the mortgagee in multifamily rental and health care facility mortgage insurance transactions and similarly to HUD and owners in the capital advance transactions.

*Frequency of Submission:* On occasion.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Respondents burden | 700 | 1 | | 1 | | 700 |

*Total Estimated Burden Hours:* 700.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 15, 2006.

**Lillian L. Deitzer,**

*Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.*

[FR Doc. E6–9830 Filed 6–21–06; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for San Joaquin River National Wildlife Refuge

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces that a Draft Comprehensive Conservation Plan and Environmental Assessment (Draft CCP/EA) for San Joaquin River National Wildlife Refuge (Refuge) is available for review and comment. This Draft CCP/EA, prepared pursuant to the National Wildlife Refuge System Administration Act, as amended, and the National Environmental Policy Act of 1969, describes the Service's proposal for managing the Refuge for the next 15 years. The draft compatibility determinations for several public uses are also available for review with the Draft CCP/EA.

**DATES:** Written comments must be received at the address below by July 24, 2006.

**ADDRESSES:** Comments on the Draft CCP/EA should be addressed to: Kim Forrest, Project Leader, San Joaquin River National Wildlife Refuge, 947–C West Pacheco Boulevard, Los Banos, California 93635. Comments may also be submitted via electronic mail to *FW8PlanComments@fws.gov.* Please type ''San Joaquin River CCP'' in the subject line.

**FOR MORE INFORMATION CONTACT:** Kim Forrest, Project Leader, San Joaquin River National Wildlife Refuge, 947–C West Pacheco Boulevard, Los Banos, California 93635 or Mark Pelz, Chief, Refuge Planning, CA/NV Operations Office, 2800 Cottage Way, W–1832, Sacramento, CA 95825, phone (916) 414–6500.

**SUPPLEMENTARY INFORMATION:** Copies of the Draft CCP/EA may be obtained by writing to the U.S. Fish and Wildlife Service, Attn: Mark Pelz, CA/NV Refuge Planning Office, 2800 Cottage Way, W–1832, Sacramento, CA 95825. Copies of the Draft CCP/EA may be viewed at this address or at San Joaquin River National Wildlife Refuge, 947–C West Pacheco Boulevard, Los Banos, CA. The Draft CCP/EA will also be available for viewing and downloading online at *http://www.fws.gov/pacific/planning.* Printed documents will also be available for review at the following libraries: Los Banos Branch Library, 1312 7th St, Los Banos, CA 93635; and Modesto Library 1500 ''I'' Street, Modesto, CA 95354.

#### Background

The San Joaquin River NWR was established in 1987 primarily to protect and manage wintering habitat for Aleutian Canada geese, a federally listed endangered species. Since that time, the Refuge's focus has expanded to include protecting other sensitive species and restoring natural habitats and ecological processes. This Refuge and its management have been important factors in the recovery of the Aleutian Canada goose and its removal in 2001 from the Threatened and Endangered Species List. The Refuge is Located just west of Modesto, California.

#### Purpose and Need for Action

The purpose of the CCP is to provide a coherent, integrated set of management actions to help attain the Refuges' establishing purposes, and vision, goals, and objectives. The CCP identifies the Refuges' role in support of the mission of the National Wildlife Refuge System and describes the Service's management actions.

#### Alternatives

The Draft CCP/EA identifies and evaluates four alternatives for managing the Refuge for the next 15 years. The proposed action is to implement Alternative D as described in the EA. Alternative D best achieves the Refuges' purposes, vision, and goals; contributes to the Refuge System mission; addresses the significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management.

In Alternative A (No Action), existing management programs, which focus on Aleutian Canada goose, would continue unchanged. The Service would also continue the current visitor services program, which is limited to wildlife photography and observation from a

platform. Management for the benefit of Aleutian Canada geese is also central to the other three Alternatives. However, they also expand Refuge management for the benefit of additional wildlife and habitats. Alternative B places greater emphasis on wetland restoration and management and would expand visitor services for all priority public uses, including fishing and hunting. Alternative C focuses on restoration and management of riparian habitats and providing non-consumptive wildlife-dependant recreation opportunities. Alternative D, the preferred alternative, includes a balance of wetland and riparian restoration and management and expands opportunities for all priority public uses, including fishing and hunting.

### Public Comments

After the review and comment period ends for this Draft CCP/EA, comments will be analyzed by the Service and addressed in the Final CCP. All comments received from individuals, including names and addresses, become part of the official public record and may be released. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations and other Service and Departmental policies and procedures.

Dated: June 16, 2006.

**Ken McDermond,**

*Acting Manager, California/Nevada Operations, Sacramento, California.*

[FR Doc. E6–9848 Filed 6–21–06; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Marine Mammals; Incidental Take During Specified Activities

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of application and proposed incidental harassment authorization; request for comments.

**SUMMARY:** The Fish and Wildlife Service (Service) has received an application from the University of Texas at Austin Institute for Geophysics (UTIG) for authorization to take small numbers of marine mammals by harassment incidental to conducting a marine seismic survey in the Arctic Ocean, including the Chukchi Sea, from approximately July 15 through August 25, 2006. In accordance with provisions of the Marine Mammal Protection Act (MMPA), as amended, the Service requests comments on its proposed authorization for the applicant to incidentally take, by harassment, small numbers of Pacific walrus and polar bears in the Chukchi Sea during the seismic survey.

**DATES:** Comments and information must be received by July 24, 2006.

**ADDRESSES:** You may submit comments by any of the following methods:

1. By mail to: Craig Perham, Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.
2. By fax to: 907–786–3816.
3. By electronic mail (e-mail) to: *FW7MMM@FWS.gov.* Please submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your message. If you do not receive a confirmation from the system that we have received your message, contact us directly at U.S. Fish and Wildlife Service, Office of Marine Mammals Management, 907–786–3810 or 1–800–362–5148.
4. By hand-delivery to: Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

**FOR FURTHER INFORMATION CONTACT:** Craig Perham, Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; telephone 907–786–3810 or 1–800–362–5148; or e-mail *craig_perham@FWS.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

Sections 101(a)(5)(A) and (D) of the MMPA, as amended, (16 U.S.C. 1371(a)(5)(A) and (D)) authorize the Secretary of the Interior to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region provided that 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 and comment.

Authorization to incidentally take marine mammals may be granted if the Service finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. Permissible methods of taking and other means of affecting the least practicable impact on the species or stock and its habitat, and requirements pertaining to the monitoring and reporting of such takings, are prescribed as part of the authorization process.

The term ''take,'' as defined by the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment, as defined by the MMPA, means ''any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild [the MMPA calls this Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [the MMPA calls this Level B harassment].''

The terms ''small numbers,'' ''negligible impact,'' and ''unmitigable adverse impact'' are defined in 50 CFR 18.27, the Service's regulations governing take of small numbers of marine mammals incidental to specified activities. ''Small numbers'' is defined as ''a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock.'' ''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.'' ''Unmitigable adverse impact'' is defined as ''an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.''

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 where the take will be limited to harassment. Section 101(a)(5)(D)(iii) establishes a 45-day time limit for Service 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, the Service must

either issue or deny issuance of the authorization. The Service refers to these authorizations as Incidental Harassment Authorizations (IHAs).

**Summary of Request**

On March 17, 2006, the Service received an application from UTIG for the taking by harassment of Pacific walrus and polar bears incidental to conducting, with research funding from the National Science Foundation (NSF), a marine seismic survey in the Western Canada Basin, Chukchi Borderland, and Mendeleev Ridge of the Arctic Ocean during July through August, 2006. The seismic survey will be operated in conjunction with a sediment coring project, which will obtain data regarding crustal structure, and will take place far north of the Chukchi Sea. A description of the coring activities is provided in the National Oceanic and Atmospheric Administration's (NOAA) proposed IHA for this same research cruise in the **Federal Register** of May 15, 2006 (71 FR 27997). Walrus do not occur in the area of the coring activities and there is no potential for harassment of walrus. There is a potential that coring activities may encounter a very few isolated members of the Chukchi Sea polar bear stock; however, the effects to those individuals would be no more than minimal. This authorization, therefore, assesses the incidental harassment of walrus and polar bear resulting from the seismic survey activity in the Chukchi Sea.

The purpose of the proposed study is to collect seismic reflection and refraction data and sediment cores that reveal the crustal structure and composition of submarine plateaus in the western Amerasia Basin in the Arctic Ocean. Past studies have led many researchers to support the idea that the Amerasia Basin opened about a pivot point near the Mackenzie Delta. However, the crustal character of the Chukchi Borderlands could determine whether that scenario is correct, or whether more complicated tectonic scenarios must be devised to explain the presence of the Amerasia Basin. These data will assist in the determination of the tectonic evolution of the Amerasia Basin and Canada Basin, which is fundamental to such basic concerns as sea level fluctuations and paleoclimate in the Mesozoic era.

**Description of the Activity**

The Healy, a U.S. Coast Guard (USCG) Cutter ice-breaker, will rendezvous with the science party off Barrow, Alaska, on or around July 15, 2006. Trained marine mammal observers will also be onboard during the cruise. The Healy will sail north and arrive at the beginning of the seismic survey, which will start more than 150 kilometers (km) (93 miles [mi]) north of Barrow. The cruise will last for approximately 40 days, and it is estimated that the total seismic survey time will be approximately 30 days depending on ice conditions. Seismic survey work is scheduled to terminate west of Barrow about August 25, 2006. The vessel will then sail south to Nome, Alaska, where the science party will disembark. In conjunction with the seismic survey, a sediment coring project will be conducted in the Arctic Ocean, north of the Chukchi Sea. The NOAA's proposed IHA for this same research cruise, published in the **Federal Register** of May 15, 2006, describes the coring project activities.

The majority of seismic survey activities will take place in the Arctic Ocean. The Chukchi Sea segment of the survey is approximately 478 km, located between 75° N and 70.9° N and will occur in mid- to late August. The bulk of the seismic survey will not be conducted in any country's territorial waters. However, the survey will occur within the Exclusive Economic Zone (EEZ) of the United States for approximately 563 km.

The Healy will use a portable Multi-Channel Seismic (MCS) system to conduct the seismic survey. A cluster of eight airguns will be used as the energy source during most of the cruise, especially in deep water areas. The airgun array will have four 500-cubic inches ($in^3$) Bolt airguns and four 210-$in^3$ G. guns for a total discharge volume of 2,840-$in^3$. In shallow water, occurring during the first and last portions of the cruise, a four 105-$in^3$ GI gun array with a total discharge volume of 420 $in^3$ will be used. Other sound sources (see below) will also be employed during the cruise. The seismic operations during the survey will be used to obtain information on the history of the ridges and basins that make up the Arctic Ocean.

The airgun arrays will discharge about once every 60 seconds. The compressed air will be supplied by compressors onboard the source vessel. The Healy will also tow a hydrophone streamer 100 to 150 meters (328 to 492 feet [ft]) behind the ship, depending on ice conditions. The hydrophone streamer will be up to 200 m (656 ft) long. As the source operates along the survey lines, the hydrophone receiving system will receive and record the returning acoustic signals. In addition to the hydrophone streamer, sea ice seismometers (SIS) will be deployed on ice floes ahead of the ship using a vessel-based helicopter, and then retrieved from behind the ship once it has passed the SIS locations.

The SISs will be deployed as much as 120 km (74 mi) ahead of the ship, and recovered when as much as 120 km (74 mi) behind the ship. The seismometers will be placed on top of ice floes with a hydrophone lowered into the water through a small hole drilled in the ice. These instruments will allow seismic refraction data to be collected in the heavily ice-covered waters of the region.

The program will consist of a total of approximately 3,625 km (2,252 mi) of surveys, not including transits when the airguns are not operating. The area included in this proposal is the southwest leg, which extends 478 km into the Chukchi Sea (south of 75° N). Water depths within the study area are 40 to 3,858 m (131 to 12,657 ft). Little more than 15 percent (approximately 73 km [45 mi]) of the Chukchi Sea survey segment will occur in water deeper than 1,000 m (3,280 ft); 21 percent (approximately 102 km [63 mi]) will be conducted in water 100 to 1,000 m (328 to 3,280 ft) deep. Most of the Chukchi survey track, 64 percent (approximately 303 km [188 mi]), will occur in water less than 100 m (328 ft). The Principal Investigators (PIs) plan to use the larger, 8-airgun array for only 24 km (15 mi) along the northernmost reach of the Chukchi survey line in deep water (greater than 1,000 m). There will be additional seismic operations associated with airgun testing, start up, and repeat coverage of any areas where initial data quality is sub-standard. In addition to the airgun array, a multibeam sonar and sub-bottom profiler will be used during the seismic profiling and continuously when underway.

*Vessel Specifications*

The Healy has a length of 128 m (420 ft), a beam of 25 m (82 ft), and a full load draft of 8.9 m (29 ft). The Healy is capable of traveling at 5.6 km/h (3 knots) through 1.4 m (4.6 ft) of ice. A Central Power Plant, consisting of four Sultzer 12Z AU40S diesel generators, provides electric power for propulsion and ship's services through a 60 Hz, 3-phase common bus distribution system. Propulsion power is provided by two electric AC Synchronous, 11.2 MW drive motors, fed from the common bus through a cycloconverter system, that turn two fixed-pitch, four-bladed propellers. The operation speed during seismic acquisition is expected to be approximately 6.5 km/hr (hour) (3.5 knots). When not towing seismic survey gear or breaking ice, the Healy cruises at 22 km/hr (12 knots) and has a maximum speed of 31.5 km/hr (17 knots). It has a normal operating range

of about 29,650 km (18,423 mi) at 23.2 km/hr (12.5 knots).

*Seismic Source Description*

A portable MCS system will be installed on the Healy for this cruise. The source vessel will tow along predetermined lines one of two different airgun arrays (an 8-airgun array with a total discharge volume of 2,840 $in^3$ or a four GI gun array with a total discharge volume of 420 $in^3$), as well as a hydrophone streamer. Seismic pulses will be emitted at intervals of approximately 60 seconds and recorded at a 2 millisecond (ms) sampling rate. The 60-second spacing corresponds to a shot interval of approximately 120 m (394 ft) at the anticipated typical cruise speed.

As the airgun array is towed along the survey line, the towed hydrophone array receives the reflected signals and transfers the data to the onboard processing system. The SISs will store returning signals on an internal datalogger and also relay them in real-time to the Healy via a radio transmitter, where they will be recorded and processed.

The 8-airgun array will be configured as a four-G. gun cluster with a total discharge volume of 840 $in^3$ and a four Bolt airgun cluster with a total discharge volume of 2,000 $in^3$. The source output is from 246 to 253 dB re 1 μPa m. The two clusters are four meter apart, which will result in less downward directivity than is often present during seismic surveys and more horizontal propagation of sound. The clusters will be operated simultaneously for a total discharge volume of 2,840 $in^3$. The 4-GI gun array will be configured the same as the four G. gun portion of the 8-airgun array. The energy source (source level 239–245 dB re 1 μPa m) will be towed as close to the stern as possible to minimize ice interference. The 8-airgun array will be towed below a depressor bird at a depth of 7–20 m (23–66 ft) depending on ice conditions; the preferred depth is 8–10 m (26–33 ft).

The highest sound level measurable at any location in the water from the airgun arrays would be slightly less than the nominal source level because the actual source is a distributed source rather than a point source. The depth at which the source is towed has a major impact on the maximum near-field output, and on the shape of its frequency spectrum. In this case, the source is expected to be towed at a relatively deep depth of up to 9 m (30 ft).

The rms (root mean square) received sound levels that are used as impact criteria for marine mammals are not directly comparable to the peak or peak-to-peak values normally used to characterize source levels of airguns. The measurement units used to describe airgun sources, peak or peak-to-peak dB, are always higher than the rms dB referred to in much of the biological literature. A measured received level of 160 dB rms in the far field would typically correspond to a peak measurement of about 170 to 172 dB, and to a peak-to-peak measurement of about 176 to 178 decibels, as measured for the same pulse received at the same location (Greene 1997; McCauley *et al.* 1998, 2000). The precise difference between rms and peak or peak-to-peak values for a given pulse depends on the frequency content and duration of the pulse, among other factors. However, the rms level is always lower than the peak or peak-to-peak level for an airgun-type source. Additional discussion of the characteristics of airgun pulses is included in Appendix A of UTIG's application.

*Safety Radii Proposed by UTIG*

Received sound fields have been modeled by Lamont-Doherty Earth Observatory (L–DEO) for the 8-airgun and 4–GI gun arrays that will be used during this survey. For deep water, where most of the present project is to occur, the L–DEO model has been shown to be precautionary, *i.e.*, it tends to overestimate radii for 190, 180, 170, 160 dB re 1 μPa rms (Tolstoy *et al.* 2004a, b).

Predicted sound fields were modeled using sound exposure level (SEL) units (dB re 1 $\mu Pa^2$-s), because a model based on those units tends to produce more stable output when dealing with mixed-gun arrays like the one to be used during this survey. The predicted SEL values can be converted to rms received pressure levels, in dB re 1 μPa by adding approximately 15 dB to the SEL value (Greene 1997; McCauley *et al.* 1998, 2000). The rms pressure is an average over the pulse duration. This is the measure commonly used in studies of marine mammal reactions to airgun sounds. The rms level of a seismic pulse is typically about 10 dB less than its peak level.

Empirical data concerning 190, 180, 170, and 160 dB (rms) distances in deep and shallow water were acquired for various airgun array configurations during the acoustic verification study conducted by L–DEO in the northern Gulf of Mexico (Tolstoy *et al.* 2004a, b). The proposed Chukchi Sea survey track will occur mainly in shallow water with approximately 64 percent of trackline in water depths greater than 100 m, 21 percent in intermediate water depths (100–1,000 m), and 15 percent in water deeper than 1,000 meter.

The L–DEO model does not allow for bottom interactions, and thus, is most directly applicable to deep water and to relatively short ranges. In intermediate-depth water a precautionary 1.5× correction factor will be applied to the values predicted by L–DEO's model, as has been done in other recent NSF-sponsored seismic studies. In shallow water, larger precautionary factors derived from the empirical shallow-water measurements will be applied (see Table 1).

TABLE 1.—ESTIMATED DISTANCES TO WHICH SOUND LEVELS (dB RE 1μ Pa) MIGHT BE RECEIVED FROM VARIOUS GUN-TYPES USED DURING THE HEALY ARCTIC CRUISE

| Seismic source volume | Water depth | Estimated distances for received levels (m) | | | |
|---|---|---|---|---|---|
| | | 190 dB (shut-down criterion for pinnipeds) | 180 dB (shut-down criterion for cetaceans) | 170 dB (alternate behavioral har-assment criterion for delphinids & pinnipeds) | 160 dB (as-sumed onset of behavioral har-assment) |
| 105 $in^3$ GI gun | >1,000 m | 10 | 27 | 90 | 275 |
| | 100–1,000 m | 15 | 41 | 135 | 413 |
| | <100 m | 125 | 200 | 375 | 750 |
| 210 $in^3$ G. gun | >1,000 m | 20 | 78 | 222 | 698 |
| | 100–1,000 m | 30 | 117 | 333 | 1,047 |
| | <100 m | 250 | 578 | 925 | 1,904 |
| 420 $in^3$ (4-GI gun array) | >1,000 m | 75 | 246 | 771 | 2,441 |

TABLE 1.—ESTIMATED DISTANCES TO WHICH SOUND LEVELS (dB RE 1μ Pa) MIGHT BE RECEIVED FROM VARIOUS GUN-TYPES USED DURING THE HEALY ARCTIC CRUISE—Continued

| Seismic source volume | Water depth | Estimated distances for received levels (m) | | | |
|---|---|---|---|---|---|
| | | 190 dB (shut-down criterion for pinnipeds) | 180 dB (shut-down criterion for cetaceans) | 170 dB (alternate behavioral harassment criterion for delphinids & pinnipeds) | 160 dB (assumed onset of behavioral harassment) |
| | 100–1,000 m | 113 | 369 | 1,157 | 3,662 |
| | <100 m | 938 | 1,822 | 3,213 | 6,657 |
| 2,840 in³ (8-airgun array) | >1,000 m | 230 | 716 | 2,268 | 7,097 |
| | 100–1,000 m | *NA | *NA | *NA | *NA |
| | <100 m | *NA | *NA | *NA | *NA |

*The 8-airgun array will only be operated in deep (greater than 1,000 m) water for approximately 24 km at the northern extent of the Chukchi Sea portion of the survey.

The empirical data indicate that, for deep water (greater than 1,000 m), the L–DEO model tends to overestimate the received sound levels at a given distance (Tolstoy et al. 2004a, b). However, to be precautionary pending acquisition of additional empirical data, it is proposed that safety radii during airgun operations in deep water will be the values predicted by L–DEO's modeling, after conversion from SEL to rms (Table 1). The estimated 190 dB (rms) radii for 8-airgun and 4–GI gun arrays are 230 (745 ft) and 75 m (246 ft), respectively.

Empirical measurements were not taken for intermediate depths (100–1,000 m). On the expectation that results would be intermediate between those from shallow and deep water, a 1.5× correction factor is applied to the estimates provided by the model for deep water situations. This is the same factor that has been applied to the model estimates during L–DEO operations in intermediate-depth water from 2003 through early 2005. The assumed 190 dB (rms) radius in intermediate-depth water is 113 m for the 4–GI gun array (Table 1). The 8-airgun array will only be used in deep water, *i.e.*, greater than 1,000 m.

Empirical measurements were not made for the 4 GI guns that will be employed during the proposed survey in shallow water (less than 100 m). (The 8-airgun array will not be used in shallow water.) The empirical data on operations of two 105 in³ GI guns in shallow water showed that modeled values underestimated the distance to the actual 160 dB sound level radii in shallow water by a factor of approximately 3 (Tolstoy et al. 2004b). Sound level measurements for the 2 GI guns were not available for distances less than 0.5 km (.31 mi) from the source. The radii estimated here for the 4–GI guns operating in shallow water are derived from the L–DEO model, with the same adjustments for depth-related differences between modeled and measured sound levels as were used for 2–GI guns in earlier applications. Correction factors for the different sound level radii are approximately 12× the model estimate for the 190 dB radius in shallow water, approximately 7× for the 180 dB radius, and approximately 4× for the 170 dB radius (Tolstoy 2004a, b). Thus, the 190 dB radius in shallow water is assumed to be 938 m (3,077 ft) for the 4–GI gun array (Table 1).

Pursuant to the mitigation measures of this proposed authorization, the airguns will be powered down (or shut-down if necessary) immediately when walrus or polar bears are detected within or about to enter the appropriate radii. The 190 dB safety criteria are consistent with guidelines listed for pinnipeds, by the National Marine Fisheries Service (NMFS) (2000) and other guidance by NMFS. The UTIG will conservatively apply the same 190 dB criterion to polar bears in water in this IHA request. Although sound effects on the walrus and polar bears have not been studied, the 190 dB criterion was selected because walrus, which are pinnipeds, are expected to react similarly to other pinnipeds. Polar bears normally swim with their heads above the surface and are likely to be less sensitive than pinnipeds to human-caused underwater sounds.

*Other Acoustic Devices*

Along with the airgun operations, additional acoustical systems will be operated during much of or the entire cruise. The ocean floor will be mapped with a multibeam sonar, and a sub-bottom profiler will be used. These two systems are commonly operated simultaneously with an airgun system. An acoustic Doppler current profiler will also be used through the course of the project.

A SeaBeam 2112 multibeam 12 kHz bathymetric sonar system will be used on the Healy, with a maximum source output of 237 dB re 1 μPa at one meter. The transmit frequency is a very narrow band, less than 200 Hz, and centered at 12 kHz. Pulse lengths range from less than one ms to 12 ms. The transmit interval ranges from 1.5 to 20 seconds, depending on the water depth, and is longer in deeper water. The SeaBeam system consists of a set of underhull projectors and hydrophones. The transmitted beam is narrow (approximately 2°) in the fore-aft direction but broad (approximately 132°) in the cross-track direction. The system combines this transmitted beam with the input from an array of receiving hydrophones oriented perpendicular to the array of source transducers, and calculates bathymetric data (sea floor depth and some indications about the character of the seafloor) with an effective 2° by 2° footprint on the seafloor. The SeaBeam 2112 system on the Healy produces a useable swath width of slightly more than 2 times the water depth. This is narrower than normal because of the ice-protection features incorporated into the system on the Healy.

The Knudsen 320BR will provide information on sedimentary layering, down to between 20 and 70 m, depending on bottom type and slope. It will be operated with the multibeam bathymetric sonar system that will simultaneously map the bottom topography.

The Knudsen 320BR sub-bottom profiler is a dual-frequency system with operating frequencies of 3.5 and 12 kHz:

*Low frequency*—Maximum output power into the transducer array, as wired on the Healy (125 ohms), at 3.5 kHz is approximately 6,000 watts (electrical), which results in a maximum source level of 221 dB re 1 μPa at 1 m downward. Pulse lengths range from 1.5

to 24 ms with a bandwidth of 3 kHz (FM sweep from 3 kHz to 6 kHz). The repetition rate is range dependent, but the maximum is a 1-percent duty cycle. Typical repetition rate is between one-half second (in shallow water) to 8 s in deep water.

*High frequency*—The Knudsen 320BR is capable of operating at 12 kHz, but the higher frequency is rarely used because it interferes with the SeaBeam 2112 multibeam sonar, which also operates at 12 kHz. The calculated maximum source level (downward) is 215 dB re 1 μPa at 1 m (3.28 ft). The pulse duration is typically 1.5 to 5 ms with the same limitations and typical characteristics as the low-frequency channel.

A single 12 kHz transducer and one 3.5 kHz, low-frequency (sub-bottom) transducer array, consisting of 16 elements in a 4-by-4 array will be used for the Knudsen 320BR. The 12 kHz transducer (TC–12/34) emits a conical beam with a width of 30°, and the 3.5 kHz transducer (TR109) emits a conical beam with a width of 26°.

The 150 kHz acoustic Doppler current profiler (ADCP™) has a minimum ping rate of 0.65 ms. There are four beam sectors, and each beamwidth is 3°. The pointing angle for each beam is 30° off from vertical with one each to port, starboard, forward, and aft. The four beams do not overlap. The 150 kHz ADCP™'s maximum depth range is 300 m.

The Ocean Surveyor 75 is an ADCP™ operating at a frequency of 75 kHz, producing a ping every 1.4 s. The system is a four-beam phased array with a beam angle of 30°. Each beam has a width of 4°, and there is no overlap. Maximum output power is 1 kW with a maximum depth range of 700 m (2,297 ft).

*Plan of Cooperation*

The UTIG will consult with representatives of the communities along the Chukchi Sea coast to identify any areas or issues of potential conflict. These communities are Point Hope, Point Lay, Wainwright, and Barrow. A Plan of Cooperation (POC) for the 2006 seismic survey in the Chukchi Sea will be developed if identified as warranted during these consultations and determined to be necessary by the Service. The POC would cover the phases of UTIG's seismic surveys planned in the Chukchi Sea when appropriate for the 2006 project. The purpose of the POC will be to identify measures that will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses, and to ensure good communication between the project scientists and the native communities along the coast.

Subsequent meetings with community representatives and any other parties to the POC will be held as necessary to negotiate the terms of the plan and to coordinate the planned seismic survey operation with subsistence hunting. The POC may address: Operational agreement and communications procedures; where and when the agreement becomes effective; the general communications scheme; onboard observers; conflict avoidance; seasonally sensitive areas; vessel navigation; air navigation; marine mammal monitoring activities; measures to avoid impacts to marine mammals; measures to avoid conflicts in areas of active hunting; emergency assistance; and the dispute resolution process.

In addition, one (or more) Alaska Native knowledgeable about the mammals and fish of the area is expected to be included as a member of the observer team aboard the Healy. Although the primary responsibilities encompass implementing the monitoring and mitigation requirements, duties will also include acting as a liaison with hunters and fishers if they are encountered at sea. In the unlikely event subsistence hunting or fishing is occurring within 5 km (3 mi) of the Healy's trackline, the airgun operations will be suspended until the Healy is approximately 5 km (3 mi) away.

**Description of Habitat and Marine Mammals Affected by the Activity**

A detailed description of the Chukchi Sea ecosystem and the associated marine mammals can be found in several documents (Corps of Engineers 1999; NMFS 1999; Minerals Management Service (MMS) 2006, 1996, and 1992). MMS' Programmatic Environmental Assessment (PEA)-Arctic Ocean Outer Continental Shelf Seismic Surveys 2006—may be viewed at: *http://www.mms.gov/alaska*.

The marine mammals that occur in the proposed survey area belong to three taxonomic groups: odontocetes (toothed cetaceans, such as beluga whale and narwhal whale), mysticetes (baleen whales), and carnivora (pinnipeds and polar bears). Cetaceans and pinnipeds, with the exception of walrus, are managed by the NMFS and are being addressed by that agency (71 FR 27997; May 15, 2006). Pacific walrus and polar bear, which are managed by the Service, are the subject of this proposed IHA.

*Pacific Walrus*

Concentrations of walrus might be encountered in certain areas, depending on the location of the edge of the pack ice relative to their favored shallow-water foraging habitat. There are two recognized subspecies of walrus: the Pacific walrus (*Odobenus rosmarus divergens*) and Atlantic walrus (*O. r. rosmarus*). Only the Pacific subspecies is potentially within the planned seismic survey study area.

The Pacific walrus is represented by a single stock of animals that inhabits the shallow continental shelf waters of the Bering and Chukchi Seas, occasionally moving into the East Siberian and Beaufort Seas. The population ranges across the international boundaries of the United States and Russia, and both nations share common interests with respect to the conservation and management of this species.

Walrus are migratory, moving south with the advancing ice in autumn and north as the ice recedes in spring (Fay 1981). In the summer, most of the population of Pacific walrus moves to the Chukchi Sea, but several thousands aggregate in the Gulf of Anadyr and in Bristol Bay (Angliss and Lodge 2004). Limited numbers of walrus inhabit the Beaufort Sea during the open water season, and they are considered extralimital east of Point Barrow (Sease and Chapman 1988).

The northeast Chukchi Sea west of Barrow is the northeastern extent of the main summer range of the walrus, and only a few are seen farther east in the Beaufort Sea (e.g., Harwood et al. 2005). Walrus observed in the Beaufort Sea have typically been lone individuals. The reported subsistence harvest of walrus by Barrow hunters for the 5-year period of 1994–1998 was 99 walrus (USDI 2000a). Most of these were harvested west of Point Barrow. In addition, between 1988 and 1998, Kaktovik hunters harvested one walrus (USDI 2000b).

Walrus are most commonly found near the southern margins of the pack ice as opposed to deep in the pack where few open leads (polynyas) exist to afford access to the sea for foraging (Estes and Gilbert 1978; Gilbert 1989; Fay 1982). Walrus are not typically found in areas of greater than 80 percent ice cover (Fay 1982). Ice serves as an important mobile platform, floating the walrus on to new foraging habitat and providing a place to rest and nurse their young.

This close relationship to the ice largely determines walrus distribution and the timing of their migrations. As the pack ice breaks up in the Bering Sea and recedes northward in May and June, a majority of subadults, females, and calves migrate with it, either by

swimming or resting on drifting ice sheets. Many males will choose to stay in the Bering Sea for the entire year, with concentrations near Saint Lawrence Island and further south in Bristol Bay. Two northward migration pathways are apparent, either toward the eastern Chukchi Sea near Barrow or northwestward toward Wrangel Island. By late June to early July, concentrations of walrus migrating northeastward spread along the Alaska coast congregating within 200 km of the shore from Saint Lawrence Island to southwest of Barrow. In August, largely dependent on the retreat of the pack ice, walrus are found further offshore with principal concentrations to the northwest of Barrow. By October, a reverse migration occurs out of the Chukchi Sea, with animals swimming ahead of the developing pack ice, as it is too weak to support them (Fay 1982).

Estimates of the pre-exploitation population of the Pacific walrus range from 200,000 to 400,000 animals (USFWS 2000a). Over the past 150 years, the population has been depleted by overharvesting and then periodically allowed to recover (Fay et al. 1989). An aerial survey flown in 1990 produced a population estimate of 201,039 animals; however, large confidence intervals associated with that estimate precluded any conclusions concerning population trend (Gilbert et al. 1992). The most current minimum population estimate is 188,316 walrus (USFWS 2000a). This estimate is conservative, because a portion of the Chukchi Sea was not surveyed due to lack of ice. The Service and U.S. Geological Survey, in partnership with Russian scientists, will conduct a rangewide survey to estimate population size. The results of these survey efforts should be available in 2007 (USFWS 2006).

Pacific walrus feed primarily on benthic invertebrates, occasionally fish and cephalopods, and more rarely, some adult males may prey on other pinnipeds (reviewed in Riedman 1990). Walrus typically feed in depths of 10 to 50 m (Vibe 1950; Fay 1982). Though the deepest dive recorded for a walrus was 133 m, they are more likely to be found in depths of 80 m or less in coastal or continental shelf habitats, where the clams and other mollusks that walrus prefer are found (Fay 1982; Fay and Burns 1988; Reeves et al. 2002). In a recent study in Bristol Bay, 98 percent of satellite locations of tagged walrus were foraging in water depths of 60 m or less (Chadwick and Hills 2005).

Polar bears (*Ursus maritimus*) are known to prey on walrus calves, and killer whales (*Orcinus orca*) have been known to take all age classes of animals. Predation levels are thought to be highest near terrestrial haulout sites where large aggregations of walrus can be found; however, few observations exist for off-shore environs.

Pacific walrus have been hunted by coastal Natives in Alaska and Chukotka for thousands of years. Exploitation of walrus by Europeans has also occurred in varying degrees since first contact. Presently, walrus hunting in Alaska and Chukotka is restricted to meet the subsistence needs of aboriginal peoples. The Service, in partnership with the Eskimo Walrus Commission (EWC) and the Association of Traditional Marine Mammal Hunters of Chukotka, administers subsistence harvest monitoring programs in Alaska and Chukotka.

Intraspecific trauma is also a known source of walrus injury and mortality. Disturbance events can cause walrus to stampede into the water and have been known to result in injuries and mortalities. The risk of stampede-related injuries increases with the number of animals hauled out. Calves and young animals at the perimeter of these herds are particularly vulnerable to trampling injuries.

Most (64 percent or 303 km) of the proposed Chukchi Sea seismic work will take place in water less than 100 m deep. Of those 303 km, 220 km will be surveyed in water greater then 60 m, where walrus prefer to forage (Chadwick and Hills 2005). During a survey through open water in the northern Chukchi Sea in early August of 2005, only three walrus were sighted south of 72.8° N in water 47 to 69 m deep (Haley and Ireland 2006).

The probability of encountering Pacific walrus along the proposed survey line in the Chukchi Sea will depend on the location of the southern margin of the pack ice and the timing of spring break-up. If the Healy crosses the margin when the ice margin is close to depths where walrus prefer to feed, it is likely that walrus will be encountered.

*Polar Bear*

Polar bears have a circumpolar distribution throughout the northern hemisphere (Amstrup et al. 1986) and occur in relatively low densities throughout most ice-covered areas (DeMaster and Stirling 1981). Polar bears are divided into six major populations and many sub-populations based on mark-and-recapture studies (Lentfer 1983), radio telemetry studies (Amstrup and Gardner 1994), and morpho-metrics (Manning 1971; Wilson 1976). Polar bears are common in the Chukchi and Beaufort Seas north of Alaska throughout the year, including the late summer period (Harwood et al. 2005). They also occur throughout the East Siberian, Laptev, and Kara Seas of Russia and the Barent's Sea of northern Europe. They are found in the northern part of the Greenland Sea, and are common in Baffin Bay, which separates Canada and Greenland, as well as through most of the Canadian Arctic Archipelago.

In Alaska, they have been observed as far south in the eastern Bering Sea as St. Matthew Island and the Pribilof Islands, but they are most commonly found within 180 miles of the Alaskan coast of the Chukchi and Beaufort Seas, from the Bering Strait to the Canadian border. Two stocks occur in Alaska: (1) The Chukchi/Bering Seas stock; and (2) the Southern Beaufort Sea stock. The Chukchi/Bering Seas stock is defined as polar bears inhabiting the area as far west as the eastern portion of the Eastern Siberian Sea, as far east as Point Barrow, and extending into the Bering Sea, with its southern boundary determined by the extent of annual ice.

The world population estimate of polar bears ranges from 20,000–25,000 individuals (ICUN, in prep). Amstrup (1995) estimated the minimum population of polar bears for the Beaufort Sea to be approximately 1,500 to 1,800 individuals, with an average density of about one bear per 38.6 to 77.2 square miles (100 to 200 $km^2$). Previous population estimates have put the Chukchi/Bering Seas population at 2,000 to 5,000; however, there are no reliable data on the population status of polar bears in the Bering/Chukchi Seas. An estimate was derived by subtracting the total estimated Alaska polar bear population from the Beaufort Sea population, thus yielding an estimate of 1,200–3,200 animals (Amstrup 1995).

The Alaskan polar bear population is considered to be stable or increasing slightly (USFWS 2000b, c). Polar bear populations located in the Southern Beaufort Sea have been estimated to have an annual growth rate of 2.2 to 2.4 percent with an annual harvest of only 1.9 percent (Amstrup 1995). The Southern Beaufort Sea population ranges from the Baillie Islands, Canada, in the east to Point Hope, Alaska, in the west. The Chukchi/Bering Seas population ranges from Point Barrow, Alaska, in the east to the Eastern Siberian Sea in the west. These two populations overlap between Point Hope and Point Barrow, Alaska, centered near Point Lay (Amstrup 1995). Both of these populations have been extensively studied by tracking the movement of tagged females (Garner et al. 1990). Radio-tracking studies indicate significant movement within

populations and occasional movement between populations (Garner et al. 1990; Amstrup 1995).

Although insufficient data exist to accurately quantify polar bear denning along the Alaskan Chukchi Sea coast, dens in the area are less concentrated than for other areas in the Arctic. The majority of denning of Chukchi Sea polar bears occurs on Wrangel Island, Herald Island, and certain locations on the northern Chukotka coast. Females without dependent cubs breed in the spring, and pregnant females enter maternity dens by late November; the young are usually born in late December or early January. Female bears can be quite sensitive to disturbances during this denning period.

Greater than 90 percent of a polar bear's diet is ringed (*Phoca hispida*) and bearded (*Erignathus barbatus*) seals; walrus calves are hunted occasionally. Polar bears hunt in areas where there are high concentrations of ringed and bearded seals (Larsen 1985; Stirling and McEwan 1975). This includes areas of land-fast ice, as well as moving pack ice. They hunt along leads and other areas of open water, or by waiting at a breathing hole, or by breaking through the roof of a seal's lair. Lairs are excavated in snow drifts on top of the ice. Bears also stalk seals in the spring when they haul out on the ice in warm weather. The relationship between ice type and bear distribution is as yet unknown, but it is suspected to be related to seal availability. Polar bears are opportunistic feeders and feed on a variety of foods and carcasses, including other marine mammals, reindeer, arctic cod, and geese and their eggs (Smith 1985; Jefferson et al. 1993; Smith and Hill 1996; Derocher et al. 2000). Polar bears are also known to eat nonfood items including styrofoam, plastic, antifreeze, and hydraulic and lubricating fluids.

The most significant source of mortality is man. Before the MMPA was passed, polar bears were taken by sport hunters and residents. Between 1925 and 1972, the mean reported kill was 186 bears per year. Since 1972, only Alaska Natives have been allowed to hunt polar bears for their subsistence uses or for handicraft and clothing items for sale. From 1980 to 2005, the total annual harvest for Alaska averaged 101 bears: 64 percent from the Chukchi Sea and 36 percent from the Beaufort Sea.

MMS bowhead whale aerial surveys since 1979 have documented an increase, starting in 1992, in the proportion of polar bears associated with land vs. sea-ice in the fall season (Monnett *et al.* 2005). In 2004, a large number of bears were observed swimming more than 2 km offshore, and a number of polar bear carcasses were subsequently observed offshore. Monnett *et al.* (2005) suggest that, as the pack ice edge moves northward, drowning deaths of polar bears may increase. The number of polar bears encountered in open water may, therefore, be slightly higher than previously reported.

Polar bears typically range as far north as 88° N (Ray 1971; Durner and Amstrup 1995); at about 88° N their population thins dramatically. However, polar bears have been observed across the Arctic, including close to the North Pole (van Meurs and Splettstoesser 2003). Stirling (1990) reported that, of 181 sightings of bears, only 3 were above 82° N. Three polar bears were observed from the Healy in the northern Chukchi Sea during a survey through this area in August of 2005 (Haley and Ireland 2006). These three sightings occurred along 2,401 km of observed trackline over 14 days between 70° N and 81° N.

Historically, polar bears have preferred the pack ice over coastal areas during the summer (Stirling 1988; Amstrup 1995). However, since the late 1980s, polar bears have been observed in greater numbers near coastal areas during late summer and fall in the central Beaufort Sea (Schliebe *et al.* 2004). This recent observation of bear behavior may be related to the 30-year moratorium on polar bear hunting and the recent success of subsistence whale harvests, the scraps of which appear to have become a reliable, annual food source for polar bears (Schliebe *et al.* 2004). The Healy is likely to encounter polar bears when it enters the pack ice, and small numbers of bears could be encountered anywhere along the entire trackline, as well as in the course of coring activities.

## Potential Impacts of Activities on Pacific Walrus and Polar Bear

### *Potential Effects of Airguns*

The effects of sounds from airguns might include one or more of the following: noise, behavioral disturbance, and, at least in theory, temporary or permanent hearing impairment, or non-auditory physical effects (Richardson *et al.* 1995). Because the airgun sources planned for use during the present project involve only 4 or 8 airguns, the effects are anticipated to be less than would be the case with a large array of airguns. It is very unlikely that there would be any cases of temporary or especially permanent hearing impairment, or non-auditory physical effects. Also, behavioral disturbance is expected to be limited to relatively short distances.

### *Species Perception of Sound and Masking Effects*

The underwater hearing of a walrus has been measured at frequencies from 13 Hz to 1,200 Hz. The range of best hearing was from 1 to 12 kHz, with maximum sensitivity (67 dB re 1 μPa) occurring at 12 kHz (Kastelein *et al.* 2002). Most of the energy in the sound pulses emitted by airgun arrays is at low frequencies, with the strongest spectrum levels below 200 Hz and considerably lower spectrum levels above 1,000 Hz. These low frequencies are not generally used by Pacific walrus. Masking effects of pulsed sound (even from large arrays of airguns) on Pacific walrus calls and other natural sounds are expected to be limited, and given the intermittent nature of these seismic pulses, masking effects are expected to be negligible. Any sound levels received by polar bears in the water would be attenuated because polar bears generally swim with their heads out of the water or at the surface and polar bears do not dive much below 4.5 m. Received levels of airgun sounds are reduced near the surface because of the pressure release effect at the water's surface (Greene and Richardson 1988; Richardson *et al.* 1995). Walrus and polar bears on the ice would be unaffected by underwater sound.

### *Disturbance Reactions*

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Reactions to sound depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors. If a marine mammal does react briefly to a disturbance by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or the species as a whole. Alternatively, if a sound source displaces marine mammals from an important area for a prolonged period, impacts on the animals are most likely significant.

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers; however, numerous studies have shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the

hearing sensitivity of that mammal group.

Seismic operations are expected to create significantly more noise than general vessel and icebreaker traffic; however, data specific to the potential response of walrus to seismic operations is limited. Therefore, we rely on observations of walrus and other pinniped reactions to similar activities and apply these conservatively to determine expected reactions. Potential effects of prolonged or repeated disturbances to Pacific walrus include displacement from preferred feeding areas, increased stress levels, increased energy expenditure, masking of communication, and impairment of thermoregulation of neonates that spend too much time in the water. There are some uncertainties in predicting the quantity and types of impacts of noise on marine mammals; however, appropriate mitigation measures minimize the potential for displacement.

The response of walrus to sound sources may be either avoidance or tolerance. It is possible that noises produced by the icebreaking or seismic activities may cause avoidance behavior in walrus. Walrus on ice have been observed to become alert and dive into the water when icebreakers passed over 2 km (1.2 mi) away (Fay *et al.* 1984; Brueggeman *et al.* 1990, 1991, 1992). In addition, Brueggeman *et al.* (1990) suggest that walrus on ice floes may avoid icebreakers by 10 to 15 km (6.2 to 9.3 mi). Anecdotal observations by walrus hunters and researchers suggest that males tend to be more tolerant of disturbances than females and individuals tend to be more tolerant than groups. Females with dependent calves are considered least tolerant of disturbances.

Pacific walrus are not likely to show a strong avoidance reaction to the medium-sized airgun sources that will be used. Studies in the Beaufort Sea based on visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds in general, and only slight (if any) changes in behavior. These studies have shown that pinnipeds frequently do not avoid the area within a few hundred meters of operating airgun arrays (*e.g.*, Miller *et al.* 2005, Harris *et al.* 2001). However, visual studies have their limitations, and initial telemetry work suggests that avoidance and other behavioral reactions to small airgun sources may at times be stronger than evident to date from visual studies of pinniped reactions to airguns (Thompson *et al.* 1998). Even if reactions of the species occurring in the present study area are as strong as those evident in the telemetry study, reactions are expected to be confined to relatively small distances and durations, with no long-term effects on pinniped individuals or populations.

Quantitative research on the sensitivity of walrus to noise has been limited because no audiograms (a test to determine the range of frequencies and minimum hearing threshold) have been done on walrus. Hearing range is assumed to be within the 13 Hz and 1,200 Hz range of their own vocalizations, with maximum hearing sensitivity in the 1 to 12 kHz range (Kastelein *et al.* 2002). Walrus hunters and researchers have also noted that walrus tend to react to the presence of humans and machines at greater distances from upwind approaches than from downwind approaches, suggesting that odor may also be a stimulus for a flight response. The visual acuity of walrus is thought to be less than for other species of pinnipeds. The reaction of walrus to vessels is highly dependent on distance, vessel speed, and possibly vessel smell (Richardson *et al.* 1995; Fay *et al.* 1984), as well as previous exposure to hunting (D.G. Roseneau In Malme *et al.* 1989). Walrus in the water appear to be less readily disturbed by vessels than walrus hauled out on land or ice (Fay *et al.* 1984).

Seismic activities may affect polar bears in a number of ways. Seismic ships and icebreakers may be physical obstructions to polar bear movements, although these impacts are of short-term and localized effect. Noise, sights, and smells produced by exploration activities may repel or attract bears, either disrupting their natural behavior or endangering them by threatening the safety of seismic personnel.

In the Chukchi Sea, during the open-water season, polar bears spend the majority of their time on pack ice, which limits the chance of impacts from seismic activities. Occasionally, polar bears can be found in open water, miles from the ice edge or ice floes.

Vessel traffic could result in short-term behavioral disturbance to polar bears. During the open-water season, most polar bears remain offshore in the pack ice and are not typically present in the area of vessel traffic. If a ship is surrounded by ice, it is more likely that curious bears will approach. Any on-ice activities create the opportunity for bear-human interactions. In relatively ice-free waters, polar bears are less likely to approach ships, although bears may be encountered on ice floes.

Ships and icebreakers may act as physical obstructions in the spring if they transit through a restricted lead system, such as the Chukchi Polynya. Polynyas are important habitat for marine mammals, which makes them important hunting areas for polar bears. Ship traffic in these ice conditions may intercept or alter movements of bears. A similar situation could occur in the fall when the pack ice begins to expand.

Little research has been conducted on the effects of noise on polar bears. Polar bears are curious and tend to investigate novel sights, smells, and possibly noises. Noise produced by seismic activities could elicit several different responses in polar bears. It may act as a deterrent to bears entering an area of operation, or potentially attract curious bears. Underwater noises are probably not a relevant form of disturbance because bears spend most of their time on the ice or at the surface of the water.

*Hearing Impairment and Other Physical Effects*

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to sequences of airgun pulses. Currently, the Service does not have specific guidelines regarding ''allowable'' received sound levels for either walrus or polar bears; however, we have adopted the NMFS criterion for Pacific walrus that pinnipeds should not be exposed to impulsive sounds greater or equal to 190 dB re 1 μPa (rms) (NMFS 2000). As a conservative measure, this criterion is also applied to polar bear. This criterion defines the safety (shut-down) radii planned for the proposed seismic survey.

Several aspects of the planned monitoring and mitigation measures for this project are designed to detect animals occurring near the airguns (and multi-beam bathymetric sonar), and to avoid exposing them to sound pulses that might cause hearing impairment. Marine mammal observers will be on watch during seismic operations. In addition, walrus and polar bears are likely to show some avoidance of the area with high received levels of airgun sound. In those cases, the avoidance responses of the animals themselves will reduce or (most likely) avoid any possibility of hearing impairment.

*Temporary Threshold Shift (TTS):* TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. For sound

exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. In Pacific walrus, TTS thresholds associated with exposure to brief pulses (single or multiple) of underwater sound have not been measured.

A marine mammal within a radius of 100 m around a typical large array of operating airguns might be exposed to a few seismic pulses with levels of 205 dB, and possibly more pulses if the mammal moved with the seismic vessel. However, based on the implementation of the mitigation measures required by this proposed authorization, several of the considerations that are relevant in assessing the impact of typical seismic surveys with arrays of airguns are not directly applicable here. These considerations include the effects on polar bear and walrus of:

Ramping up (soft start), which is standard operational protocol during startup of large airgun arrays in many jurisdictions. Ramping up involves starting the airguns in sequence, usually commencing with a single airgun and gradually adding additional airguns. This practice, which will be employed when the airgun array is operated, requires that the safety radius be visible for 30 minutes prior to the start of operations and that no walrus or polar bear has been sighted within or near the safety radius during the final 15 minutes, thereby avoiding exposure of walrus and polar bears to potential effects of ramping up.

Longer term exposure to airgun pulses at a sufficiently high level for a sufficiently long period to cause more than mild TTS. Because the mitigation measures require that the operation of airguns either shut-down or power-down (which procedure is followed depends on the circumstances as described in the section on Mitigation) if a walrus or polar bear approaches or nears the safety radius, long term exposure to airgun pulses at high levels will be avoided.

The predicted 190 dB distances for the airguns operated by UTIG vary with water depth. They are estimated to be 230 m in deep water for the 8-airgun system, and 75 m in deep water for the 4–GI gun system. In intermediate depths, this distance is predicted to increase to 113 m for the 4–GI gun system. The 8-airgun array will only be used in deep water (greater than 1,000 m). The predicted 190 dB distance for the 4–GI gun system in shallow water is 938 m (Table 1). Shallow water (less than 100 m) will occur along 303 km (64 percent) of the planned trackline in the Chukchi Sea. Those sound levels are not considered to be the levels above which TTS might occur.

P*ermanent Threshold Shift (PTS):* When PTS occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness; in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges.

There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. However, given the possibility that mammals close to an airgun array might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. Relationships between TTS and PTS thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to the strong sound pulses with very rapid rise time.

It is unlikely that walrus or polar bears could receive sounds strong enough (and over a sufficient duration) to cause permanent hearing impairment during a project employing the medium-sized airgun sources planned here. In the proposed project, walrus or bears are unlikely to be exposed to received levels of seismic pulses strong enough to cause TTS, as they would probably need to be within 100 to 200 m of the airguns for that to occur. Given the higher level of sound necessary to cause PTS, it is even less likely that PTS could occur. In fact, even the levels immediately adjacent to the airgun may not be sufficient to induce PTS, especially because an animal would not be exposed to more than one strong pulse unless it swam immediately alongside the airgun for a period longer than the inter-pulse interval. The planned monitoring and mitigation measures, including visual monitoring, power-downs, and shut-downs of the airguns when walrus and bears are seen within the safety radii, will minimize the already minimal probability of exposure of animals to sounds strong enough to induce PTS.

*Non-auditory Physiological Effects:* Non-auditory physiological effects or injuries that theoretically might occur in Pacific walrus or polar bears exposed to strong underwater sound include stress, neurological effects, and other types of organ or tissue damage. However, studies examining such effects are very limited. If any such effects do occur, they probably would be limited to unusual situations when animals might be exposed at close range for unusually long periods. It is doubtful that any single walrus or bear would be exposed to strong seismic sounds long enough for significant physiological stress to develop. That is especially so in the case of the proposed project where the airgun configuration is moderately sized, the ship is moving at 3 to 4 knots (5.5 to 7.4 km/hr), and for the most part, the tracklines will not double back through the same area.

In general, little is known about the potential for seismic survey sounds to cause auditory impairment or other physical effects in Pacific walrus or polar bears. Available data suggest that such effects, if they occur at all, would be limited to short distances and probably to projects involving large arrays of airguns. Marine mammals that show behavioral avoidance of seismic vessels, including some pinnipeds, are especially unlikely to incur auditory impairment or other physical effects. Also, the planned monitoring and mitigation measures include shut-downs of the airguns, which will reduce any such effects that might otherwise occur.

Pacific walrus or polar bears close to underwater detonations of high explosives can be killed or severely injured, and auditory organs would be especially susceptible to injury (Ketten *et al.* 1993; Ketten 1995). However, airgun pulses are less energetic and have slower rise times, and there is no evidence that they can cause serious injury, or death, even in the case of large airgun arrays.

*Potential Effects of Bathymetric Sonar Signals*

A SeaBeam 2112 multibeam 12 kHz bathymetric sonar system will be operated from the source vessel essentially continuously during the planned study. Sounds from the multibeam are very short pulses, depending on water depth. Most of the energy in the sound pulses emitted by the multibeam is at moderately high frequencies, centered at 12 kHz. The beam is narrow (approximately 2°) in fore-aft extent and wide (approximately 130°) in the cross-track extent.

The area of possible influence of the bathymetric sonar is a narrow band oriented in the cross-track direction below the source vessel. Walrus or polar bears that encounter the bathymetric

sonar at close range are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam, and will receive only small amounts of pulse energy because of the short pulses. In assessing the possible impacts of a similar multibeam system (the 15.5 kHz Atlas Hydrosweep multibeam bathymetric sonar), Boebel *et al.* (2004) noted that the critical sound pressure level at which TTS may occur is 203.2 dB re 1 μPa (rms). The critical region included an area of 43 m (141 ft) in depth, 46 m (151 ft) wide athwartship, and 1 m (3.3 ft) fore-and-aft (Boebel *et al.* 2004). In the more distant parts of that (small) critical region, only slight TTS could potentially be incurred.

Walrus communications will not be masked appreciably by the bathymetric sonar signals given the low duty cycle of the sonar and the brief period when an individual mammal is likely to be within the sonar beam. Furthermore, the 12 kHz multibeam will not overlap with the predominant frequencies in walrus calls, further reducing any potential for masking in that group.

We are not aware of any data on the reactions of Pacific walrus to sonar sounds at frequencies similar to those of the multibeam sonar (12 kHz). Based on observations of other pinniped responses to other types of pulsed sounds, and the likely brevity of exposure to the bathymetric sonar sounds, Pacific walrus reactions to the sonar sounds are expected to be limited to startle or otherwise brief responses of no lasting consequence to the animals.

Polar bears would not occur below the Healy or elsewhere at sufficient depth to be in the main beam of the bathymetric sonar, so would not be affected by the sonar sounds.

*Potential Effects of Sub-bottom Profiler Signals*

A Knudsen 320BR sub-bottom profiler will be operated from the source vessel at nearly all times during the planned study. The Knudsen 320BR produces sound pulses with lengths of up to 24 ms every 0.5 seconds to approximately 8 seconds, depending on water depth. The energy in the sound pulses emitted by this sub-bottom profiler is at mid-to moderately high frequency, depending on whether the 3.5 or 12 kHz transducer is operating. The conical beam-width is either 26°, for the 3.5 kHz transducer, or 30°, for the 12 kHz transducer, and is directed downward. Source levels for the Knudsen 320 operating at 3.5 and 12 kHz have been measured as a maximum of 221 and 215 dB re 1 μPa m, respectively. Received levels would diminish rapidly with increasing depth.

Walrus communications will not be masked appreciably by the sub-bottom profiler signals given its relatively low duty cycle, directionality, and the brief period when an individual animal is likely to be within its beam. The 12 kHz transducer for the Knudsen 320BR will rarely be used because its frequency interferes with the multibeam sonar; however, neither the 3.5 kHz nor the 12 kHz sonar signals overlap with the predominant frequencies in walrus calls, which would avoid significant masking.

The pulsed signals from the Knudsen 320BR while the 3.5 kHz transducer is operating are weaker than those from the bathymetric sonar and those from the proposed 4-or 8-airgun arrays. Therefore, behavioral responses are not expected unless an animal is close to the source. Exposure would be brief and any response would likely be limited and have no lasting consequence to the animals.

Source frequencies of the Knudsen 320BR are much lower than those of the bathymetric sonar when the 3.5 kHz transducer is engaged. When the 12.5 kHz transducer is operating (which will be seldom because it interferes with the SeaBeam), the source frequency is similar to that of the bathymetric sonar. As with the SeaBeam, the pulses are brief and concentrated in a downward beam. An animal would be in the beam of the sub-bottom profiler only briefly, reducing its received sound energy. Thus, it is unlikely that the sub-bottom profiler produces pulse levels strong enough to cause hearing impairment or other physical injuries even in a walrus that is (briefly) in a position near the source.

Polar bears would not occur below the Healy or elsewhere at sufficient depth to be in the main beam of the sub-bottom profiler, so would not be affected by the sonar sounds.

The sub-bottom profiler is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the animal would be close enough for there to be any possibility of effects from the sub-bottom profiler. In the case of Pacific walrus and polar bears that do not avoid the approaching vessel and its various sound sources, mitigation measures that would be applied to minimize effects of the higher-power sources would further reduce or eliminate any minor effects of the sub-bottom profiler.

*Effects of Helicopter Activities*

Collection of seismic refraction data requires the deployment of hydrophones at great distances from the source vessel. In order to accomplish this in the ice-covered waters, the science party plans to deploy SISs along seismic lines in front of the Healy and then retrieve them off the ice once the vessel has passed. Vessel-based helicopters will be used to shuttle SISs along seismic track lines. Deployment and recovery of SISs every 10 to 15 km (6.2 to 9.3 mi) along the track line and as far as 120 km (75 mi) ahead or behind the vessel will require as many as 24 on-ice landings per 24-hr period during seismic shooting.

Levels and duration of sounds received underwater from a passing helicopter are a function of the type of helicopter used, orientation of the helicopter, the depth of the marine mammal, and water depth. A civilian helicopter service will be providing air support for this project; however, the type of helicopter has not been determined. Helicopter sounds are detectable underwater at greater distances when the receiver is at shallow depths. Generally, sound levels received underwater decrease as the altitude of the helicopter increases (Richardson et al. 1995). Helicopter sounds are audible for much greater distances in air than in water.

Few systematic studies of Pacific walrus reactions to aircraft overflights have been completed. Documented reactions of pinnipeds range from simply becoming alert and raising the head to escape behavior such as hauled out animals rushing to the water. Disturbances caused by low-flying air traffic may cause walrus groups to abandon land or ice haulouts or to stampede. Reactions of walrus to aircraft vary with range, aircraft type, and flight pattern, as well as walrus age, sex, and group size. Fixed-winged aircraft are less likely to elicit a response than helicopter overflights. Adult females, calves, and immature walrus tend to be more sensitive to aircraft disturbance (Loughrey 1959; Salter 1979). Walrus are particularly sensitive to changes in engine noise and are more likely to stampede when planes turn or fly low overhead. Severe disturbance events could result in trampling injuries or cow-calf separations, both of which are potentially fatal.

Although specific details of altitude and horizontal distances are lacking from many largely anecdotal reports, escape reactions to a low flying helicopter (lower than 150 m altitude) can be expected from walrus

encountered during the proposed operations. These responses would likely be relatively minor and brief in nature. Researchers conducting aerial surveys for walrus in sea ice habitats have observed little reaction to aircrafts above 1,000 ft (304 m).

In order to limit behavioral reactions of Pacific walrus during deployment of SISs, helicopters will maintain a minimum altitude of 1,000 ft (304 m) above the sea ice except when taking off or landing. Sea-ice landings within 1,000 ft (304 m) of any observed walrus will not occur, and the helicopter flight path will remain along the seismic track line. Three or four SIS units will be deployed/retrieved before the helicopter returns to the vessel. This should minimize the number of disturbances caused by repeated over-flights.

While researching the effects of human disturbances on denning polar bears, Amstrup (1993) noted that repeated overflights and the capture and handling of study animals was likely to seriously disturb the bears. In addition, the effects of fleeing from aircraft on a warm spring or summer day may be enough to overheat a well-insulated polar bear. Nonetheless, the studied female's cubs were not smaller and did not suffer decreased recruitment (Amstrup 1993). Aerial surveyors observed 24 polar bears while monitoring marine mammals during BP's Northstar oil development project. One polar bear was sitting on the ice, 6 were looking at the aircraft, 3 were walking, and 14 were running. The surveyors concluded that the running or walking bears had been displaced from a small area and that the bears were not impacted over the long term (Moulton and Williams 2003). Recurring aircraft overflights could result in short-term behavioral disturbances to polar bears. However, reactions will vary among individuals and are not likely to be significant to the individual.

Repeated overflights of any individual polar bear during the helicopter operations are unlikely with the monitoring provisions that are in place. Any reaction to the helicopter work is expected to be limited and of no consequence to the fitness or health of individual animals. However, in order to further limit any potential behavioral reactions of polar bears, the same requirements applied for helicopter operations around observed walrus will be applied to those operations when polar bears are sighted.

**Effects of Coring Activities**

The sediment coring project to be conducted in the Arctic Ocean north of the Chukchi Sea will have no effect on walrus, because it will not encounter walrus. Walrus do not occur in the areas of the coring project, which are far north of the southern edge of the pack ice. The coring project may encounter a few individual polar bears. The effects of the coring activities on any bears that are encountered would be minimal, consisting of temporary disturbance. The presence of humans and the nature of the activity would likely prevent any encounters because individual bears are expected to alter their course to avoid the coring activity due to unfamiliar scents and noises.

**Mitigation**

Several important mitigation measures have been built into the design of the project. The UTIG has stated that these mitigation measures will be implemented to avoid or minimize effects on Pacific walrus and polar bear encountered along the tracklines.

(1) No seismic surveys will take place in the Chukchi Sea before July 15, 2006.

(2) Airgun operations will be limited to offshore waters, i.e., greater than 120 km (93 miles) from shore;

(3) When operating in shallower parts (less than 100 m) of the study area, airgun operations will be limited to the smaller source (4 GI guns);

(4) Seismic vessels must observe a 0.5-mile (800-m) exclusion zone around walrus and polar bears observed on land or ice when not conducting seismic operations.

(5) Trained vessel-based observers will be required onboard to monitor marine mammals near the seismic source vessel during all airgun operations. When marine mammals are observed within, or about to enter, designated safety radius (i.e., the distance from the sound source at which the received level of sound would correspond to the acoustic threshold of 190 dB at any given depth), airgun operations will be powered down (or shut-down, if necessary) immediately. Vessel-based observers will watch for walrus and polar bears near the seismic vessel during all periods of shooting and for a minimum of 30 minutes prior to the planned start of airgun operations after an extended shut-down.

(6) If a Pacific walrus or polar bear is detected outside the safety radius and, based on its position and the relative motion, is likely to enter the safety radius, the vessel's speed and/or direct course may, when practical and safe, be changed in a manner that also minimizes the effect on the planned science objectives. The animal's activities and movements relative to the seismic vessel will be closely monitored to ensure that it does not approach within the safety radius. If the animal appears likely to enter the safety radius, further mitigative actions will be taken, i.e., either further course alterations, or power-down or shut-down of the airgun(s).

(7) A power-down involves decreasing the number of airguns in use such that the radius of the 190-dB zone is decreased to the extent that marine mammals are no longer within the safety radius. A power-down may also occur when the vessel is moving from one seismic line to another. During a power-down, one airgun (or some other number of airguns less than the full airgun array) is operated. The continued operation of one airgun will alert marine mammals to the presence of the seismic vessel in the area.

If a Pacific walrus or polar bear is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's speed and/or course cannot be changed to avoid having the mammal enter the safety radius, the airguns will be powered down before the animal is within the safety radius. Likewise, if a walrus or polar bear is already within the safety zone when first detected, the airguns will immediately be powered down. During a power-down of the 4-or 8-airgun array, one airgun (either a single 105 $in^3$ GI gun or one 210 $in^3$ G. gun, respectively) will be operated. If a Pacific walrus or polar bear is detected within or near the smaller safety radius around that single airgun (see Table 1), it will be shut-down. Power-downs will only be used in deep water. In shallow and intermediate depth water, an immediate shutdown will occur when Pacific walrus or polar bears are sighted within the designated safety radii.

(8) The operating airgun(s) will be shut-down completely if a Pacific walrus or polar bear approaches or enters the safety radius and a power-down is not practical (or shut-down is specifically prescribed, see Table 1). The operating airgun(s) will also be shut-down completely if a walrus or polar bear approaches or enters the estimated safety radius around the source that would be used during a power-down.

(9) Following a power-down or shut-down, airgun activity will not resume until the walrus or polar bear has cleared the safety zone. The animal will be considered to have cleared the safety zone if it is visually observed to have left the safety zone or has not been seen within the zone for 15 minutes.

(10) A ramp-up procedure will be followed when the airgun array begins operating after a specified-duration period without airgun operations. The

specified period depends on the speed of the source vessel and the size of the airgun array that is being used. Ramp-up will begin with one of the G. guns (210 $in^3$) or one of the Bolt airguns (500 $in^3$) for the 8-airgun array, or one of the 105 $in^3$ GI guns for the 4–GI gun array. One additional airgun will be added after a period of 5 minutes. Two more airguns will be added after another 5 minutes, and the last four airguns (for the 8-airgun array) will all be added after the final 5 minute period. During the ramp-up, the safety zone for the full airgun array in use at the time will be maintained.

If the complete 190-dB safety radius has not been visible for at least 30 minutes prior to the start of operations, ramp up will not commence unless at least one airgun has been operating during the interruption of seismic survey operations. This means that it will not be permissible to ramp up the 4–GI gun or 8-airgun source from a complete shut-down in thick fog or darkness (which may be encountered briefly in late August), when the outer part of the 190 dB safety zone is not visible. If the entire safety radius is visible, then start up of the airguns from a shut-down may occur at night (if any periods of darkness are encountered during seismic operations). If one airgun has operated during a power-down period, ramp up to full power will be permissible in poor visibility, on the assumption that walrus and polar bears will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. Ramp up of the airguns will not be initiated during the day or at night if a walrus or polar bear has been sighted within or near the applicable safety radii during the previous 15 minutes.

(11) To limit disturbance, helicopters will follow the survey track line. The UTIG would avoid landing within 1,000 ft (304 m) of an observed walrus or bear, and maintain a minimum altitude of 1,000 ft (304 m), unless weather or other circumstances require a closer landing for human safety. For efficiency, each helicopter excursion will be scheduled to deploy/retrieve three or four SIS units. This will minimize the number of flights and the number of potential disturbances to walrus and polar bears in the area.

(12) The applicant will be required to develop a Service-approved site-specific polar bear and walrus interaction plan prior to initiation of activities. These plans outline the contingency steps that the applicant will take, such as the chain of command for reporting and responding to polar bear or walrus sightings.

(13) No seismic activities will occur within a 40-mile radius of affected communities. This condition will limit potential interactions with walrus hunters in near-shore environments.

(14) Prior to seismic activities, UTIG will contact and consult with the communities of Point Hope, Point Lay, Wainwright, and Barrow to identify any necessary measures to be taken to minimize adverse impacts to subsistence hunters in these communities. A POC will be developed if there is concern from the community that the activities will impact subsistence uses of Pacific walrus and polar bears.

The POC must outline how applicants will work with the affected Native communities and what actions will be taken to avoid interference with subsistence hunting of walrus and polar bear. The POC will address: Operational agreement and communications procedures; where and when the agreement becomes effective; the general communications scheme; onboard observers; conflict avoidance; seasonally sensitive areas; vessel navigation; air navigation; marine mammal monitoring activities; measures to avoid impacts to marine mammals; measures to avoid conflicts in areas of active hunting; emergency assistance; and the dispute resolution process. The Service will review the POC prior to issuance of the final IHA to ensure any potential adverse effects on the availability of the animals are minimized.

(15) At least one Alaska Native knowledgeable about the mammals and fish of the area will be a member of the observer team and will serve as a liaison with subsistence users encountered at sea. Air gun operations will be suspended if the Healy's trackline is less than 5 km (3 miles) from ongoing subsistence hunting or fishing activities.

**Estimated Take by Incidental Harassment Due to Chukchi Sea Seismic Survey**

All anticipated takes would be non-lethal harassment involving temporary changes in behavior. In the sections below, we estimate take by harassment of the numbers of walrus and polar bears that are likely to be affected during the proposed seismic study in the Chukchi Sea with the implementation of the mitigation measures described above. The estimates are based on data obtained during marine mammal surveys in and near the Chukchi Sea by Brueggeman et al. (1990) and Evans et al. (2003).

This section provides estimates of the number of potential exposures to sound levels greater than or equal to 160 dB and 170 dB re 1 μpa (rms). The 160 dB criterion is applied as a maximum estimate for both species, and the 170 dB criterion is applied as a more accurate criterion based on studies that have determined pinnipeds tend to be less responsive than many other marine mammal species. As a conservative measure, this sound level criteria is also applied to polar bears.

The following estimates are based on a consideration of the number of walrus and polar bears that might be disturbed appreciably by approximately 478 line kilometers of seismic surveys in the Chukchi Sea. An assumed total of 598 km of trackline includes a 25 percent allowance over and above the planned 478 km to allow for turns, lines that might have to be repeated because of poor data quality, or minor changes to the survey design.

The anticipated radii of influence of the bathymetric sonar and sub-bottom profiler are less than those for the airgun configurations. It is assumed that, during simultaneous operations of the airgun array, sonar, and profiler, any walrus or polar bear close enough to be affected by the sonars would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the sonar or with the profiler, walrus and polar bears are expected to exhibit no more than short-term and inconsequential responses to the sonar or profiler given their characteristics (e.g., narrow downward-directed beam) and other considerations described above. Such reactions are not considered to constitute taking and, therefore, no additional allowance is included for animals that might be affected by the sound sources other than the airguns.

Few surveys of walrus and polar bears have been conducted in the Chukchi Sea area of the proposed project. The best polar bear density data are from one pilot study in the eastern Chukchi Sea testing the viability of aerial surveys from an icebreaker as a tool for monitoring polar bear stock (Evans et al. 2003). Most of the survey (90.7 percent) was flown over areas of ice cover greater than 10 percent. The density of bears was calculated to be 0.0068/$km^2$. It is expected that the density estimate is greater than that which may be encountered in the Chukchi Sea in open water. In recent years, many polar bears have concentrated near bowhead harvesting sites on land during late summer and would, therefore, not be affected by the proposed seismic survey. Polar bears are not expected to be encountered in areas of open water (Haley and Ireland 2006, Harwood et al.

2005, Evans et al. 2003), but an estimated density of 0.0001 has been used to allow for the chance encounter of a few individuals traversing open water areas (Monnett et al. 2005).

The estimates of walrus densities most relevant to the proposed project are reported by Brueggeman et al. (1990) from seven aerial surveys of ice pack areas occurring in late June through early July. These surveys took place in the Chukchi Sea area of the proposed Healy trackline in optimal ice habitat for walrus, and near the center of the northern migration concentration of the summer population of Chukchi walrus. Brueggeman et al. (1990) reported an average density in open water near the ice margin of 0.0731 walrus/km². This value was used as the average density for walrus in open water during the proposed survey. Brueggeman et al. (1990) reported a walrus density along the pack ice edge of 0.62 walrus/km². This value was considered to be the maximum density of walrus that will be encountered as the Healy crosses the ice margin in the Chukchi Sea. Pacific walrus most frequently feed in shallow waters (less than 60 to 80 m) (Chadwick and Hills 2005; Reeves et al. 2002), and the deepest recorded walrus dive was to 133 m (Reeves et al. 2002). Because of these reasons, walrus densities have only been applied to areas along the seismic survey line that are less than 200 m deep.

The potential number of occasions when walrus and polar bears species might be exposed to received levels 160 dB re 1 μPa (rms) was calculated for each of three water depth categories (less than 100 m, 100 to 1,000 m, and greater than 1,000 m) within the Chukchi Sea (south of 75° N) by multiplying:

the expected species density, either average (i.e., best estimate) or maximum; the anticipated line-kilometers of operations with both the 4–GI and 8-airgun array in each water-depth category after applying a 25 percent allowance for possible additional line kilometers;

the cross-track distances within which received sound levels are predicted to be greater than or equal to 160 dB for each water-depth category.

During the Chukchi Sea portion of the survey, 1,931 km² would be ensonified within the 170 dB isopleths and 6,455 km² would be ensonified within the 160 dB isopleths. After adding the 25 percent contingency to the expected number of line kilometers, the number of exposures is calculated based on 2,414 km² for the 170 dB sound level and 8,069 for the 160 dB sound level. The numbers of exposures in the three depth categories were then summed for each species (Table 2).

TABLE 2.—ESTIMATES OF THE POSSIBLE NUMBERS OF WALRUS AND POLAR BEAR EXPOSURES TO 160 DB AND 170 DB DURING UTIG'S PROPOSED SEISMIC PROGRAM IN THE CHUKCHI SEA, ALASKA

| Species | Number of exposures to sound levels | | | |
|---|---|---|---|---|
| | Best estimate | | Maximum estimate | |
| | >160 dB | >170 dB | >160 dB | >170 dB |
| Walrus | 470 | 143 | 3,960 | 1,203 |
| Polar bear | 8 | 2 | 55 | 16 |

Unlike polar bears, whose best and maximum density estimates were multiplied by the entire trackline within the Chukchi Sea survey area to estimate exposures, walrus densities were only multiplied by the proposed seismic trackline in water depths less than 200 m in the Chukchi Sea survey area. Walrus are known to occur offshore but generally remain in waters less than 200 m deep and mostly along the pack ice margin where ice concentrations are less than 80 percent (Fay 1982; Fay and Burns 1988). The location of the ice edge has shown a high degree of interannual variation, but is rarely found north of 75° N. Calculating exposures of walrus along the entire southwestern seismic trackline south of 75° N should somewhat overestimate the number of exposures since concentrations of walrus are only likely to be at the proposed densities for a short distance at the margin of the ice pack.

Based on this method, the best and maximum estimates of the numbers of Pacific walrus and polar bears exposures to airgun sounds with received levels greater than or equal to 160 dB re 1 μPa (rms) were obtained using the average and maximum densities described above and are presented in Table 2.

Based upon information supplied by the applicant, the impact of conducting the seismic survey in the Chukchi Sea it is likely to result in the temporary modification in behavior (Level B Harassment) of up to 143 Pacific walrus and 2 polar bears. The walrus may be exposed to airgun sounds at received levels greater than or equal to 160 dB re 1 μPa (rms) during the seismic survey. It is probable that only a small percentage of those would actually be disturbed.

For polar bears that may be encountered during the survey, almost all of these are expected to be on the ice, and therefore unaffected by underwater sound from the airguns. For the few bears that are in the water, levels of airgun and sonar sound would be attenuated because polar bears generally do not dive much below the surface. Bears on the ice may be impacted by short-term displacements as the vessel traverses the area near the bear.

In addition, we note that the coring project activities to be conducted to the north of the Chukchi Sea in the Arctic Ocean will cause no take of Pacific walrus because no walrus will be encountered that far north. There is a possibility that a few individual polar bears will be encountered; however, any potential disturbance would be limited to temporary behavior changes and does not affect the take estimate for polar bear.

Although current population estimates for the Pacific walrus population and Chukchi Sea polar bear stocks are not available, the best available information indicates that the number of potentially affected animals is small. Furthermore, any impacts to individuals are expected to be relatively short term in duration, are anticipated to be minor behavioral reactions, and are not expected to impact animal health or reproduction.

In 2005, the Healy conducted similar research that began in the same region, but continued across the Arctic Basin to Norway (Haley and Ireland 2006). During the 2005 cruise, seven live walrus were encountered in the Bering Sea. No walrus were encountered in the northern Chukchi Sea (B. Haley, LGL Alaska Research Associates, Inc., pers. comm.). In addition, a total of 24 polar

bears were visually recorded and the Service considers all observations to be takes. Three separate groups consisting of 5 bears were observed north of the Alaska coast between 74° and 79° N latitude. These bears were most likely from the southern Beaufort Sea or Chukchi/Bering Seas polar bear stocks. The remainder of the bears were observed near Svalbard and Franz Joseph Land. These bears most likely belonged to the Svalbard and Franz Joseph-Novaya Zemlya polar bear stocks. The takes for both species during the 2005 cruise through the Chukchi Sea appeared to be limited to Level B harassment of a relatively small number of animals and of relatively a short-term duration.

**Potential Effects on Habitat**

The proposed airgun operations will not result in any permanent impact on habitats used by Pacific walrus or polar bears, or to the food sources they utilize. The main impact associated with the proposed activities will be temporarily elevated noise levels and the associated direct effects.

One of the reasons for the adoption of airguns as the standard energy source for marine seismic surveys was that, unlike explosives, they do not result in any appreciable fish kill. However, the existing body of information relating to the impacts of seismic on marine fish and invertebrate species is very limited.

In water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) The received peak pressure; and (2) the time required for the pressure to rise and decay (Hubbs and Rechnitzer 1952 in Wardle et al. 2001). Generally, the higher the received pressure and the less time it takes for the pressure to rise and decay, the greater the chance of acute pathological effects. Considering the peak pressure and rise/decay time characteristics of seismic airgun arrays used today, the pathological zone for fish and invertebrates would be expected to be within a few meters of the seismic source (Buchanan et al. 2004). For the proposed survey, any injurious effects on fish would be limited to very short distances.

During the seismic study only a small fraction of the available habitat would be ensonified at any given time. Disturbance to benthic invertebrates, fish, and marine mammals would be short term, and they would return to their pre-disturbance behavior once the seismic activity passes or otherwise ceases. Thus, the proposed survey would have little effect on these prey items and, therefore, little, if any, impact on the abilities of walrus and polar bears to feed in the area where seismic work is planned. In addition, the proposed activity is not expected to have any habitat-related effects that could cause significant or long-term consequences for prey species or for individual walrus or polar bears or their populations, since operations at any one location will be limited in duration.

**Potential Impacts on Subsistence Needs**

Subsistence hunting and fishing continue to be prominent in the household economies and social welfare of some Alaskan residents, particularly among those living in small, rural villages (Wolfe and Walker 1987). Subsistence remains the basis for Alaska Native culture and community. In rural Alaska, subsistence activities are often central to many aspects of human existence, including patterns of family life, artistic expression, and community religious and celebratory activities.

Pacific walrus and polar bear are legally hunted in the Chukchi Sea by coastal Alaska Natives. For thousands of years, hunting has been an important source of food and raw materials for equipment and handicrafts. Today, hunting remains an important part of the culture and economy of many coastal villages in Alaska. Rural communities in the vicinity of the proposed Chukchi Sea seismic survey area include Point Hope, Point Lay, Wainwright, and Barrow.

Any activity that displaces Pacific walrus beyond the range of coastal hunters has the potential to adversely impact subsistence harvests in these communities. Walrus hunting may occur anywhere along the Chukchi Sea coastline from Cape Lisburne to Point Barrow. Walrus hunting by these communities is generally limited to conditions when sea ice occurs within the range of small hunting boats, typically less than 48 km (30 mi) from shore.

Point Hope hunters typically begin their hunt in late May and June as walrus migrate north. The sea ice is usually well off shore of Point Hope by July and does not bring animals back into the range of hunters until late August and September. Between 2000 and 2004, the average annual reported harvest at Point Hope was 11 animals per year.

Walrus hunting in Point Lay occurs primarily in July. Point Lay hunters reported an average of six walrus per year between 2000 and 2004.

Wainwright residents hunt walrus from June through August as the ice retreats northward. Walrus are plentiful in the pack ice near the village this time of year. Wainwright hunters have consistently harvested more walrus than other subsistence communities; the village averaged 62 animals per year for 2000 through 2004.

In Barrow, most walrus hunting occurs from June through September, peaking in August, when the land-fast ice breaks up and hunters can access the walrus by boat as they migrate north on the retreating pack ice. The average annual walrus harvest for Barrow from 2000 to 2004 was 32 animals.

Although it is possible that accessibility to walrus for subsistence harvest could be impacted during the seismic surveys, it is unlikely. The majority of Pacific walrus are taken less than 48 km (30 mi) from shore, and the Healy will conduct its survey operations significantly farther offshore, *i.e.*, approximately 150 km (93 mi) to 200 km (124 mi) offshore. In addition, the applicant will implement necessary mitigation measures as described above to further minimize or avoid any potential impact.

Depending upon ice conditions, the subsistence harvest of polar bears can occur year-round in the northern Chukchi Sea villages, with peaks in the spring and winter. The period with the lowest harvest of bears occurs in June and July. Hunting success varies considerably from year to year because of variable ice and weather conditions.

For Point Hope, the average annual reported harvest between 2000 and 2004 was eight polar bears. The average for Point Lay during this same time period was less than one bear per year. In Wainwright, the average was four bears per year from 2000 through 2004. And, in Barrow, the average annual polar bear harvest from 2000 to 2004 was 16 animals.

Disruption of polar bear subsistence hunting is not expected because the timing of polar bear hunting occurs primarily during the winter and spring when pack ice is present nearshore and the seismic surveys will take place during the summer and fall open-water seasons. Furthermore, the applicant will implement necessary mitigation measures as described above to insure any potential impact is minimized or avoided.

The harvest information provided for Pacific walrus and polar bears is based on reports provided through the Service's Marking, Tagging, and Reporting Program. Harvest data for 2005 is not presently available. Harvest totals are not corrected for struck and lost animals.

**Basis for Findings**

*Negligible Impact on Species*

The Service has determined that the seismic survey in the Chukchi Sea will cause a temporary modification in behavior of small numbers of Pacific walrus and polar bears. Based upon information supplied by the applicant, the seismic survey in the Chukchi Sea could potentially result in the temporary modification in behavior of up to 143 Pacific walrus and 2 polar bears. Any impacts to individuals are expected to be limited to Level B harassment and short term in duration. The potential for temporary or permanent hearing impairment is very low and any potential for hearing impairment will be avoided through the incorporation of the proposed mitigation measures mentioned in this document. We also considered the sediment coring projects potential effect on walrus and polar bears in making the negligible impact finding. Because the coring project will not affect the estimated take of the overall survey, it does not affect the negligible impact finding. No take by injury or death is anticipated. The Service finds that the anticipated harassment caused by the proposed activities are not expected to adversely affect the species or stock through effects on annual rate of recruitment or survival and, therefore, will have a negligible impact on Pacific walrus and polar bears.

Our finding of negligible impact is based on the total level of activity proposed by UTIG and the Service's analysis of the effects of all activities. In making this finding, we considered the following: (1) The distribution of the species; (2) the biological characteristics of the species; (3) the nature of seismic survey program; (4) the potential effects of seismic activities on the species; (5) the documented impacts of seismic activities on the species; and (6) the mitigation measures that will be conditions of the authorization.

Although Pacific walrus are expected to occur in the area of the proposed seismic surveys, the surveys would not be concentrated in any location for extended periods. Most of the proposed activities would occur in areas of open water where walrus densities are expected to be relatively low. In addition, mitigation measures will be followed when walrus are observed within the safety radius.

The number of polar bears present in the open water of the Chukchi Sea during the time of the seismic surveys will also be minimal. Individual polar bears may be observed in the open water during seismic activities, but the majority of the population will be found on the pack ice during this time of year. If polar bears are observed in the area prior to, or even during, seismic surveys, appropriate mitigation measures will be followed.

Based on our review of these factors, we conclude that, while incidental harassment of polar bears and walrus is reasonably likely to or reasonably expected to occur as a result of proposed seismic surveys, the overall impact would be negligible on polar bear and Pacific walrus populations. In addition, we find that any takes are likely to be limited to Level B harassment of a relatively small number of animals and of relatively a short-term duration. Furthermore, we do not expect the anticipated level of harassment from these proposed activities to affect the rates of recruitment or survival of Pacific walrus and polar bear populations.

While the actual number of incidental harassment takes will depend on the distribution and abundance of Pacific walrus and polar bears in the vicinity of the survey activity, the number of harassment takings will be small. Furthermore, the previously mentioned mitigation measures that will be implemented by the applicant insures these measures will provide additional means of effecting the least level practicable impact on Pacific walrus and polar bears.

*Impact on Subsistence*

Based on the results of harvest data, including affected villages, the number of animals harvested, the season of the harvests, and the location of hunting areas, we find that the anticipated harassment caused by the proposed seismic surveys will not have an unmitigable adverse impact on the availability of Pacific walrus and polar bears for taking for subsistence uses during the period of the activities. In making this finding, we considered the following: (1) Records on subsistence harvest from the Service's Marking, Tagging, and Reporting Program (historical data regarding the timing and location of harvests); (2) anticipated effects of UTIG's proposed activities on subsistence hunting; (3) development of Plans of Cooperation between the applicants and affected Native communities, as appropriate; (4) reliance on an Alaska Native to serve as a liaison with subsistence users encountered at sea; and (5) and suspending air gun operations when the Healy's trackline is less than 5 km (3 miles) from ongoing subsistence hunting or fishing activities.

Most subsistence walrus hunting occurs less than 48 km (30 mi) from shore. Although walrus hunters may encounter vessels and aircraft in open-water areas, these interactions are expected to be limited in area and duration and are not expected to affect overall hunting success.

Only a small fraction of the polar bear harvest occurs during the open-water season. In addition, most polar bears are harvested outside of the area that would be covered by this authorization. Because the polar bear is hunted almost entirely during the ice-covered season, it is unlikely that open-water seismic activities would have any effect on the harvest of that species.

In addition, helicopter operations will occur far offshore where the seismic operations take place in the ice-pack. Thus any reaction of walrus or polar bears to the helicopter operations will have no effect on their availability for subsistence. These helicopter operations will be conducted in a manner that will minimize effects on walrus and polar bears.

Finally, UTIG will develop a POC for the proposed 2006 seismic survey in the Chukchi Sea, as appropriate, in consultation with representatives of communities along the Chukchi Sea coast including Point Hope, Point Lay, Wainwright, and Barrow.

**Monitoring**

The UTIG will conduct marine mammal monitoring during the seismic surveys, in order to implement the mitigation measures that require real-time monitoring, and to satisfy monitoring called for under the MMPA.

Vessel-based observers will monitor Pacific walrus and polar bears near the seismic source vessel during all seismic operations. There will be little or no darkness during this cruise. Airgun operations will be shut-down when Pacific walrus or polar bears are observed within, or about to enter, designated safety radii. Vessel-based observers will also watch for Pacific walrus and polar bears near the seismic vessel for at least 30 minutes prior to the planned start of airgun operations after an extended shut-down of the airgun. When feasible, observations will also be made during daytime periods without seismic operations (e.g., during transits and during coring operations).

During seismic operations in the Chukchi Sea, four observers will be based aboard the vessel. These observers will be appointed by UTIG with Service concurrence. An Alaska native resident knowledgeable about the mammals and fish of the area is expected to be included as one of the team of observers

aboard the Healy. At least one observer, and when practical, two observers, will monitor Pacific walrus and polar bears near the seismic vessel during ongoing operations and nighttime startups (if darkness is encountered in late August). Observers will normally be on duty in shifts of duration no longer than 4 hours. The USCG crew will also be instructed to assist in detecting Pacific walrus and polar bears and implementing mitigation requirements (if practical). The necessary instructions will be provided to the crew prior to the start of the seismic survey.

The Healy is a suitable platform for marine mammal observations. When stationed on the flying bridge, the eye level will be approximately 27.7 m (91 ft) above sea level, and the observer will have an unobstructed view around the entire vessel. If surveying from the bridge, the observer's eye level will be 19.5 m (64 ft) above sea level and approximately 25° of the view will be partially obstructed directly to the stern by the stack (Haley and Ireland 2006). The observers will scan the area around the vessel systematically with reticle binoculars (e.g., 7 × 50 Fujinon), Big-eye binoculars (25 × 150), and with the naked eye. During any periods of darkness (minimal, if at all, in this cruise), NVDs will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), if and when required. The survey will take place at high latitude in the summer when there will be continuous daylight, but night (darkness) is likely to be encountered briefly at the southernmost extent of the survey in late August. Laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation; these are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly.

When walrus or polar bears are detected within, or are about to enter, the designated safety radius, the airgun(s) will be powered down or shut-down immediately. To assure prompt implementation of shut-downs, additional channels of communication between the observers and the airgun technicians will be established. During power-downs and shut-downs, the observers will continue to maintain watch to determine when the animal(s) are outside the safety radius. Airgun operations will not resume until the animal is outside the safety radius. The animal will be considered to have cleared the safety radius if it is visually observed to have left the safety radius, or if it has not been seen within the radius for 15 minutes.

All observations and airgun power or shut-downs will be recorded in a standardized format. Data will be entered into a custom database using a notebook computer. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, or other programs for further processing and archiving. Results from the vessel-based observations will provide:

(1) The basis for real-time mitigation (airgun power or shut-down).

(2) Information needed to estimate the number of Pacific walrus and polar bears potentially taken by harassment, which must be reported to FWS.

(3) Data on the occurrence, distribution, and activities of Pacific walrus and polar bears in the area where the seismic study is conducted.

(4) Information to compare the distance and distribution of Pacific walrus and polar bears relative to the source vessel at times with and without seismic activity.

(5) Data on the behavior and movement patterns of Pacific walrus and polar bears seen at times with and without seismic activity.

Development and participation in a cooperative research program is not a requirement for obtaining an IHA. However, the Service encourages research of walrus and polar bear, such as projects funded and supported by the National Fish and Wildlife Foundation. The UTIG stated it will coordinate the planned marine mammal monitoring program associated with the seismic survey in the Chukchi Sea with other parties that may have interest in this area and/or be conducting marine mammal studies in the same region during operations. This type of coordination could provide additional insight into the relationship between seismic activities and the basic biological requirements of the two species of concern. The UTIG will also coordinate with other applicable Federal, State, and Borough agencies, and will comply with their requirements.

**Reporting**

Polar bear and walrus observation forms will be provided by the Service to the applicant. Any walrus or polar bear sighting that occurs during the seismic surveys must be submitted to the Service within 24 hours of the animal sighting or as soon as practicable. A report must be submitted to the Service within 90 days after the end of the cruise. The report will describe the operations that were conducted and the walrus and polar bears that were detected near the operations. The report will be submitted to the Service, providing full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations, and all walrus and polar bear sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the level and type of take, numbers of walrus and polar bears observed, direction of movement of observed individuals, and any observed changes or modifications in behavior or travel direction resulting from the seismic surveys.

**Proposed Authorization**

The Service proposes to issue an IHA for small numbers of Pacific walrus and polar bears harassed incidentally by UTIG while conducting marine seismic surveys in the Arctic Ocean from July 15 through August 25, 2006. The purpose of the surveys is to collect seismic reflection and refraction data in the western Amerasia Basin in the Arctic Ocean. The final IHA would incorporate the mitigation, monitoring, and reporting requirements discussed in this proposal. The UTIG will be responsible for following those requirements. All activities would be conducted during the 2006 open-water season. Authorization for the seismic surveys would be for approximately 40 days. These authorizations do not allow the intentional taking of polar bear or Pacific walrus.

If the level of activity exceeds that described by the UTIG, or the level or nature of take exceeds those projected here, the Service would reevaluate its findings. The Secretary may modify, suspend, or revoke an authorization if the findings are not accurate or the conditions described herein are not being met.

**Endangered Species Act**

The Service has determined that no species under its jurisdiction listed as threatened or endangered under the Endangered Species Act of 1973, as amended, would be affected by issuing an IHA under section 101(a)(5)(D) of the MMPA to the applicants for the proposed open-water seismic surveys.

**National Environmental Policy Act (NEPA)**

The applicant provided a *Draft Environmental Assessment (EA) of a Marine Geophysical Survey by the USCG Healy of the Western Canada Basin, Chukchi Borderland and Mendeleev Ridge, Arctic Ocean, July-August 2006,* prepared by LGL Alaska Research Associates, Inc. of Anchorage, Alaska and LGL Ltd., environmental research associates of King City, Ontario dated March 1, 2006. The Service has adopted this draft EA as the foundation of the Service's EA and finds that it meets NEPA standards for analyzing the effects of the issuance of this IHA. For a copy of the EA, contact the individual identified under **FOR FURTHER INFORMATION CONTACT.**

**Government-to-Government Relations With Native American Tribal Governments**

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, Secretarial Order 3225, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. We have evaluated possible effects on federally recognized Alaska Native tribes. Through the POC identified above, applicants will work with the Native Communities most likely to be affected and will take actions to avoid interference with subsistence hunting.

**Public Comments Solicited**

The Service requests interested persons to submit comments and information concerning this proposed IHA. Consistent with section 101(a)(5)(D)(iii) of the MMPA, we are opening the comment period on this proposed authorization for 30 days (see **DATES**).

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 record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state that prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: June 15, 2006.

**Tom Melius,**

*Regional Director.*

[FR Doc. 06–5589 Filed 6–21–06; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Advisory Board for Exceptional Children

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, the Bureau of Indian Affairs is announcing that the Advisory Board for Exceptional Children will hold its next meeting in Denver, Colorado. The purpose of the meeting is to meet the mandates of the Individuals with Disabilities Education Improvement Act of 2004 on Indian children with disabilities.

**DATES:** The Board will meet on Saturday, July 22, 2006, from 6 p.m. to 9 p.m., Sunday, July 23, 2006, from 8 a.m. to 4 p.m., and Monday July 24, 2006, from 8 a.m. to 4 p.m. Local Time.

**ADDRESSES:** The meetings will be held at the Marriott Denver Tech Center, 4900 South Syracuse, Denver, Colorado 80237.

Written statements may be submitted to Mr. Thomas M. Dowd, Director, Bureau of Indian Affairs, Office of Indian Education Programs, 1849 C Street, NW., Mail Stop 3609–MIB, Washington, DC 20240; Telephone (202) 208–6123; Fax (202) 208–3312.

**FOR FURTHER INFORMATION CONTACT:** Lyann Barbero, Acting Supervisor, Education Specialist—Special Education, Bureau of Indian Affairs, Office of Indian Education Programs, Division of Compliance, Monitoring and Accountability, P.O. Box 1088, Suite 332, Albuquerque, New Mexico 87104; Telephone (505) 563–5270.

**SUPPLEMENTARY INFORMATION:** The Advisory Board was established to advise the Secretary of the Interior, through the Assistant Secretary—Indian Affairs, on the needs of Indian children with disabilities, as mandated by the Individuals with Disabilities Education Improvement Act of 2004 (Pub. L. 108–446).

The following items will be on the agenda:

- State Performance Plan.
- Special Education Supervisor Report.
- Part B allocation.
- Parent Involvement Activities.
- Updates on priority issues.
- Office of Special Education new organizational information.
- Compliance and Monitoring.
- Procedural Safeguards.
- Title Programs.
- Institutionalized Handicapped Program.
- Coordinated Service Plan.
- Update on meeting between State Education Agency and Bureau of Indian Affairs.

The meetings are open to the public. The Advisory Board will accept public comments during a teleconference session.

Dated: June 15, 2006.

**Debbie Clark,**

*Acting Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 06–5581 Filed 6–21–06; 8:45 am]

**BILLING CODE 4310–6W–M**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WO–310–1310–PB–24 1A; OMB Control Number 1004–0185]**

### Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On September 20, 2005, the BLM published a notice in the **Federal Register** (70 FR 55160) requesting comments on this proposed collection. The comment period ended on November 21, 2005. The BLM received no comments. You may obtain copies of the proposed collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments an suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0185), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov*. Please

provide a copy of our comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

*Nature of Comments:* We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

*Title:* Oil and Gas Exploration, Leasing, and Drainage Operations (43 CFR parts 3100, 3120, 3150, 3162).

*OMB Control Number:* 1004–0185.

*Bureau Form Number:* Non-form information.

*Abstract:* The Bureau of Land Management proposes to extend the currently approved collection of information to determine whether applicants are qualified to conduct oil and gas exploration and leasing activities. BLM will also determine if oil and gas lessees are ensuring that their leases are protected from drainage.

*Frequency:* On occasion.

*Description of Respondents:* Individuals, small businesses, and oil and gas exploration and drilling companies, lessees, and operators.

*Estimated Completion Time:*

| Information collection | Requirement | Number of responses | Reporting hours per respondent | Total hours |
|---|---|---|---|---|
| 3100.3–1 | Notice of option holdings | 30 | 1 | 30 |
| 3100.3–3 | Option statement | 50 | 1 | 50 |
| 3101.2–4(a) | Excess acreage petition | 10 | 1 | 10 |
| 3101.2–6 | Showings statement | 10 | 1.5 | 15 |
| 3101.3–1 | Joinder evidence statement | 50 | 1 | 50 |
| 3103.4–1 | Waiver, suspension, reduction of rental, etc. | 20 | 2 | 40 |
| 3105.2 | Communication or drilling agreement | 150 | 2 | 300 |
| 3105.3 | Operating, drilling, development contracts interested statement | 50 | 2 | 100 |
| 3105.4 | Joint operations; transportation of oil applications | 20 | 1 | 20 |
| 3105.5 | Subsurface storage application | 50 | 1 | 50 |
| 3106.8–1 | Heirs and devisee statement | 40 | 1 | 40 |
| 3106.8–2 | Change of name report | 60 | 1 | 60 |
| 3106.8–3 | Corporate merger notice | 100 | 2 | 200 |
| 3107.8 | Lease renewal application | 30 | 1 | 30 |
| 3108.1 | Relinquishments | 150 | .5 | 75 |
| 3108.2 | Reinstatement petition | 500 | .5 | 250 |
| 3109.1 | Leasing under rights-of-way application | 20 | 1 | 20 |
| 3120.1–1(e) | Lands available for leasing | 280 | 2.5 | 700 |
| 3120.1–3 | Protests and appeals | 90 | 1.5 | 135 |
| 3152.1 | Oil and gas exploration in Alaska application | 20 | 1 | 20 |
| 3152.6 | Data collection | 20 | 1 | 20 |
| 3152.7 | Completion of operations reports | 20 | 1 | 20 |
| Totals | | 1,770 | | 2,235 |

The table below summarizes the burden and cost estimates.

| Type of analysis | Number of analyses | Hours | Cost |
|---|---|---|---|
| Preliminary | 1,000 | 2,000 | $60,000 |
| Detailed | 100 | 2,400 | 72,000 |
| Additional | 10 | 200 | 8,000 |
| Total | 1,110 | 4,600 | 140,000 |

Respondents submitting the drainage determination analyses and results are individuals, oil companies, and small businesses who are familiar with the collection requirements.

*Annual Responses:* 2,880.

*Application Fee Per Response:* 0.

*Annual Burden Hours:* 6,835.

*Bureau Clearance Officer:* Ted Hudson, (202) 452–5033.

Dated: February 9, 2006.

**Ted R. Hudson,**

*Bureau of Land Management, Acting, Information Collection Clearance Officer.*

[FR Doc. 06–5611 Filed 6–21–06; 8:45 am]

BILLING CODE 4310–84–M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[WY–100–05–1310-DB]**

## Notice of Tour Rescheduling for the Pinedale Anticline Working Group

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public tour.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) will host a tour of the Pinedale Anticline Oil and Gas development field.

**DATES:** The June 20, 2006 tour has been cancelled and rescheduled for June 27, 2006 from 8 a.m. to 5 p.m.

**ADDRESSES:** The tour will start at the Shell Energy and Production Company Office in Pinedale, WY.

**FOR FURTHER INFORMATION CONTACT:** Matt Anderson, BLM/PAWG Liaison, Bureau of Land Management, Pinedale Field Office, 432 E. Mills St., P.O. Box 738, Pinedale, WY, 82941; 307–367–5328.

**SUPPLEMENTARY INFORMATION:** The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field proceeds for the life of the field.

The tour is open to the public and will give an overview of the various aspects of natural gas activities on the anticline, including drilling and various monitoring and mitigation activities, such as reclamation and water resources. The exact schedule for the day is still being developed. Lunch, refreshments, and safety gear such as hardhats, etc., will be provided. Please RSVP due to a limited number of seats available for the tour.

Dated: June 15, 2006.

**Dennis Stenger,**

*Field Office Manager.*

[FR Doc. E6–9825 Filed 6–21–06; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF JUSTICE

### Office on Violence Against Women; Agency Information Collection Activities: Revision of a Currently Approved Collection and Extension of a Currently Approved Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act as Amended for Applicants to the STOP (Services* Training* Officers* Prosecutors) Violence Against Women Formula Grant Program.

The Department of Justice, Office on Violence Against Women (OVW) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments are encouraged and will be accepted for ''sixty days'' until August 21, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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, including the validity of the methodology and assumptions used;

(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, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Revision of a currently approved collection and extension of a currently approved collection.

(2) *Title of the Form/Collection:* Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act as Amended for Applicants to the STOP Formula Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0001. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* The affected public includes STOP formula grantees (50 states, the District of Columbia and five territories (Guam, Puerto Rico, American Samoa, Virgin Islands, Northern Mariana Islands). The STOP Violence Against Women Formula Grant Program was authorized through the Violence Against Women Act of 1994 and reauthorized and amended by the Violence Against Women Act of 2000 and the Violence Against Women Act of 2005. The purpose of the STOP Formula Grant Program is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system's response to violence against women. It envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. The Department of Justice's Office on Violence Against Women (OVW) administers the STOP Formula Grant Program funds which must be distributed by STOP state administrators according to statutory formula (as amended by VAWA 2000 and VAWA 2005).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 56 respondents (state administrators from the STOP Formula Grant Program) less than one hour to complete a Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act, as Amended.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the Certification is less than 56 hours.

If additional information is required contact: Lynn Bryant, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 16, 2006.

**Lynn Bryant,**

*Department Deputy Clearance Officer, United States Department of Justice.*

[FR Doc. E6–9839 Filed 6–21–06; 8:45 am]

**BILLING CODE 4410–FX–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-day notice of information collection under review: Application for Explosives License or Permit.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until August 21, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Christopher Reeves, Chief, Federal Explosives Licensing Center, 244 Needy Road, Martinsburg, WV 25401.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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 submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Explosives License or Permit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5400.13/5400.16. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individual or households. The purpose of this collection is to enable ATF to ensure that persons seeking to obtain a license or permit under 18 U.S.C. chapter 40 and responsible persons of such companies are not prohibited from shipping, transporting, receiving, or possessing explosives.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 10,000 respondents will complete a 1 hour and 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 15,000 annual total burden hours associated with this collection.

*If additional information is required contact:* Lynn Bryant, Department Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 16, 2006.

**Lynn Bryant,**

*Department Deputy Clearance Officer, Department of Justice.*

[FR Doc. E6–9840 Filed 6–21–06; 8:45 am]

BILLING CODE 4810–FY–P

## DEPARTMENT OF JUSTICE

### Foreign Claims Settlement Commission

**[F.C.S.C. Meeting Notice No. 5–06 (REVISED)]**

### Notice of Meeting; Sunshine Act

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives revised notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

**DATE AND TIME:** Thursday, June 29, 2006, at 10 a.m.

**SUBJECT MATTER:** Issuance of Amended Final Decisions in claims against Albania.

**STATUS:** Open.

This is a rescheduling of the Commission meeting previously set for Wednesday, June 28, 2006, at 10 a.m., notice of which was published in the **Federal Register** on June 19, 2006 (71 FR 35312).

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

**Mauricio J. Tamargo,**

*Chairman.*

[FR Doc. 06–5627 Filed 6–20–06; 12:37 pm]

BILLING CODE 4410–01–P

## DEPARTMENT OF JUSTICE

### Parole Commission

### Public Announcement Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) (5 U.S.C. 552b)

**TIME AND DATE:** 10 a.m., Monday, June 26, 2006.

**PLACE:** 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The meeting is being held to discuss the agency's budget proposal for the fiscal year 2008.

**AGENCY CONTACT:** Thomas W. Hutchison, Chief of Staff, United States Parole Commission. (301) 492–5959.

Dated: June 19, 2006.

**Pamela Posch,**

*Acting General Counsel, U.S. Parole Commission.*

[FR Doc. 06–5617 Filed 6–20–06; 10:07 am]

BILLING CODE 4410–31–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions,

the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 3, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 3, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 7th day of June 2006.

**Erica R. Cantor,**

*Director, Division of Trade Adjustment Assistance.*

APPENDIX

[TAA petitions instituted between 5/29/06 and 6/2/06]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 59483 | B.C. Moore and Sons (Wkrs) | Wadesboro, NC | 05/31/06 | 05/22/06 |
| 59484 | International Paper (Comp) | Gretna, VA | 05/31/06 | 05/30/06 |
| 59485 | A.O. Smith Electrical Products (Comp) | Tipp City, OH | 05/31/06 | 05/26/06 |
| 59486 | Loan Pro LLC (Wkrs) | Horsham, PA | 05/31/06 | 05/26/06 |
| 59487 | LG Phillips Display USA (Comp) | Ann Harbor, MI | 05/31/06 | 05/25/06 |
| 59488 | Industrial Design Construction (State) | Corvallis, OR | 05/31/06 | 05/24/06 |
| 59489 | Socks & Things Inc. (Wkrs) | Hickory, NC | 05/31/06 | 05/26/06 |
| 59490 | Pace Industries (Comp) | Midland, GA | 05/31/06 | 05/30/06 |
| 59491 | Quality Cleaning Service (Comp) | Springfield, OR | 05/31/06 | 05/26/06 |
| 59492 | Brand Science LLC (Comp) | Dandridge, TN | 05/31/06 | 05/25/06 |
| 59493 | Titan Plastics Group (Wkrs) | Portage, MI | 05/31/06 | 05/26/06 |
| 59494 | Sun Microsystems, Inc. (State) | Santa Clara, CA | 06/01/06 | 05/18/06 |
| 59495 | Hooter Airlines (Wkrs) | Myrtle, SC | 06/01/06 | 05/30/06 |
| 59496 | Arrow Electronics (Wkrs) | Foothill Ranch, CA | 06/01/06 | 05/30/06 |
| 59497 | Unisys (State) | Roseville, MN | 06/01/06 | 05/30/06 |
| 59498 | Reilly Industries (USWA) | Granite City, IL | 06/01/06 | 05/31/06 |
| 59499 | Dana Automotive Systems Group (USW) | Mitchell, IN | 06/01/06 | 05/26/06 |
| 59500 | Cigna/Intracorp (Wkrs) | Philadelphia, PA | 06/01/06 | 05/24/06 |
| 59501 | Firemen's Fund (State) | Novato, CA | 06/02/06 | 05/31/06 |
| 59502 | Culpepper Plastics Corp. (State) | Clinton, AR | 06/02/06 | 05/31/06 |
| 59503 | Bank of America Corporation (Wkrs) | Utica, NY | 06/02/06 | 05/24/06 |
| 59504 | Eaton Hydraulic (Comp) | Petersburg, IL | 06/02/06 | 06/01/06 |
| 59505 | Claude Gable Company, Inc. (Comp) | High Point, NC | 06/02/06 | 06/01/06 |
| 59506 | Great Batch Life Science (State) | Columbia, MD | 06/02/06 | 06/01/06 |

[FR Doc. E6–9902 Filed 6–21–06; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–57,273]**

### Bernhardt Furniture Company Upholstery Plant #5 Including On-Site Leased Workers of Able Body Temporary Service, Lenoir, NC; 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 July 11, 2005, applicable to workers of Bernhardt Furniture Company, Upholstery Plant #5, including on-site leased workers of Able Body Temporary Service, Lenoir, North Carolina. The notice was published in the **Federal Register** on August 26, 2005 (70 FR 50412). The workers are engaged in the production of frames and frame components for upholstery manufacturing.

New information provided by the petitioners show 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.

Information obtained from the company states 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–57,273 is hereby issued as follows:

All workers of Bernhardt Furniture Company, Upholstery Division, Plant #5, including on-site leased workers of Able Body Temporary Services, Lenoir, North Carolina, who became totally or partially separated from employment on or after May 25, 2004 through July 11, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for Alternative Trade

Adjustment Assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 2nd day of June 2006.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6–9897 Filed 6–21–06; 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 May 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 county 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 or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

**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–59,188; Bosch Rexroth Corporation, Wooster Division, Wooster, OH:* April 10, 2005

*TA–W–59,319; Parker and Harper, Inc., Worcester, MA: May 2, 2005*

*TA–W–59,094; U.S. Baird Corporation (The), Stratford, CT: March 27, 2005*

*TA–W–59,121; Rhodia, Inc., CDI, Coworx Staffing & Kelly Services, Deepwater, NJ: March 30, 2005*

*TA–W–59,362; Mount Vernon Mills, Trion Denim Mill Division, Trion, GA: May 9, 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–59,406; Jakel, Inc., Highland, IL:* April 1, 2006

*TA–W–59,264; JohnsonDiversey, Inc., U.S. Institutional Division, On-Site Leased Workers of ADECCO Manpower and Erg, East Stroudsburg, PA: April 15, 2005*

*TA–W–59,299; Bayer Clothing Group, Inc., Clearfield, PA: June 4, 2006*

*TA–W–59,304; DeRoyal Industries, Inc., DeRoyal Patient Care, Dryden, VA: May 28, 2006*

*TA–W–59,329; Optical Electro Forming, Oracle Lenses, Clearwater, FL: May 2, 2005*

*TA–W–59,333; Superior Industries International, Inc., Van Nuys Plant, Van Nuys, CA: May 4, 2005*

*TA–W–59,355; Quebecor World, Leased Workers of Westaff and DC Staffing Services, Brookfield, WI: May 8, 2005*

*TA–W–59,371; Sony Electronics, Display Device, On-Site Leased Workers of Staffmark and Remedy, San Diego, CA: April 21, 2005*

*TA–W–59,376; Indian Industries, dba Escalade Sports, Billiard Tables Division, Evansville, IN: May 9, 2005*

*TA–W–59,275; Progressive Maintenance Technologies, Inc., On-Site at Elementis Pigments, Inc., Saint Louis, MO: April 11, 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.

*None*

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.

*None*

**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–59,237; Easton Sports, Inc., A Division of Easton-Bell Sports, Van Nuys, CA.*

*TA–W–59,237A; Easton Sports, Inc., A Division of Easton-Bell Sports, Long Beach, CA.*

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (shift in production to a foreign country) have not been met. 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–59,317; Ascent/Son Manufacturing, San Jose, CA.*

*TA–W–59,321; Vails Gate Manufacturing, LLC, Tarkett, Inc., New York, NY.*

*TA–W–59,324; Hiawathaland Tool, Inc., Kasson, MN.*

*TA–W–59,350; Central Minnesota Tool and Stamping, Little Falls, MN.*

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–59,235; Oakwood International, Employed at Delphi Corp., Electgronics and Safety Division, Kokomo, IN.*

*TA–W–59,257; Systems West Computer Resource, On-Site at Exelon Corp. Commercial Center, Oakbrook, IL.*

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–59,262; Nokia Enterprise Solutions, Operations/Demand Fullifillment Team, Service Operations and Quality Div., Irving, TX.*

*TA–W–59,310; Motorola, Inc., Energy Systems Group, Lawrenceville, GA.*

*TA–W–59,357; Dole Fruit Co., Gulfport Purchasing Department, Gulfport, MS.*

*TA–W–59,359; Science Applications International Corp. (SAIC), Piscataway, NJ.*

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 Ajdustment 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 issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

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–59,237; Easton Sports, Inc., A Division of Easton-Bell Sports, Van Nuys, CA.*

*TA–W–59,237A; Easton Sports, Inc., A Division of Easton-Bell Sports, Long Beach, CA.*

*TA–W–59,317; Ascent/Son Manufacturing, San Jose, CA.*

*TA–W–59,321; Vails Gate Manufacturing, LLC, Tarkett, Inc., New York, NY.*

*TA–W–59,324; Hiawathaland Tool, Inc., Kasson, MN.*

*TA–W–59,350; Central Minnesota Tool and Stamping, Little Falls, MN.*

*TA–W–59,235; Oakwood International, Employed at Delphi Corp., Electgronics and Safety Division, Kokomo, IN.*

*TA–W–59,257; Systems West Computer Resource, On-Site at Exelon Corp. Commercial Center, Oakbrook, IL.*

*TA–W–59,262; Nokia Enterprise Solutions, Operations/Demand Fullifillment Team, Service Operations and Quality Div., Irving, TX.*

*TA–W–59,310; Motorola, Inc., Energy Systems Group, Lawrenceville, GA.*

*TA–W–59,357; Dole Fruit Co., Gulfport Purchasing Department, Gulfport, MS.*

*TA–W–59,359; Science Applications International Corp. (SAIC), Piscataway, NJ.*

The Department as determined that criterion (1) of section 246 has not been met. Workers at the firm are 50 years of age or older.

*None*

The Department has determined that criterion (2) of section 246 has not been met. Workers at the firm possess skills that are easily transferable.

*None*

The Department has determined that criterion (3) of section 246 has not been met. Competition conditions within the workers' industry are not adverse.

*TA–W–59,371; Sony Electronics, Display Device, On-Site Leased Workers of Staffmark and Remedy, San Diego, CA.*

I hereby certify that the aforementioned determinations were issued during the month of May 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: June 9, 2006.

**Erica R. Cantor,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. E6–9906 Filed 6–21–06; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–56,258]**

### Collins and Aikman Products Company, Division 016, Roxboro, NC (Including Employees Working out of Troy, MI); Amended Certification Regarding Eligibility To Apply for Worker 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 Regarding Eligibility to Apply for Worker Adjustment Assistance on February 24, 2005, applicable to workers of Collins and Aikman Products Company, Division 016, Roxboro, North Carolina. The notice was published in the **Federal Register** on April 1, 2005 (70 FR 16847).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers produced automotive fabrics.

New information provided by the company official shows that worker separations occurred involving employees of Collins and Aikman Products Company, Division 016, Roxboro, North Carolina, working out of Troy, Michigan.

Based on this new information, the Department is amending this certification to include those workers of Collins and Aikman Products Company, Division 016, Roxboro, North Carolina, working out of Troy, Michigan.

The intent of the Department's certification is to include all workers of the Collins and Aikman Products Company, Division 016, Roxboro, North Carolina, who were adversely affected by increased imports.

The amended notice applicable to TA–W–56,258 is hereby issued as follows:

All workers of Collins and Aikman Products Company, Division 016, Roxboro, North Carolina, including employees of Collins and Aikman Products Company, Division 016, Roxboro, North Carolina, working out of Troy, Michigan, who became totally or partially separated from employment on or after December 13, 2003 through February 24, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 6th day of June 2006.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6–9886 Filed 6–21–06; 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 May 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 or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

**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–59,234; Frontier Spinning Mills, Formerly Know as Swift Galey, Also know as Swift Textiles, Yarn Plant, Columbus, GA: April 9, 2005*

*TA–W–59,277A; Thomasville Furniture Industries, Inc., Upholstery Plant 9, Hickory, NC: April 24, 2005*

*TA–W–59,277B; Thomasville Furniture Industries, Inc., Upholstery Plant 3, Troutman, NC: April 24, 2005*

*TA–W–59,415; WestPoint Home, Bed Products Division, Columbia, AL: May 16, 2005*
*TA–W–58,869; Teknetix, Inc., Parkersburg, WV: February 17, 2005*
*TA–W–59,127; Cridge, Inc., On-Site Leased Workers of Global Staffing, Staffing Visions of J.N., Fallsington, PA: March 22, 2005*
*TA–W–59,135; Bicor Processing Corp., Brooklyn, NY: March 22, 2005*
*TA–W–59,165; Georgia Pacific Corp., Fort James Operating Division, Pulp Mill, A Subsidiary of Koch Industries, Old Town, ME: April 4, 2005*
*TA–W–59,185; Roseburg Forest Products, Plywood Division, Dillard, OR: April 3, 2005*
*TA–W–59,190; FSP–One, Inc., Plainville, MA: April 11, 2005*
*TA–W–59,198; Tietex Interiors, A Division of Tietex, Williamsburg Plant, Gibsonville, NC: November 15, 2005*
*TA–W–59,203; LH Sewing Co., San Francisco, CA: April 12, 2005*
*TA–W–59,244; Convatec, A Division of E.R. Squibb and Sons, LLC, Greensboro, NC: April 19, 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–59,224; Lear Corporation, SSD Division, Elsie, MI: April 13, 2005*
*TA–W–59,245; Securitas Security Service, Inteir Automotive Seating of America, Inc., Romech Division, Red Oak, IA: April 18, 2005*
*TA–W–59,326; Dura Art Stone, Inc., Fontana, CA: May 3, 2005*
*TA–W–59,341; STERIS Corporation, Healthcare—Erie Operations Division, Erie, PA: May 4, 2005*
*TA–W–59,346; Sonoco Products Co., Flexible Packaging Division, Charlotte, NC: May 5, 2005*
*TA–W–59,353; Auburn Technology, Inc., A Subsidiary of Bombardier Transportation North America, Auburn, NY: May 5, 2005*
*TA–W–59,387; SKF USA Inc., Automotive Division, On-Site Leased Workers from Aiken Staffing Career, Graniteville, SC: May 3, 2005*
*TA–W–59,409; Components Manufacturing Co., A Subsidiary of Rheem Mfg Co., Augusta Warehouse, Augusta, GA: May 8, 2005*
*TA–W–59,216; Schindler Elevator Corp., Pete DeLuke & Assoc. & Manpower, Sidney, OH: April 13, 2005*
*TA–W–59,277; Thomasville Furniture Industries, Inc., Plant A, Thomasville, NC: April 24, 2005*
*TA–W–59,277C; Thomasville Furniture Industries, Inc., Plant D, Thomasville, NC: April 24, 2005*
*TA–W–59,284; Sound Advance Systems, Santa Ana, CA: April 26, 2005*
*TA–W–59,294; Dale's Cleaning Service, Working On-Site at OSRAM/Sylvania, Rockland, ME: April 7, 2005*
*TA–W–59,296; Synertech Health System Solutions, LL Sofware/Product Engineering Dept., Harrisburg, PA: April 17, 2005*
*TA–W–59,403; Picolight, Inc., Louisville, CO: May 16, 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–59,256; Caraustar Industries, Inc., Danville Plant, Blairs, VA:* April 20, 2005
*TA–W–59,325; Stanco Metal Products, Inc., On-Site Leased Workers of Kelly Services, Grand Haven, MI: April 27, 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–59,263; A Bust Tool and Mfg. Co., Inc., dba Metal Manufacturing Co., Hammond, IN: April 21, 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–59,308; Michelin North America, Inc., Service V, Greenville, SC.*
*TA–W–59,315; Lear Corporation—Walker Plant, Seating Systems Division, Walker, MI.*

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (shift in production to a foreign country) have not been met.

*TA–W–59,279; International Waxes, Inc., formerly Honeywell, Smethport, PA.*
*TA–W–59,285; Sony Technology Center Pittsburgh, A Subsidiary of Sony Electronics, SXRD Assembly, Mt. Pleasant, PA.*

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–58,841; Crossroads Systems, Inc., Austin, TX.*
*TA–W–59,243; Tenneco, Inc., OE/RC Sterling Heights Div., Sterling Heights, MI.*

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–59,180; Leading Technologies, Leechburg, PA.*
*TA–W–59,217; San Francisco City Lights, Inc., San Francisco, CA.*
*TA–W–59,303; South Mountain Technologies (USA), Inc., Wilsonville, OR.*

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–59,239; ReadyHosting, Inc., Kenosha, WI.*
*TA–W–59,253; Universal Manufacturing Corp., Shelby, NC.*
*TA–W–59,302; Information Systems Services, Working On-Site at Ford Motor Company, Dearborn, MI.*
*TA–W–59,345; Theramatrix Services, Working at Ford Motor Co., Atlanta Assembly Plant, Hapeville, GA.*
*TA–W–59,352; Town of Calhoun Falls, Calhoun Falls, SC.*

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 Ajdustment Assistance**

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

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 issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

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–59,308; Michelin North America, Inc., Service V, Greenville, SC.*

*TA–W–59,315; Lear Corporation—Walker Plant, Seating Systems Division, Walker, MI.*

*TA–W–59,279; International Waxes, Inc., formerly Honeywell, Smethport, PA.*

*TA–W–59,285; Sony Technology Center Pittsburgh, A Subsidiary of Sony Electronics, SXRD Assembly, Mt. Pleasant, PA.*

*TA–W–58,841; Crossroads Systems, Inc., Austin, TX.*

*TA–W–59,243; Tenneco, Inc., OE/RC Sterling Heights Div., Sterling Heights, MI.*

*TA–W–59,180; Leading Technologies, Leechburg, PA.*

*TA–W–59,217; San Francisco City Lights, Inc., San Francisco, CA.*

*TA–W–59,303; South Mountain Technologies (USA), Inc., Wilsonville, OR.*

*TA–W–59,239; ReadyHosting, Inc., Kenosha, WI.*

*TA–W–59,253; Universal Manufacturing Corp., Shelby, NC.*

*TA–W–59,302; Information Systems Services, Working On-Site at Ford Motor Company, Dearborn, MI.*

*TA–W–59,345; Theramatrix Services, Working at Ford Motor Co., Atlanta Assembly Plant, Hapeville, GA.*

*TA–W–59,352; Town of Calhoun Falls, Calhoun Falls, SC.*

The Department as determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

*None*

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

*TA–W–59,244; Convatec, A Division of E.R. Squibb and Sons, LLC, Greensboro, NC:*

*TA–W–59,326; Dura Art Stone, Inc., Fontana, CA:*

*TA–W–59,296; Synertech Health System Solutions, LLC, Sofware/Product Engineering Dept., Harrisburg, PA:*

The Department as 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 May 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: June 7, 2006.

**Erica R. Cantor,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. E6–9901 Filed 6–21–06; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–58,759B]**

### Buckingham Galleries D/B/A Hitchcock Fine Home Furnishings, Riverton, CT; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Buckingham Galleries, d/b/a Hitchcock Fine Home Furnishings, Riverton, Connecticut. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–58,759B; Buckingham Galleries d/b/a Hitchcock Fine Home Furnishings, Riverton, Connecticut (June 9, 2006).

Signed at Washington, DC this 9th day of June 2006.

**Erica R. Cantor,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. E6–9887 Filed 6–21–06; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–59,247; TA–W–59,247A]**

### Saint-Gobain Advanced Ceramics Microelectronics Division, Sanborn, NY; Saint-Gobain Advanced Ceramics Microelectronics Division, East Granby, CT; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for Trade Adjustment Assistance, the group eligibility requirements in either paragraph (a)(2)(A) or (a)(2)(B) of section 222 of the Trade Act must be met. It is determined in the case of Saint-Gobain Advanced Ceramics, Microelectronics Division, Sanborn, New York that the requirements of (a)(2)(A) of section 222 have been met.

The investigation was initiated on April 20, 2006 in response to a petition filed by a company official on behalf of workers of Saint-Gobain Advanced Ceramics, Microelectronics Division, Sanborn, New York (TA–W–59,247) and Saint-Gobain Advanced Ceramics, Microelectronics Division, East Granby, Connecticut (TA–W–59,247A). The workers at the Sanborn facility produce aluminum nitride substrates, while the workers at the East Granby facility produce silicon-nitrate bearings.

With regard to the Sanborn, New York facility, the investigation revealed that sales, production and employment at the facility all declined absolutely upon its shutdown, which occurred on February 28, 2006.

The Department of Labor surveyed the subject facility's primary customers regarding purchases of aluminum nitride substrates in 2004, 2005 and during the period of January through March of 2006. The survey revealed that from 2004 to 2005 when the subject fir's sales declined, respondents became increasingly reliant on imports of aluminum nitride substrates. Customer imports also were sustained with the closure of the plant in 2006.

With regard to the East Granby, Connecticut location, the petitioner has requested that the petition be

withdrawn. Consequently, the investigation has been terminated.

In addition, 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 the case of the Sanborn, New York facility 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.

In order for the Department to issue a certification of eligibility to apply for ATAA, the worker group must be certified eligible to apply for trade adjustment assistance (TAA). Since the workers of the East Granby, Connecticut facility are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

**Conclusion**

After careful review of the facts obtained in the investigation, I determine that increases of imports of articles like or directly competitive with aluminum nitride substrates produced at Saint-Gobain Advanced Ceramics, Microelectronics Division, Sanborn, New York contributed importantly to the total or partial separation of workers and to the decline in sales or production at that firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

All workers of Saint-Gobain Advanced Ceramics, Microelectronics Division, Sanborn, New York who became totally or partially separated from employment on or after April 16, 2005 through two years from the date of certification 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.

The petition for Saint-Gobain Advanced Ceramics, Microelectronics Division, East Granby, Connecticut has been withdrawn. Consequently, that investigation has been terminated.

Signed in Washington, DC, this 5th day of June 2006.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6–9904 Filed 6–21–06; 8:45 am]

**BILLING CODE 4510–30–P**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–59,454]**

### West Point Stevens, Drakes Branch, VA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 24, 2006, in response to a petition filed on behalf of workers at West Point Stevens, Drakes Branch, Virginia.

This petitioning group of workers is covered by an earlier petition (TA–W–59,408) filed on May 16, 2006 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation has been terminated.

Signed in Washington, DC, this 26th day of May 2006.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6–9888 Filed 6–21–06; 8:45 am]

**BILLING CODE 4510–30–P**

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### Agency Information Collection Activities; Announcement of Office of Management and Budget (OMB) Control Numbers Under the Paperwork Reduction Act

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

**ACTION:** Notice; announcement of OMB approval of information collection requirements.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) announces that OMB has extended its approval for a number of information collection requirements found in sections of 29 CFR pars 1910, 1915, 1917, 1918, 1926, and 1928. OSHA sought approval under the Paperwork Reduction Act of 1995 (PRA–95), and, as required by that Act, is announcing the approval number and expiration dates for those requirements.

**DATES:** This notice is effective June 22, 2006.

**FOR FURTHER INFORMATION CONTACT:** Todd Owen or Theda Kenney, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–2222.

**SUPPLEMENTARY INFORMATION:** In a series of **Federal Register** notices, the Agency announced its requests to OMB to renew its current extensions of approvals for various information collection (paperwork) requirements in its safety and health standards for general industry, shipyard employment, longshoring, marine terminals, the construction industry, and agriculture (*i.e.,* 29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928). In these **Federal Register** announcements, the Agency provided 60-day comment periods for the public to respond to OSHA's burden-hour and cost estimates.

In accordance with PRA–95 (44 U.S.C. 3501–3520), OMB renewed its approval for these information collection requirements and assigned OMB control numbers to these requirements. The table below provides the following information for each of these OMB-approved requirements: The title of the collection; the date of the **Federal Register** notice; the **Federal Register** reference (date, volume, and leading page); OMB's control number; and the new expiration date.

| Title | Date of **Federal Register** Publication, **Federal Register** Reference, and OSHA Docket No. | OMB Control No. | Expiration Date |
|---|---|---|---|
| Acrylonitrile (29 CFR 1910.1045) | 06/15/2005, 70 FR 34799, Docket No. 1218–0126 (2005). | 1218–0126 | 11/30/2008 |
| 1,2-Dibromo-3-Chloropropane (DBCP) Standard (29 CFR 1910.1044). | 09/01/2005, 70 FR 52132, Docket No. 1218–0101 (2005). | 1218–0101 | 02.28/2009 |
| Asbestos in Construction (29 CFR 1926.1101) | 10/27/2005, 70 FR 62002, Docket No. 1218–0134 (2006). | 1218–0134 | 02/28/2009 |

| Title | Date of **Federal Register** Publication, **Federal Register** Reference, and OSHA Docket No. | OMB Control No. | Expiration Date |
|---|---|---|---|
| Asbestos in Shipyards (29 CFR 1915.1001) | 10/27/2005, 70 FR 62003, Docket No. 1218–0195 (2006). | 1218–0195 | 02/28/2009 |
| Blasting and the Use of Explosives (29 CFR part 1926, subpart U). | 11/25/2005, 70 FR 71174, Docket No. 1218–0217 (2006). | 1218–0217 | 03/31/2009 |
| Cadmium in Construction (29 CFR 1926.1127) | 10/27/2005, 70 FR 62006, Docket No. 1218–0186 (2006). | 1218–0185 | 03/31/2009 |
| Cadmium in General Industry (29 CFR 1910.1027) | 10/27/2005, 70 FR 62005, Docket No. 1218–0185 (2006). | 1218–0185 | 03/31/2009 |
| Coke Oven Emissions (29 CFR 1910.1029) | 05/23/2005, 70 FR 29536, Docket No. 1218–0128 (2006). | 1218–0128 | 10/31/2008 |
| Cotton Dust (29 CFR 1910.1043) | 06/28/2005, 70 FR 37122, Docket No. 1218–0061 (2005). | 1218–0061 | 11/30/2008 |
| Design of Cave-in Protection Systems (29 CFR 1926.652). | 12/07/2004, 69 FR 70710, Docket No. 1218–0137 (2005). | 1218–0137 | 06/30/2008 |
| Electrical Standards for Construction (29 CFR part 1926, subpart K) and for General Industry (29 CFR part 1910, subpart S). | 04/20/2005, 70 FR 20604, Docket No. 1218–0130 (2005). | 1218–0130 | 09/30/2008 |
| Hazardous Waste Operations and Emergency Response (HAZWOPER) (29 CFR 1910.120). | 10/27/2005, 70 FR 61999, Docket No. 1218–0202 (2006). | 1218–0202 | 03/31/2009 |
| Inorganic Arsenic (29 CFR 1910.1018) | 07/22/2005, 70 FR 42389, Docket No. 1218–0104 (2005). | 1218–0104 | 11/30/2008 |
| Marine Terminals Standards (29 CFR part 1917) and Safety and Health Regulations for Longshoring (29 CFR part 1918). | 11/21/2005, 70 FR 70102, Docket No. 1218–0196 (2006). | 1218–0196 | 03/31/2009 |
| Methylene Chloride (29 CFR 1910.1052) | 12/07/2004, 69 FR 70709, Docket No. 1218–0179 (2005). | 1218–0179 | 06/30/2008 |
| OSHA Strategic Partnership Program for Worker Safety and Health (OSPP). | 11/25/2005, 70 FR 71173, Docket No. 1218–0244 (2006). | 1218–0244 | 03/31/2009 |
| Permit-Required Confined Spaces (29 CFR 1910.146) | 08/31/2005, 70 FR 51849, Docket No. 1218–0203 (2005). | 1218–0203 | 02/28/2009 |
| Servicing Multi-Piece and Single Piece Rim Wheels (29 CFR 1910.177). | 07/22/2005, 70 FR 42392, Docket No. 1218–0219 (2005). | 1218–0219 | 11/30/2008 |
| Shipyard Employment Standards (29 CFR 1915.113(b)(1) and 1915.172(d)). | 07/22/2005, 70 FR 42390, Docket No. 1218–0220 (2005). | 1218–0220 | 11/30/2008 |
| Slings (29 CFR 1910.184) | 05/26/2005, 70 FR 30488, Docket No. 1218–0223 (2005). | 1218–0223 | 10/31/2008 |
| Subpart A (“General Provisions”) and Subpart B (“Confined and Enclosed Spaces and other Dangerous Atmospheres in Shipyard Employment”) (29 CFR part 1915). | 04/01/2005, 70 FR 16871, Docket No. 1218–0011 (2005). | 1218–0011 | 07/31/2008 |
| Telecommunications (Training Certification Record) (29 CFR 1910.268(c)). | 07/22/2005, 70 FR 42391, Docket No. 1218–0225 (2005). | 1218–0225 | 12/31/2008 |
| Vinyl Chloride Standard (29 CFR 1910.1017) | 06/10/2005, 70 FR 33926, Docket No. 1218–0010 (2005). | 1218–0010 | 10/31/2008 |

In accordance with 5 CFR 1320.5(b), an agency cannot conduct, sponsor, or require a response to a collection of information unless the collection displays a valid OMB control number and the agency informs respondents that they are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*), and Secretary of Labor’s Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on June 14, 2006.

**Edwin G. Foulke, Jr.,**

*Assistant Secretary of Labor.*

[FR Doc. 06–5578 Filed 6–21–06; 8:45 am]

**BILLING CODE 4510–26–M**

## NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; National Council on the Arts 158th Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on July 13 and July 14, 2006 in Rooms 527 and M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

The Council will meet in closed session on July 13th, from 2 p.m. to 5 p.m. (ending time is approximate), in Room 527 for discussion of National Medal of Arts nominations. In accordance with the determination of the Chairman of February 27, 2006, this session will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

The July 14th meeting, from 9 a.m. to 12 p.m. (ending time is approximate), will be open to the public on a space available basis. Following opening remarks and announcements, there will be an update from the Government Affairs office. The meeting will include two presentations: one on 40 years of NEA support for Museums and Visual Arts and one on 40 years of NEA support for Arts Education. This will be followed by review and voting on applications and guidelines. The

meeting will conclude with general discussion.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

Dated: June 19, 2006.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Office of Guidelines and Panel Operations.*

[FR Doc. E6–9883 Filed 6–21–06; 8:45 am]

**BILLING CODE 7537–01–P**

## NATIONAL INSTITUTE FOR LITERACY

### Notice of Consideration of Unsolicited Grant Proposals and Intent To Publish Regulations

**AGENCY:** National Institute for Literacy.

**SUMMARY:** The Director provides through this notice information concerning the receipt by the National Institute for Literacy (the Institute) of four unsolicited grant proposals, the process under which the Institute will consider the proposals, the intention of the Institute to publish regulations to govern future grant competitions and consideration of future unsolicited grant proposals, and the intention of the Institute not to accept additional unsolicited grant proposals until final regulations have been published.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Hollis, Special Assistant to the Director, National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006–2401, Telephone: (202) 233–2025, or via the Internet: *ehollis@nifl.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

**SUPPLEMENTARY INFORMATION:** The Institute is authorized under 20 U.S.C. 9252(c)(1) to carry out a number of activities to improve and expand the system for the delivery of literacy services. To assist it in carrying out these activities, the Institute may award grants to individuals, public or private institutions, agencies, organizations, or consortia of such institutions, agencies, or organizations (20 U.S.C. 9252(c)(2)). In addition, the Institute is authorized under 20 U.S.C. 6367 to carry out information dissemination responsibilities with respect to scientifically based reading research.

In the past, the Institute, which is administered under the terms of an interagency agreement entered into by the Secretaries of Education, Labor, and Health and Human Services (the Interagency Group), has adopted provisions of the Education Department General Administrative Regulations (EDGAR) for purposes of grant competitions and grant awards. However, the Institute has determined that it would be beneficial for potential grantees to have regulations specifically applicable to the Institute's grants process. The Institute believes that having its own set of regulations would reflect the Institute's purposes more clearly and therefore provide better guidance to potential applicants and improve the overall efficiency and consistency of its grants management process. Therefore, the Institute is currently preparing regulations to govern future grant awards to authorized entities. In the meantime, the Institute has received four unsolicited proposals that are awaiting consideration. The Director does not wish to postpone the consideration of these proposals further; therefore, for the sole purpose of considering these unsolicited proposals, the Director adopts the regulations in part 75 of EDGAR (34 CFR part 75) applicable to unsolicited proposals, including 34 CFR 75.210(b), 75.211, 75.219, and 75.222. Finally, the Director is hereby providing notice that the Institute will accept no further submissions of unsolicited proposals until it has prepared and published final regulations.

#### Electronic Access to This Document

You may view this document, as well as all other National Institute for Literacy documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

**Program Authority:** 20 U.S.C. 9252.

Dated: June 16, 2006.

**Sandra Baxter,**

*Director, National Institute for Literacy.*

[FR Doc. E6–9835 Filed 6–21–06; 8:45 am]

**BILLING CODE 6055–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 40–8903]**

### Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Homestake Mining Company, Grants, NM

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**FOR FURTHER INFORMATION CONTACT:** Ron Linton, Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–7777; fax number: (301) 415–5955; e-mail: *rcl1@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Introduction

The Nuclear Regulatory Commission (NRC) proposes to issue a license amendment for License Condition 35 (background water quality concentrations for ground water compliance monitoring), to Materials License SUA–1471, for the Homestake Mining Company (HMC), Grants, New

Mexico uranium mill site. The purpose of this amendment is to revise several current ground water protection standards based on a more extensive data set (temporal and spacial) of background water quality in the upper most (alluvial) aquifer. In addition, this amendment will include establishing new ground water protection standards for several constituents in the alluvial aquifer; the Upper, Middle, and Lower Chinle non-mixing zones; and the Chinle mixing zone. Presently, three alluvial aquifer monitor wells have been designated as point of compliance wells for existing ground water protection standards. Designation of additional point of compliance wells for the alluvial aquifer and the Chinle non-mixing and mixing zones will be addressed in a revised Corrective Action Plan, to be submitted by HMC no later than December 31, 2006. NRC has prepared an Environmental Assessment (EA) in support of this amendment in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

**II. EA Summary**

The staff has prepared the EA in support of the proposed license amendment. Since this action relates to ground water, the primary focus of the evaluation of potential environmental impacts relates to ground water. For several of the constituents of interest, including uranium and selenium, the proposed ground water quality standards are higher than the existing standards. With respect to uranium and selenium, both the current and proposed ground water protection standards exceed their respective Safe Drinking Water Act maximum contaminant levels; therefore, post-restoration treatment to meet Federal potable water quality limits will be necessary. Since the proposed standards are higher, the cost of post-restoration treatment to meet Federal water quality limits under the proposed amendment may be higher. However, it is recognized that the proposed ground water quality standards represent the ambient (background) chemical quality of the ground water flowing into (and eventually downgradient) of the mill site from upgradient areas and these higher background levels are not related to milling activities. In addition, staff has concluded that there would be no effect to the following resources: visual resources, vegetation and soils, ambient air quality, and transportation. Staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on cultural or historic resources.

**III. Finding of No Significant Impact**

On the basis of the EA, NRC has concluded that there are no significant environmental impacts from the proposed amendment and has determined not to prepare an environmental impact statement.

**IV. Further Information**

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are as follows:

| Document | ADAMS Accession No. | Date |
|---|---|---|
| Environmental Restoration Group Statistical Evaluation of Alluvial Ground Water Quality Upgradient of the Homestake Site Near Grants, New Mexico. | ML020080071<br>ML020080076<br>ML020080104<br>ML020350348 | 12/31/01 |
| Environmental Restoration Group Statistical Evaluation of the Chinle Aquifer Quality at Homestake Site Near Grants, New Mexico. | ML033140226 | 10/31/03 |
| Homestake Mining Company and Hydro-Engineering Background Water Quality Evaluation of Chinle Aquifers. | ML033140212<br>ML033140215<br>ML033140218<br>ML033140223<br>ML033160201<br>ML033160203<br>ML033160207<br>ML033160213 | 10/31/03 |
| Homestake Mining Company—HMC's response to New Mexico Environment Department Comments | ML060790062 | 6/9/05 |
| Homestake Mining Company—Revised Ground Water Protection Standards | ML060250273 | 1/19/06 |
| NRC's EA for Homestake's Proposed Revisions to Ground Water Protection Standards | ML061450327 | 6/06/06 |

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 16th day of June, 2006.

For the Nuclear Regulatory Commission.

**Ron Linton,**

*Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E6–9851 Filed 6–21–06; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 040–07455]**

## Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Source Materials License No. Sma–1018, Approving the Final Status Survey Plan for Section 2 of the Whittaker Corporation's Facility in Transfer, PA

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

**FOR FURTHER INFORMATION CONTACT:** Marjorie McLaughlin, Health Physicist, Decommissioning Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406–1415; telephone (610) 337–5240; fax number (610) 337–5269; or by e-mail: *mmm3@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Source Materials License No. SMA–1018. This license is held by Whittaker Corporation (the Licensee), for its Whittaker facility (the Facility), located at 99 Crestview Drive in Transfer, Pennsylvania. Issuance of the amendment would approve a Final Status Survey Plan (FSSP) for Section 2 of the Facility. The Licensee requested this action in a letter dated October 5, 2005. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10 Code of Federal Regulation (CFR), part 51 (10 CFR part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued following the publication of this FONSI and EA in the **Federal Register**.

## II. Environmental Assessment

### *Identification of Proposed Action*

The proposed action would grant the Licensee's October 5, 2005, license amendment request, thereby approving the FSSP for Section 2 of the Facility. Specifically, the FSSP describes the Licensee's methods and procedures for determining whether that portion of the site currently meets the radiological criteria for release for unrestricted use specified in Subpart E of 10 CFR part 20, or if additional remediation is required. NRC approval of the FSSP does not constitute termination of the license or release of the site for unrestricted use. Instead, it would allow the Licensee to obtain the information required by the NRC in support of any later request to release the Facility (or a portion of the Facility) for unrestricted use.

License No. SMA–1018 was issued on December 15, 1969, pursuant to 10 CFR part 40, and has been amended periodically since that time. The license authorized the possession and use of unsealed source material (natural thorium and natural uranium) contained in ores used for minerals processing and as a contaminant that was isolated by the processing of scrap metal. The Facility originally consisted of a plant and a slag waste storage area. In 1974, the Licensee ceased licensed operations at the Facility, and initiated decommissioning of plant equipment and buildings. Waste slag, raw materials, feed-metal scrap, and contaminated building materials that were generated from the decontamination activities were placed in the slag storage area. The portion of the property housing the plant was released for unrestricted use in 1975, following the performance of a confirmatory survey by the NRC. An additional plant building was decommissioned in 1983 and released for unrestricted use in 1985. The plant is an active facility under a new owner (Greenville Metals), who is not associated with the Licensee. Greenville Metals processes and refines scrap and other metals to produce metal alloys and conversion products. Greenville Metals does not utilize NRC-licensed radioactive material, and is separated from the Whittaker property by metal fencing.

The Facility that the Licensee plans to decommission consists of the slag area, located on a 5.9 acre strip of land, that is characterized by four sections according to topography and site use. Section 2 is in the center, bordered by Section 3 to the north, the boundary fence with the Greenville Metals plant to the west, a ravine to the south, and floodplain and the Shenango River to the east. Section 2 contained the highest-activity slag, most of which has now been excavated and disposed in accordance with the Licensee's procedures that were approved by NRC in the license amendment dated June 10, 1999. The Facility is located within an industrial park. There are no buildings remaining at the Facility (with the exception of temporary trailers supplied by the decommissioning contractor), and the surrounding area is primarily rural.

In July 2004, the Licensee initiated excavation and survey of the slag and waste materials in Section 2 of the Facility. On September 12, 2005, the Licensee commenced shipping the material to an authorized radioactive waste disposal site. The proposed action is to approve the Licensee's plan for conducting a radiological survey of Section 2 of the Facility. The Licensee will perform the survey to determine if Section 2 meets the site-specific Derived Concentration Guideline Levels (DCGLs), approved by the NRC on September 20, 2005 (70 FR 54779). These DCGLs describe the maximum amount of residual radioactivity on building surfaces, equipment, materials, and soils that will satisfy the NRC requirements in Subpart E of 10 CFR part 20 for unrestricted release of the Facility.

### *Need for the Proposed Action*

The Licensee is no longer using licensed materials at the Facility. In accordance with the requirements of 10 CFR 40.42(h), the Licensee must complete decommissioning of the site no later than 24 months following the initiation of decommissioning. The Licensee will use the proposed FSSP to determine if Section 2 of the Facility meets the NRC criteria for release for unrestricted use, or if additional decommissioning activities are required.

### *Environmental Impacts of the Proposed Action*

The survey described in the proposed Section 2 FSSP follows the guidance contained in NUREG–1575, Rev 1, ''Multi-Agency Radiation Survey and Site Investigation Manual'' (MARSSIM). The proposed FSSP divides Section 2 into Class 1 and Class 2 survey units, based on the expected remaining radioactive contamination. Under the proposed action, each survey unit will receive a walkover radiation survey of the soil surface (one-hundred percent of the area for the Class 1 units and a minimum of ten percent of the area for the Class 2 units). The walkover surveys will be performed using a two-inch by two-inch (2″ x 2″) Sodium-Iodide (NAI) radiation detector. The proposed FSSP also provides for obtaining 11 discrete soil samples from each survey unit. The sample locations would be determined using a random-start grid pattern, in accordance with the MARSSIM guidance. The samples would consist of filling one-gallon bags with soil from the remediated area, and having the soil analyzed by gamma spectroscopy to determine the radiological composition. In addition, the proposed FSSP includes the performance of exposure rate measurements at each soil sample location at a height of one meter (m).

The proposed action would have minimal effect on environmental resources because it involves passive surveys and the removal of only a small amount of soil from an area that was previously-impacted by licensed operations. The proposed action would not result in the release of radioactivity to the air or water. The proposed action

also would not authorize release of Section 2 of the Facility for unrestricted use. Based on its review, the NRC staff has determined that the proposed FSSP is in compliance with approved NRC standards, as described in NUREG–1575, Rev.1.

Area groundwater is chemically contaminated with trichloroethylene (TCE). The origin of this contamination is being investigated by the Pennsylvania Department of Environmental Protection (PADEP). PADEP has indicated that it believes the contamination is being leached onto the Facility property from surrounding industrial sites. The Licensee is working with PADEP and the surrounding industries to identify and remediate the TCE source and the contamination. The proposed action will not result in the release of TCE to the environment. The NRC staff has found no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts. Based on its review, the staff concluded that the proposed action will not have a significant effect on the quality of the human environment.

*Environmental Impacts of the Alternatives to the Proposed Action*

The only alternative to the proposed action is the no-action alternative, under which the staff would deny the amendment request for the proposed FSSP. This alternative would result in no environmental impacts, but would prohibit the performance of a FSS for Section 2 of the Facility. This no-action alternative is not feasible because it conflicts with 10 CFR 20.1402, requiring licensees to verify that residual radioactivity meets the radiological unrestricted release criteria. The Licensee cannot demonstrate that the site meets the decommissioning criteria without performing the FSS. The licensee must verify that the decommissioning criteria are met before it can request release of Section 2 of the Facility for unrestricted use. Additionally, denying the amendment request would prevent the Licensee from completing decommissioning in the timeframe required by 10 CFR 40.42(h). The environmental impacts of the proposed action are minimal, and the no-action alternative is accordingly not further considered.

*Conclusion*

The NRC staff has concluded that the proposed action is consistent with NRC guidance and regulations. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

*Agencies and Persons Consulted*

NRC provided a draft of the EA to PADEP on January 24, 2006. On February 15, 2006, PADEP responded by e-mail. The State agreed with the conclusions of the EA, and provided some typographical comments on the EA document, and two specific comments on the FSSP:

*Comment 1:* PADEP asked whether the contractor, NRC, will use to perform a confirmatory survey of Section 2 of the Facility will review and comment on the FSSP.

*Resolution:* NRC provided the proposed FSSP to the NRC contractor for review and comment on February 21, 2006. Comments were received on March 2, 2006. NRC provided the comments to the Licensee in a Request for Additional Information on March 29, 2006. The Licensee revised the proposed FSSP in response to the comments, and provided the revised FSSP in a letter dated May 15, 2006. The staff reviewed the revised FSSP for the preparation of this EA.

*Comment 2:* PADEP asked how the Licensee has verified the belief stated in the proposed FSSP that Section 2 of the Facility has been excavated to native soil, and that there is not additional contamination at a greater depth.

*Resolution:* NRC discussed the comment with the Licensee and PADEP. The bottom of the excavation is characterized by foundry sand in most locations, and by river rock and coarse soil in others. The Licensee believes, and NRC concurs that the river rock and coarse soil is native soil. In areas exposing foundry sand, the Licensee will perform surveys to verify that contamination is not present at greater depths. PADEP indicated that they are satisfied with this response.

The NRC staff has determined that the proposed action has minimal environmental impacts, and will not affect listed species or critical habitat. Therefore, no consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic reservation Act.

## III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

## IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. Initial Amendment Request with Final Status Survey Plan, dated October 5, 2005 (ML052900082);
2. Request for Additional Information (RAI), dated October 18, 2005 (ML052910472);
3. Section 2 FSSP, Revision 1, dated November 14, 2005 (ML053190091);
4. Additional RAI, dated January 9, 2006 (ML060090311);
5. Section 2 FSSP, Revision 2, dated January 31, 2006 (ML060300532);
6. Comments on the Section 2 FSSP from the Oak Ridge Institute for Science and Education, dated March 2, 2006 (ML060690388);
7. Telephone Log, dated March 22, 2006 (ML060810706);
8. Additional RAI, dated March 29, 2006 (ML060880199);
9. Section 2 FSSP, Revision 3, dated May 15, 2006 (ML061420467);
10. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''
11. Title 10 Code of Federal Regulations, Part 40. 42, ''Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas;''
12. Title 10 Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''
13. NUREG–1575, Rev 1, ''Multi-Agency Radiation Survey and Site Investigation Manual''

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to pdr@nrc.gov. These documents may also be viewed electronically on the public computers

located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania this 15th day of June, 2006.

For the Nuclear Regulatory Commission.

**Marie Miller,**

*Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region I.*

[FR Doc. E6–9850 Filed 6–21–06; 8:45 am]

**BILLING CODE 7590–01–P**

## PENSION BENEFIT GUARANTY CORPORATION

### Required Interest Rate Assumption for Determining Variable-Rate Premium for Single-Employer Plans; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of interest rates and assumptions; correction.

**SUMMARY:** The Pension Benefit Guaranty Corporation published in the **Federal Register** of June 15, 2006, a notice informing the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. This document corrects an inadvertent error in that notice.

**FOR FURTHER INFORMATION CONTACT:** Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:** The Pension Benefit Guaranty Corporation published a document in the June 15, 2006, **Federal Register** (71 FR 34645), informing the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. This document corrects an inadvertent error in that notice.

In FR Doc. E6–9346, published on June 15, 2006 (70 FR 34645), make the following correction. On page 34646, in the second column, in the last line of the table, remove ''2005'' and add, in its place, ''2006''.

Issued in Washington, DC, on this 19th day of June 2006.

**Vincent K. Snowbarger,**

*Acting Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. E6–9881 Filed 6–21–06; 8:45 am]

**BILLING CODE 7709–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Extension:* Rule 6c–7; SEC File No. 270–269; OMB Control No. 3235–0276.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 6c–7 (17 CFR 270.6c–7) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''1940 Act'') provides exemption from certain provisions of sections 22(e) and 27 of the 1940 Act for registered separate accounts offering variable annuity contracts to certain employees of Texas institutions of higher education participating in the Texas Optional Retirement Program. There are approximately 80 registrants governed by Rule 6c–7. The burden of compliance with Rule 6c–7, in connection with the registrants obtaining from a purchaser, prior to or at the time of purchase, a signed document acknowledging the restrictions on redeemability imposed by Texas law, is estimated to be approximately 3 minutes of professional time per response for each of approximately 2600 purchasers annually (at an estimated $70 per hour), for a total annual burden of 130 hours (at a total annual cost of $9,100).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. The Commission does not include in the estimate of average burden hours the time preparing registration statements and sales literature disclosure regarding the restrictions on redeemability imposed by Texas law. The estimate of burden hours for completing the relevant registration statements are reported on the separate PRA submissions for those statements. (See the separate PRA submissions for Form N–3 (17 CFR 274.11b) and Form N–4 (17 CFR 274.11c).

The Commission requests written 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 will 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 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 in writing within 60 days of this publication.

Please direct your written comments to R. Corey Both, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: June 15, 2006.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–9833 Filed 6–21–06; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54001; File No. 4–429]**

### Joint Industry Plan; Notice of Filing of Joint Amendment No. 19 to the Intermarket Option Linkage Plan To Modify the Manner in Which the Participation Fee Applicable to New Participants Is Calculated

June 15, 2006.

Pursuant to section 11A of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 608 thereunder,[2] notice is hereby given that on February 17, 2006, March 16, 2006, April 12, 2006, April 18, 2006, May 2, 2006, and May 22, 2006, International Securities Exchange, Inc. (''ISE''), Philadelphia Stock Exchange, Inc. (''Phlx''), Chicago Board Options Exchange, Incorporated

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

(''CBOE''), Boston Stock Exchange, Inc. (''BSE''), American Stock Exchange LLC (''Amex''), and NYSE Arca, Inc. (''NYSE Arca'') (collectively, ''Participants'') respectively submitted to the Securities and Exchange Commission (''Commission'') Joint Amendment No. 19 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the ''Linkage Plan'').[3] The Joint Amendment proposes to modify the manner in which the participation fee applicable to new Participants is calculated.[4] The Commission is publishing this notice to solicit comments from interested persons on the proposed Joint Amendment to the Linkage Plan.

## I. Description and Purpose of the Amendment

The purpose of the Joint Amendment is to modify the manner in which the participation fee applicable to new Participants is calculated. The participation fee is determined by the Participants and is assessed in connection with an Eligible Exchange[5] becoming a new Participant. The Joint Amendment provides that in determining the amount of the participation fee, the Participants shall consider one or both of the following: (i) The portion of costs previously paid by the Participants for the development, expansion, and maintenance of Linkage[6] facilities which, under generally accepted accounting principles, could have been treated as capital expenditures and, if so treated, would have been amortized over the five years preceding the admission of the new Participant (and for this purpose all such capital expenditures shall be deemed to have a five-year amortizable life); and (ii) previous participation fees paid by other new Participants. These standards are consistent with the participation fee standards contained in the Consolidated Tape Plan (''CTA Plan'').[7] Further, the Participants would no longer be required to calculate the participation fee at least once a year. Instead, the participation fee would be calculated at the time an Eligible Exchange seeks to become a Participant.

## II. Implementation of the Plan Amendment

The Participants intend to make the proposed Joint Amendment to the Linkage Plan reflected in this filing effective when the Commission approves the Joint Amendment.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Joint Amendment to the Linkage Plan 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 4–429 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 4–429. 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 Joint Amendment that are filed with the Commission, and all written communications relating to the proposed Joint Amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices of the Amex, BSE, CBOE, ISE, NYSE Arca, and 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 4–429 and should be submitted on or before July 13, 2006. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–9854 Filed 6–21–06; 8:45 am]

BILLING CODE 8010–01–P

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, upon separate requests by the Phlx, Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.), and BSE, the Commission issued orders to permit these exchanges to participate in the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[4] *See* Section 11(b) of the Linkage Plan.

[5] *See* Section 2(6) of the Linkage Plan.

[6] *See* Section 2(14) of the Linkage Plan.

[7] *See* Section III(c)(2) of the CTA Plan.

[8] 17 CFR 200.30–3(a)(29).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54000; File No. SR-CBOE–2006–41]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto To Amend Obsolete, Outdated and/or Unnecessary Rules

June 15, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 21, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 principally by the CBOE. On June 15, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed this proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made certain clarifying changes regarding the purposes for the proposed changes. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change the Commission considers the period to commence on June 15, 2006, the date on which the Exchange filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] As required by Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii), the CBOE submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend certain of its rules, or portions thereof, which it has determined to be obsolete, outdated, and/or unnecessary. The text of the proposed rule change is available on the Exchange's web site (*http://www.cboe.com*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange performed a complete review of its Rules, as well as the surveillance procedures thereto, and identified a number of CBOE Rules, or portions thereof, that are outdated, obsolete, and/or unnecessary. In conjunction with this review, this filing proposes to: (i) Delete certain rules that are currently obsolete and no longer necessary; and (ii) amend certain rules that need to be updated. Specifically, the Exchange proposes to delete or amend (as indicated below) the following CBOE rules.

*CBOE Rule 2.15.* This rule pertains to the make-up of the Exchange's internal departments and how the Exchange may establish such departments. The Exchange no longer refers to them as ''departments'' but presently refers to them as ''divisions.'' For this reason, the Exchange proposes to amend the language of this rule to bring it up to date and make it consistent with the current terminology.

*CBOE Rule 4.3.* This rule currently requires that the Exchange's members receive the prior written consent of the Exchange before he/she establishes or maintains wire connections or shares an office with other members or non-members. Due to the anachronistic nature of this rule, the Exchange feels that no regulatory purposes are currently served by the requirements of this rule. This rule was implemented in the early 1970s, a time when communication was extremely limited. The rule was implemented to assure that there was no confusion on the part of the Exchange or a customer as to what member or member organization actually maintained a specific office space or wire connection and/or with whom. By having prior notice of such information, the Exchange would be able to discern who was affiliated with a specific office space and who was not. This was also at a time when customer business was done on a ''face to face'' basis, in which a customer would traditionally walk up off the street and into a member or member organization's storefront business. The Exchange states that this type of business activity rarely takes place these days. Due to communication enhancements (such as the cell phone, email and internet), this rule is no longer consistent with our current environment and capabilities. Customer business is not as much of a ''face to face'' business as it was in the 1970s and 1980s due to these communication enhancements. Customers have access to the internet and can converse with members or member organizations through other means of communications like the cell phone, email and facsimile. In addition, to the extent that CBOE Rule 4.3 is designed to provide the Exchange with notice of its members' business locations, it is redundant; CBOE Rule 3.7 requires that each Exchange member: (i) Promptly file with the Exchange's Membership Department its business address and residence address; and (ii) promptly file any changes to this information. For these reasons, the Exchange proposes to delete CBOE Rule 4.3.

*CBOE Rule 6.64.* This rule requires: (i) Every clearing member to maintain an office at a location that is approved by the Exchange; (ii) that the clearing member shall also have present at the office a representative that is authorized to sign any instruments and transactions on behalf of the clearing member; and (iii) that the clearing member shall file with the Exchange a certified list of those representatives that are authorized to sign any instruments and transactions on behalf of the clearing member. Due to the technological advancements in electronic communications over the past number of years, the Exchange believes that the requirements of this Rule are no longer necessary. When the Exchange originally implemented this rule, the only way of communicating with its clearing members was in-person or by telephoning them at their place of business. Based on such limitations, it was important to ensure that the Exchange knew the office location of its clearing members and that the members would have someone physically present at such office if the need arose to get in contact with them for the purpose of having an instrument or transaction reviewed and executed by the clearing member. This Rule was implemented in the late 1970s, a time when communication with members was limited. Such limitations no longer exist. Now, due to the advancements in electronic communications (such as cellular phones, mobile e-mail, Internet and facsimile), the Exchange has the ability to communicate with Exchange clearing members through these others means and thus no longer needs the physical presence of a clearing member representative at the clearing member's office for the sake of signing any instruments or transactions. In addition, pursuant to Chapter 3 of the CBOE Rules, all Exchange clearing members must have their office locations and contact information on file with the Exchange. Having the ability to communicate with Exchange clearing members at all times, whether they are at the office location or not, it is no longer necessary to require the physical presence of an authorized person at the clearing members office location. Therefore, because these requirements are obsolete and are no longer necessary, the Exchange proposes to delete this Rule.

*Interpretations .03 and .04 of CBOE Rule 7.4.* CBOE Rule 7.4 pertains to the obligations of orders by an order book official (''OBO''). Specifically, Interpretation .03 of CBOE Rule 7.4 requires an OBO to maintain an ''order shoe'' for each option class that he/she trades at his/her post. Interpretation .04 of CBOE Rule 7.4 defines the term ''custody'' for purposes of the Rule to mean that the option order is placed into the appropriate order shoe for each option traded at an OBO's post. Presently, the Exchange no longer requires an OBO to maintain an order shoe. The purpose of the order shoe was to give the OBO a place to deposit an order from the floor when the OBO wanted that order to be placed in the Exchange order book (''Book''). An OBO would have a specific order shoe for either a put or a call option order. Upon an OBO's deposit of an order into an order shoe, an Exchange employee

would then take such order and enter it into the Book manually. Due to technological advancements, such orders are no longer manually entered into the Book and are now maintained electronically. Specifically, these orders are maintained electronically on either: (i) CBOE's Hybrid Trading System (''Hybrid'') or (ii) CBOE's electronic book (''e-Book''). For option classes trading on Hybrid, these orders will be maintained electronically on Hybrid, since it is an electronic trading platform. For option classes that are non-Hybrid, the OBO no longer puts an order in an order shoe; the OBO now enters such orders electronically into the e-Book. An OBO will continue to be bound by the requirements of CBOE Rule 7.4 pertaining to an OBO's obligations for orders on both Hybrid and the e-Book. It should be noted that this filing does not propose any changes to an OBO's obligations pertaining to maintaining orders, but solely proposes to update CBOE Rule 7.4 because such orders are no longer physically deposited into an order shoe by an OBO. The Exchange proposes to delete Interpretations .03 and .04 of CBOE Rule 7.4 because it no longer uses order shoes due to these electronic advancements in trading and does not intend to use them in the future. These Interpretations, therefore, are obsolete and no longer necessary.

*Interpretation .13 of CBOE Rule 12.3.* CBOE Rule 12.3 pertains to margin requirements for customer accounts. Specifically, Interpretation .13 of CBOE Rule 12.3 states that the margin treatment for spread options that involve stock index warrants and currency warrants is subject to a one-year pilot program scheduled to begin on August 29, 1995. This Interpretation is obsolete and no longer necessary because the referenced pilot program expired almost ten years ago, on August 29, 1996. For this reason, the Exchange proposes to delete this Interpretation.

*Interpretation .02 of CBOE Rule 15.10.* CBOE Rule 15.10 pertains to the reporting requirements that are applicable to short sales in the Nasdaq National Market. Specifically, Interpretation .02 to this Rule requires that, when a Market-Maker facilitates an option or combination order from off of the Exchange trading floor and contemporaneously hedges the resulting position with a short sale Nasdaq National Market, the Market-Maker must give prior notification to an Exchange official or Trading Official prior to making such trade. Then, in turn, the Exchange Official or Trading Official must file a report describing such transaction with the Exchange's ''Department of Market Surveillance.'' The Department of Market Surveillance used to be a department within the Exchange's Regulatory Division. Presently, the Department of Market Surveillance no longer exists and is simply referred to as part of the Regulatory Division in general. Therefore, the Exchange proposes to amend this Interpretation to bring it up to date by amending the reference to ''Department of Market Surveillance'' and replacing it with ''Regulatory Division.''

*CBOE Rule 24.9(a)(5)(i) and Interpretations .04 and .08 of Rule 24.9.* CBOE Rule 24.9 details the terms of index option contracts that are traded on the Exchange. Specifically, CBOE Rule 24.9(a)(5)(i) and Interpretation .04 of CBOE Rule 24.9 pertain to the exercise settlement values for CBOE's index options based on the FT–SE (U.K.) 100 Index (the FT–SE Index''). Also, Interpretation .08 of CBOE Rule 24.9 pertains to the trading of reduced-value LEAPS on the FT–SE 100 stock index. The Exchange no longer trades options on the FT–SE Index and reduced value LEAPS on the FT–SE stock index, and it does not plan to trade them in the future. For this reason, CBOE Rule 24.9(a)(5)(i) and Interpretations .04 and .08 of CBOE Rule 24.9 are no longer necessary and the Exchange proposes to delete those sections.

*Interpretation .06 of CBOE Rule 24.9.* Interpretation .06 of CBOE Rule 24.9 pertains to the use of ''implied forward levels'' in determining the strike prices on options based on indices of Mexican stocks. Currently, the Exchange does not trade options based on indices of Mexican stocks, and it has no intention of trading them in the future. For this reason, Interpretation .06 is no longer necessary and therefore the Exchange proposes to delete this section.

2. Statutory Basis

By proposing to amend those Exchange rules, or portions thereof, which have been determined to be obsolete, outdated and/or unnecessary, the Exchange believes the proposed rule change is consistent with section 6(b) of the Act [7] in general and furthers the objectives of section 6(b)(5) of the Act [8] in particular in that it should promote just and equitable principles of trade, serve 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.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange states that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange states that 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**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

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.[11]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2006–41 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary,

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] *See supra* at note 3.

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–CBOE–2006–41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of 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 No. SR–CBOE–2006–41 and should be submitted on or before July 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–9853 Filed 6–21–06; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54010; File No. SR–NASD–2006–076]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Exempt All Securities Included in the NASDAQ 100 Index From the Price Test Set Forth in NASD Rule 3350(a)

June 16, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 15, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by Nasdaq. 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 the Substance of the Proposed Rule Change

Nasdaq has submitted a proposed rule change to exempt all securities included in the NASDAQ 100 Index from the price test set forth in NASD Rule 3350(a). The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

3350 Short Sales

(a)–(b) No Change.

(c)(1)–(9) No Change.

*(10) Sales of securities included in the Nasdaq 100 Index.*

(d)–(k) No Change.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Nasdaq is proposing to amend Rule 3350(c) to create an exemption from the short sale rule for securities included in the Nasdaq 100 Index.

*The NASDAQ 100 Index.* First introduced in 1985, the NASDAQ–100 Index was created to track the performance of the largest non-financial companies listed on The NASDAQ Stock Market. Nasdaq states that the NASDAQ–100 Index Tracking Stock, also known as ''QQQ'', is the most actively traded ETF and the most actively traded listed equity security in the U.S. by average daily share trading volume. As of the end of the fourth quarter of 2005, QQQ traded an average of 90.4 million shares per day. Nasdaq notes that QQQ has grown significantly since its inception: From $14.5 million in assets at the start to $20.3 billion in assets as of December 31, 2005, and from 300,000 total shares outstanding to 501.95 million at the end of the fourth quarter of 2005.

In addition to the QQQ, Nasdaq states that nearly 150 licensees have contracted with Nasdaq to use the NASDAQ–100 and other Nasdaq indices as benchmarks for the issuing and trading of their global financial products. These third-party underwritten products, such as equity-linked notes, index warrants, certificates of deposits, leveraged products and basket securities, were sold in 32 countries and amounted to $157.05 billion in underlying notional value as of December 31, 2005.6 A total of 33 domestic and international mutual funds use this barometer index as a benchmark as well.

Nasdaq states that, as a result, the Nasdaq 100 stocks are highly liquid. For the month of April 2006, the average daily volume for that group of securities was over 880 million shares. The average daily volume of an individual Nasdaq 100 security was over 8.8 million shares and the mean daily trading value of those securities was over 3.4 million shares.

*The Regulation SHO Pilot.* On June 23, 2004, Commission approved new and amended short sale regulations in Regulation SHO under the Securities Exchange Act of 1934 (the ''Act''). On July 28, 2004, the Commission issued an order creating a one year Pilot (''Pilot'') suspending the provisions of Rule 10a–1(a) under the Act and any short sale price test of any exchange or national securities association for short sales of certain securities. The Pilot was created pursuant to Rule 202T of Regulation SHO, which established procedures to allow the Commission to temporarily suspend short sale price tests so that the Commission could study the effectiveness of short sale price tests. On April 20, 2006, the Commission issued an order extending the termination date of the Pilot to August 6, 2007, the date on which temporary Rule 202T expires.

The Pilot exempted a selected list of securities from short sale price test restrictions of SEC Rule 10a–1 and the rules of self regulatory organizations, including NASD Rule 3350. Nasdaq notes that, of the roughly 1000 such securities, roughly 47 percent are listed

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

on Nasdaq and, of those, 24 currently are included in the Nasdaq 100 Index.

*Rationale for Proposed Exemption.* Nasdaq states that, first, the proposed exemption is consistent with the goals of short sale regulation because the stocks included in the Nasdaq 100 Index are highly liquid and not implicated by the objectives of the short sale rule. Congressional and Commission objectives included allowing relatively unrestricted short selling in an advancing market, preventing short selling at successively lower prices; and preventing short sellers from accelerating a declining market by exhausting all remaining bids at one price level. Nasdaq states that, given the highly liquid nature of securities listed in the Nasdaq 100 Index, the proposed exemption poses no risk to investors.

Nasdaq states that this conclusion is supported by the results of the Reg SHO Pilot to date. Numerous academics have used the implementation of Reg SHO as a natural experiment to study the affects of price-test exemptions on various measures of market quality and trading behavior. Nasdaq states that a recurring finding among these studies is that there is no indication that the pilot increased short-sale volume or volatility, decreased returns, or sacrificed market efficiency. Nasdaq believes that the results also show that bid-test rules had little-to-no affect on market quality or trading behavior for Nasdaq pilot stocks. Nasdaq states that this finding is consistent with the ability of short-sellers to circumvent Nasdaq's bid-test rule by routing orders to markets without short-sale restrictions.

Given the highly liquid nature of Nasdaq 100 securities and the absence of a material impact from the removal of price-based short sale restrictions on 24 of those securities, Nasdaq believes it would benefit investors to exempt the remaining stocks in the Nasdaq 100 Index. As described above, the Nasdaq 100 Index serves as the basis for billions of dollars of assets and trading in the basket of securities that make up the index. Nasdaq believes that the disparity of regulatory treatment between Nasdaq 100 securities that are included in the Pilot and those that are not is inefficient and potentially harmful to investors.

Nasdaq believes that the proposed exemption will also remove the disparity in short sale regulation that currently exists between markets. As opposed to the NASD, which has voluntarily adopted a short sale rule for Nasdaq securities, several exchanges that trade Nasdaq securities do so with no short sale regulation, encouraging market participants to route short sale orders to their markets to avoid any regulatory restriction. As a result, the level of regulatory protection an investor receives depends almost entirely on the market to which the investor's order is routed. Nasdaq believes that this disparity harms customers on all markets by forcing traders to choose between bypassing limit orders posted on Nasdaq, delaying executing those orders, or declining to execute. Nasdaq states that the proposed exemption is designed to help to alleviate these issues.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[3] in general, and with Section 15A(b)(5) of the Act,[4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. 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.

Nasdaq has requested that this proposal be approved on an accelerated basis. Nasdaq asserts that, given the current disparity between short sale regulation on Nasdaq and the lack of short sale regulation on NYSE/Arca and the National Stock Exchange, there is no basis to conclude that this proposal will generate legitimate controversy. Nasdaq also states that these are highly active and liquid securities that do not present any of the risks commonly understood as the underpinning for short sale regulation.

## 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–NASD–2006–076 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–NASD–2006–076. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090. Copies of such filing also will be available for inspection and copying at the principal office of the 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.

[3] 15 U.S.C. 78o–3.

[4] 15 U.S.C. 78o–3(b)(5).

All submissions should refer to File Number SR–NASD–2006–076 and should be submitted on or before July 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–9852 Filed 6–21–06; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–53998; File No. SR–NYSE–2006–41]**

## Self-Regulatory Organizations; New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC); Notice of Filing and Amendment No. 1 Thereto and Order Granting Accelerated Approval of Proposed Rule Change To List and Trade Thirty-Four WisdomTree Exchange Traded Funds

June 15, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 25, 2006 the New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC) (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On June 15, 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 from interested persons and is approving the proposal on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to list and trade the following thirty-four (34) exchange traded funds (''ETFs''), which are a type of Investment Company Unit: (1) WisdomTree Europe Total Dividend Fund; (2) WisdomTree Europe High-Yielding Equity Fund; (3) WisdomTree Japan Total Dividend Fund; (4) WisdomTree Japan High-Yielding Equity Fund; (5) WisdomTree DIEFA Fund; (6) WisdomTree DIEFA High Yielding Equity Fund; (7) WisdomTree Pacific ex-Japan Dividend Fund; (8) WisdomTree Pacific ex-Japan High-Yielding Equity Fund;[4] (9) WisdomTree International LargeCap Dividend Fund; (10) WisdomTree International MidCap Dividend Fund; (11) WisdomTree International SmallCap Dividend Fund; (12) WisdomTree International Dividend Top 100 Fund; (13) WisdomTree Europe Dividend Top 100 Fund; (14) WisdomTree Europe SmallCap Dividend Fund; (15) WisdomTree Japan SmallCap Dividend Fund; (16) WisdomTree International Consumer Non-Cyclical Sector Fund; (17) WisdomTree International Basic Materials Sector Fund; (18) WisdomTree International Communications Sector Fund; (19) WisdomTree International Consumer Cyclical Sector Fund; (20) WisdomTree International Energy Sector Fund; (21) WisdomTree International Financial Sector Fund; (22) WisdomTree International Healthcare Sector Fund; (23) WisdomTree International Industrial Sector Fund; (24) WisdomTree International Technology Sector Fund; (25) WisdomTree International Utilities Sector Fund; (26) WisdomTree Emerging Markets Total Dividend Fund; (27) WisdomTree Emerging Markets High-Yielding Equity Fund; (28) WisdomTree Emerging Markets Dividend Top 100 Fund; (29) WisdomTree Latin America Dividend Fund; (30) WisdomTree Asia Emerging Markets Total Dividend Fund; (31) WisdomTree Asia Emerging Markets High-Yielding Equity Fund; (32) WisdomTree China Dividend Fund; (33) WisdomTree Hong Kong Dividend Fund; and (34) WisdomTree Singapore Dividend Fund[5] (collectively, the ''Funds'').

### 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

NYSE states that it has adopted listing standards applicable to Investment Company Units (''ICUs'') that are consistent with the listing criteria currently used by other national securities exchanges, and trading standards pursuant to which the Exchange may either list and trade ICUs or trade such ICUs on the Exchange on an unlisted trading privileges (''UTP'') basis.[6]

The Exchange now proposes to list and trade under Section 703.16 of the NYSE Listed Company Manual (the ''Manual'') and the Exchange's Rule 1100 *et seq.* shares (''Shares'') of the Funds. The Funds are separate investment portfolios of the WisdomTree Trust (the ''Trust'').[7] Because the Funds invest in non-U.S. securities not listed on a national securities exchange or the Nasdaq Stock Market, the Funds do not meet the ''generic'' listing requirements of Section 703.16 of the Manual applicable to listing of ICUs (permitting listing in reliance upon Rule 19b–4(e) under the Act),[8] and cannot be listed without a

[5] 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 Exchange stated that the net asset value (''NAV'') per share for each Fund would be disseminated to all market participants at the same time.

[4] The Board of Trustees of WisdomTree Trust has approved a name change for the WisdomTree DIPR Fund and WisdomTree DIPR High-Yielding Fund to WisdomTree Pacific ex-Japan Dividend Index Fund and WisdomTree Pacific ex-Japan High-Yielding Equity Fund, respectively, as of the effective date of the Funds' Registration Statement.

[5] ''WisdomTree,'' ''WisdomTree Investments,'' ''High-Yielding Equity,'' ''Dividend Top 100,'' ''WisdomTree DIEFA,'' and ''WisdomTree DIPR'' are servicemarks of WisdomTree Investments, Inc.

[6] In 1996, the Commission approved Section 703.16 of the Manual, which sets forth the rules related to the listing of ICUs. *See* Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996) (SR–NYSE–95–23). In 2000, the Commission also approved the Exchange's generic listing standards for listing and trading, or the trading pursuant to UTP, of ICUs under Section 703.16 of the Manual and Exchange Rule 1100. *See* Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000) (SR–NYSE–00–46).

[7] The Trust will be registered under the Investment Company Act of 1940 (15 U.S.C. 80a), (the ''Investment Company Act''). On March 13, 2006, the Trust filed with the Commission a Registration Statement for certain of the Funds (Nos. 1–15) on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the Investment Company Act relating to the Funds (File Nos. 333–132380 and 811–21864) (the ''Registration Statement''). The Trust also consists of six funds that invest in indexes comprised of dividend-paying U.S. equity securities, as described in the Registration Statement. Telephone conference between Florence Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, and Michael Cavalier, Assistant General Counsel, NYSE, on June 9, 2006.

On April 19, 2006, the Trust filed with the Commission an Application for Orders under sections 6(c) and 17(b) of the Investment Company Act for the purpose of exempting of all the Funds from various provisions of the Investment Company Act and the rules thereunder (the ''Application'').

[8] 15 U.S.C. 78a.

filing pursuant to Rule 19b–4 [9] under the Act.

As set forth in detail below, the Funds will hold certain securities (''Component Securities'') selected to correspond generally to the performance of the following indexes, respectively (the ''Indexes,'' ''Underlying Indexes'' or ''International Indexes''): (1) WisdomTree Europe Dividend Index; (2) WisdomTree Europe High-Yielding Equity Index; (3) WisdomTree Japan Dividend Index; (4) WisdomTree Japan High-Yielding Equity Index; (5) WisdomTree Dividend Index of Europe, Far East Asia and Australasia (DIEFA); (6) WisdomTree DIEFA High-Yielding Equity Index; (7) WisdomTree Pacific ex-Japan Dividend Index (DIPR); (8) WisdomTree Pacific ex-Japan High-Yielding Equity Index; (9) WisdomTree International LargeCap Dividend Index; (10) WisdomTree International MidCap Dividend Index; (11) WisdomTree International SmallCap Dividend Index; (12) WisdomTree International Dividend Top 100 Index; (13) WisdomTree Europe Dividend Top 100 Index; (14) WisdomTree Europe SmallCap Dividend Index; (15) WisdomTree Japan SmallCap Dividend Index; (16) WisdomTree International Consumer Non-Cyclical Sector Index; (17) WisdomTree International Basic Materials Sector Index; (18) WisdomTree International Communications Sector Index; (19) WisdomTree International Consumer Cyclical Sector Index; (20) WisdomTree International Energy Sector Index; (21) WisdomTree International Financial Sector Index; (22) WisdomTree International Healthcare Sector Index; (23) WisdomTree International Industrial Sector Index; (24) WisdomTree International Technology Sector Index; (25) WisdomTree International Utilities Sector Index; (26) WisdomTree Emerging Markets Dividend Index (''EMDI''); (27) WisdomTree Emerging Markets High-Yielding Equity Index (''EMDI HYE''); (28) WisdomTree Emerging Markets Dividend Top 100 Index (''EMDI Top 100''); (29) WisdomTree Latin America Dividend Index (''LDI''); (30) WisdomTree Asia Emerging Markets Dividend Index (''AEMDI''); (31) WisdomTree Asia Emerging Markets High-Yielding Equity Index (''AEMDI HYE''); (32) WisdomTree China Dividend Index; (33) WisdomTree Hong Kong Dividend Index; and (34) WisdomTree Singapore Dividend Index.

Each Fund intends to qualify as a ''regulated investment company'' (a ''RIC'') under the Internal Revenue Code (the ''Code''). WisdomTree Asset Management, Inc. (''WTA'' or ''Advisor''), a Delaware Corporation, is the investment advisor to the Funds. The Advisor is registered under the Investment Advisers Act of 1940 (''Advisers Act'').[10] The Advisor's parent corporation is WisdomTree Investments, Inc. (''WTI'') (formerly Index Development Partners, Inc.). Each Fund will be advised by WTA. WTA has entered into a Subadvisory Agreement with BNY Investment Advisors, a separately identifiable division of The Bank of New York (''BNY'') (''Subadvisor'') with respect to the Funds. According to the Application, neither WTI nor WTA, or any affiliated persons of WTI or WTA are, or will be, registered as broker-dealers. Except for the investment management services that WTA will provide to the Funds and its other clients, neither WTI nor WTA provides, or will provide any other services to the Funds. An affiliated person of the Subadvisor is registered as a broker-dealer and, as such, provides traditional broker-dealer services to its clients. ALPS Distributors, Inc. (''Distributor''), a broker-dealer registered under the Act, acts on an agency basis and is the distributor and principal underwriter of the Creation Units (as defined below) of Shares. The Distributor is not affiliated with WTI, the Advisor, the Subadvisor, Calculation Agent (as discussed below) or any exchange.

1. Operation of the Funds [11]

The investment objective of each Fund will be to provide investment results that correspond generally to the price, and yield performance of its Underlying Indexes. Each Fund will issue, on a continuous offering basis, its Shares to be listed and traded on an Exchange. The Trust will issue, with respect to each Fund on a continuous offering basis, only specified large aggregations of Shares (each such aggregation a ''Creation Unit'') currently expected to range from 100,000 up to 250,000 Shares as will be clearly stated in such Fund's Prospectus.[12] The size of such Creation Unit for each Fund will initially be determined by the Advisor, in part on the estimated initial trading price per Share of such Fund and the size of Creation Units for other ETFs trading at that time, as well as each Fund's intended audience. Therefore, the Exchange expects the initial price of a Creation Unit will be a minimum of $1 million [13] and will range from $1 million to $10 million or more, and the initial trading price per Share of each Fund will range from $25 to $200.

The investment objective of each Fund will be to provide investment returns that closely correspond to the price, dividend, and yield performance of its Underlying Index. In seeking to achieve the respective investment objective of each Fund, the Subadvisor may utilize a ''replication'' strategy, or a ''representative sampling'' strategy with respect to its Underlying Index. The Trust expects that a Fund using a replication strategy will invest in substantially all of the Component Securities in its portfolio in the same approximate proportions as in its Index. A Fund utilizing a representative sampling strategy generally will invest in a significant number of the Component Securities of its Underlying Index, but it may not invest in all of the Component Securities of its Underlying Index.

Under normal circumstances, it is expected that each Fund will have a tracking error relative to the performance of its Underlying Index of no more than five percent (5%), net of fees or expenses. Each Fund's investment objectives, policies, and investment strategies are fully disclosed in its relevant Prospectus and statement of additional information (''SAI'').

Under normal circumstances, at least 95% of a Fund's total assets (exclusive of collateral held from securities lending) will be invested in the Component Securities of its Underlying Index. Each Fund may also invest up to 5% of its assets in securities not included in its Underlying Index. For example, a Fund may invest in securities that are not components of its Underlying Index in order to reflect various corporate actions and other changes in such Index (such as reconstitutions, additions and

[9] 17 CFR 240.19b–4.

[10] 15 U.S.C. 80b.

[11] While the Advisor would manage the Funds, the Funds' Board of Directors would have overall responsibility for the Funds' operations. The composition of the Board is, and would be, in compliance with the requirements of Section 10 of the Investment Company Act. The Funds are subject to and must comply with Section 303A.06 of the Manual, which requires that the Funds have an audit committee that complies with Rule 10A–3 under the Act, 17 CFR 240.10A–3.

[12] Telephone conference between Florence Harmon, Senior Special Counsel, Division, Commission, and Michael Cavalier, Assistant General Counsel, NYSE, on June 14, 2006 (''June 14 Telephone Conference'').

[13] The size of a Creation Unit as stated in a Fund's Prospectus may be changed, from time to time, by the Trust, if the individual Share price of such Fund increases to such an extent that the Creation Unit price becomes unappealing to investors seeking to create or redeem and arbitrageurs. In no case will the price of a Creation Unit be less than $1 million.

deletions).[14] As long as a Fund invests at least 95% of its total assets in the stocks of its Underlying Index, it also may, but is not required to, invest its other assets in futures contracts, options on futures contracts, options, and swaps, as well as cash and cash equivalents, and other investment companies, all in accordance with the requirements of the Investment Company Act.

To the extent the Funds invest in American Depositary Receipts (''ADRs''),[15] they will be listed on a national securities exchange or the Nasdaq Stock Market, and, to the extent the Funds invest in other Depositary Receipts (*i.e.,* Global Depositary Receipts and Euro Depositary Receipts), they will be listed on a foreign exchange. The Funds will not invest in any unlisted Depositary Receipts. Also, the Funds will not invest in any listed Depositary Receipts that the Advisor deems to be illiquid or for which pricing information is not readily available. In addition, all Depositary Receipts and ADRs must be sponsored (with the exception of certain pre-1984 ADRs that are listed and unsponsored because they are grandfathered). The Funds may invest in Depositary Receipts for which BNY's Depository Receipts Division acts as the depository bank. The value of an Index underlying a Fund will reflect only the value of the Index's constituents and not the value of any Depository Receipt representing an Index constituent.

From time to time, adjustments may be made in the portfolio of the Funds in accordance with changes in the composition of the Underlying Indexes or to maintain compliance with requirements applicable to a RIC under the Code.[16] For example, if at the end of a calendar quarter, a Fund would not comply with the RIC diversification tests, the Advisor would make adjustments to the portfolio to ensure continued RIC status.

The Exchange believes that these requirements and policies prevent the Funds from being excessively weighted in any single security or group of securities and significantly reduce concerns that trading in the Funds could become a surrogate for trading in unregistered securities.

WTI has created a proprietary, rules-based methodology described below (''Rules-Based Methodology'') to define the dividend-paying segments of the U.S. and foreign stock markets and to serve as indexes for use by the Funds and other equity income investors. WTI has licensed to the Funds the Indexes underlying the Funds. The Exchange states that the Indexes will be ''transparent,'' that is, the Rules-Based Methodology and the composition of each Index will be freely available to the public, any change to the composition of an Index will be made pursuant to the Rules-Based Methodology, and any changes to the Rules-Based Methodology or Index constituents will also be freely available to the public in advance of their implementation.[17]

As owner of the Indexes, WTI has entered into an agreement (the ''Calculation Agent Agreement'') with Bloomberg L.P. (''Bloomberg'' or the ''Calculation Agent'') to implement the Rules-Based Methodology, to calculate and maintain the Indexes, and calculate and disseminate the Index values. Pursuant to the Calculation Agent Agreement, the Calculation Agent will determine the number, type, and weight of securities that will comprise each Index and will perform or cause to be performed all other calculations necessary to determine the proper make-up of the Index, including the reconstitution updates for such Index. Employees of WTA and/or WTI will monitor the results produced by the Calculation Agent on an ongoing basis.

*Rules-Based Methodology*

*International Indexes: Securities Selection*

The Indexes are modified capitalization weighted indexes as developed by WTI to define the dividend-paying segments of the European, Japanese and other national and regional stock markets and to serve as Indexes for equity income investors. Only dividend—paying securities are eligible to be included in the Indexes.

In June of each year, each Index is reconstituted in accordance with the Rules-Based Methodology (''International Screening Point'' as defined below).[18] At such time, securities meeting the criteria of the Rules-Based Methodology are added to the Indexes. Securities that no longer meet these requirements are deleted. Each component security is weighted (or re-weighted if it was already in the applicable Index) to reflect its dividend-weighting in its respective Index. The Indexes were constituted by the Calculation Agent for the first time in the spring of 2006.[19] Given the

[14] According to the Application, the Trust requires some flexibility in connection with the International Funds. Although Applicants do not intend to do so, in order to comply with the requirements of the Code, to meet regulatory requirements in non-U.S. jurisdictions or to manage major changes in an International Index, an International Fund may have less than 95% of its assets invested in the Component Securities of its Underlying Index. In such a situation, which the Applicants' believe will be infrequent and of limited duration, an International Fund may have no less than 90% of its total assets in the Component Securities of its Underlying Index, with up to 10% of its assets invested in securities that are not represented in its Underlying Index. In such a situation, the Advisor or Subadvisor will attempt to reduce any potential tracking error that may otherwise occur by investing these assets in securities which are similar to (*e.g.*, having similar risk return and dividend payment profiles, comparable market capitalizations, etc.) the Component Securities of the relevant Underlying Index.

[15] For the purposes of this proposed rule filing, ''Depositary Receipts'' are American Depositary Receipts (''ADRs''), Global Depositary Receipts (''GDRs''), and Euro Depositary Receipts (''EDRs'') (collectively, ''Depositary Receipts''). Telephone conference between Brian Trackman, Special Counsel, Division, Commission, and Michael Cavalier, Assistant General Counsel, NYSE, on May 25, 2006.

[16] In order for the Funds to qualify for tax treatment as a RIC, they must meet several requirements under the Code. Among these is a requirement that, at the close of each quarter of the Funds' taxable year: (1) At least 50% of the market value of the Funds' total assets must be represented by cash items, U.S. government securities, securities of other RICs and other securities, with such other securities limited for the purpose of this calculation with respect to any one issuer to an amount not greater than 5% of the value of the Funds' assets and not greater than 10% of the outstanding voting securities of such issuer; and (2) not more than 25% of the value of their total assets may be invested in securities of any one issuer, or two or more issuers that are controlled by the Funds (within the meaning of Section 851(b)(4)(B) of the Code) and that are engaged in the same or similar trades or business (other than U.S. government securities of other RICs).

''Other securities'' of an issuer are considered qualifying assets only if they meet the following conditions:

The entire amount of the securities of the issuer owned by the company is not greater in value than 5% of the value of the total assets of the company; and the entire amount of the securities of such issuer owned by the company does not represent more than 10% of the outstanding voting securities of such issuer.

Under the second diversification requirement, the ''25% diversification limitation,'' a company may not invest more than 25% of the value of its assets in any one issuer or two issuers or more that the taxpayer controls.

Compliance with the above referenced RIC asset diversification requirements are monitored by the Advisor and any necessary adjustments to portfolio issuer weights will be made on a quarterly basis or as necessary to ensure compliance with RIC requirements. When a Fund's Underlying Index itself is not RIC compliant, the Advisor generally employs a representative sampling indexing strategy (as described in the Funds' prospectus) in order to achieve the Fund's investment objective. The Funds' prospectus also gives the Funds additional flexibility to comply with the requirements of the Code and other regulatory requirements and to manage future corporate actions and index changes in smaller markets by investing a percentage of Fund assets in securities that are not included in the Fund's Underlying Index or in ADRs and Global Depositary Receipts representing such securities.

[17] More information is available on the Web site for the Funds (*http://www.wisdomtree.com*).

[18] Each Index will be reconstituted on a fixed, periodic basis, no more frequently than quarterly.

[19] June 14 Telephone Conference.

proximity of this initial constitution to the scheduled annual reconstitution date, the Indexes will not be reconstituted in June of 2006. The first annual reconstitution for the International Dividend Indexes will occur in June of 2007. Each component's weight in an Index is based on the U.S. dollar value of cash dividends paid on shares of its common stock in the twelve (12) months prior to the reconstitution. Notwithstanding the foregoing, the components of each ''Dividend Top 100 Index'' are weighted based on dividend yield. Each Index assumes dividends are reinvested into the Index. The Indexes are calculated using primary market prices and in U.S. dollars.

Each index component will have an average daily trading dollar volume of at least $100,000 for the three months prior to the International Screening Point and must trade at least 250,000 shares for *each* of the preceding six months prior to the International Screening Point.[20] Additionally, each of the high-yielding equity index components must have an average daily dollar volume of at least $200,000 for the three months preceding the International Screening Point. Once the high-yielding equity index components pass these requirements, then they are *ranked by dividend yield* and the top 30% of this defined list are included in the Index.[21]

For example, the WisdomTree Europe Dividend Index (''EDI''), measures the stock performance of investable companies incorporated in 16 industrialized European countries that pay regular cash dividends on shares of common stock. WisdomTree Japan Dividend Index (''JDI'') measures the performance of investable companies incorporated in Japan that pay regular cash dividends on shares of common stock. The WisdomTree Europe High-Yielding Equity Index (''EHYE'') comprises the top 30% of the companies within the EDI, with market capitalizations of at least $200 million at the International Screening Point (the duration of time after the close of trading on the last trading day in May and before the open of trading on the next trading day) and average daily trading volume of at least $200,000 for the three months prior to the International Screening Point, ranked by dividend yield. The WisdomTree Japan High-Yielding Equity Index (''JHYE'') comprises the top 30% of the companies within the JDI, with market capitalizations of at least $200 million at the International Screening Point and average daily trading volume of at least $200,000 for the three months prior to the International Screening Point, ranked by dividend yield. The WisdomTree Dividend Index of Europe, Far East Asia and Australasia (''DIEFA''), and the WisdomTree DIEFA High-Yielding Equity Index (''DIEFA HYE'') are modified capitalization indices created by WTI to define the dividend-paying segments of the industrialized world outside of the U.S. and Canada, and to serve as performance Indexes for equity income investors. DIEFA HYE comprises the top 30% of eligible companies within DIEFA, with market capitalizations of at least $200 million at the International Screening Point and average daily trading volume of at least $200,000 for the three months prior to the International Screening Point, ranked by dividend yield.

The WisdomTree Pacific ex-Japan Dividend Index (''WisdomTree DIPR''); the WisdomTree Pacific ex-Japan High-Yielding Equity Index (''DIPR HYE''); WisdomTree International Dividend Top 100 Index; WisdomTree Europe Dividend Top 100 Index; WisdomTree International LargeCap Dividend Index; WisdomTree International MidCap Dividend Index; WisdomTree International SmallCap Dividend Index; WisdomTree Europe SmallCap Dividend Fund; and WisdomTree Japan SmallCap Dividend Fund are modified capitalization weighted indexes developed by WTI to define various dividend-paying segments of the European, Japanese, Australia, New Zealand, Hong Kong, and Singapore stock markets. WisdomTree DIPR measures the stock performance of investable companies that pay regular cash dividends on shares of common stock and that are represented in DIEFA from Australia, New Zealand, Hong Kong, and Singapore. The WisdomTree DIPR HYE comprises the top 30% of the companies within the WisdomTree DIPR, with market capitalizations of at least $200 million at the International Screening Point and average daily trading volumes of at least $200,000 for the three months prior to the International Screening Point, ranked by dividend yield.

The WisdomTree International SmallCap Dividend Index is comprised of the dividend-paying companies from the small-capitalization segment of the WisdomTree DIEFA. The International MidCap Dividend Index is comprised of the dividend-paying companies from the mid-capitalization segment of the WisdomTree DIEFA. The WisdomTree International LargeCap Dividend Index is comprised of the dividend-paying companies from the large-capitalization segment of the WisdomTree DIEFA. The WisdomTree International Dividend Top 100 Index is comprised of the 100 highest dividend-yielding companies from the WisdomTree International LargeCap Dividend Index (*i.e.*, the top 100 companies that exhibit the highest dividend yields). The WisdomTree Europe Dividend Top 100 Index is comprised of the 100 highest dividend-yielding companies from the 300 largest companies ranked by market capitalization within the WisdomTree Europe Dividend Index. Component securities of the WisdomTree-International Dividend Top 100 and the WisdomTree Europe Dividend Top 100 are weighted in each Index based on dividend yield.

The WisdomTree Europe SmallCap Dividend Index measures the performance of small-capitalization companies incorporated in Western Europe that pay regular cash dividends on shares of common stock and meet specified requirements as of a specified date. The Index is created by first removing from the WisdomTree Europe Dividend Index the 300 companies with the highest market capitalizations as of such date. Those companies that comprise the bottom 25% of the remaining market capitalization of this group are included in the WisdomTree Europe SmallCap Dividend Index. Companies are weighted in the Index based on regular cash dividends paid.

The WisdomTree Japan SmallCap Dividend Index measures the performance of small-capitalization companies incorporated in Japan that pay regular cash dividends on shares of common stock and meet specified requirements as of a specified date. The Index is created by first removing the 300 companies with the highest market capitalizations as of the Index measurement date from the WisdomTree Japan Dividend Index. The remaining companies are then weighted in the Index based on regular cash dividends paid.

The WisdomTree International Consumer Non-Cyclical Sector Fund; WisdomTree International Basic Materials Sector Fund; WisdomTree International Communications Sector Fund; WisdomTree International Consumer Cyclical Sector Fund; WisdomTree International Energy Sector Fund; WisdomTree International Financial Sector Fund; WisdomTree International Healthcare Sector Fund; WisdomTree International Industrial Sector Fund; WisdomTree International Technology Sector Fund; and WisdomTree International Utilities

[20] *Id.*

[21] *Id.*

Sector Fund are each comprised of all the companies within the WisdomTree DIEFA classified as belonging to the industry specified in the Fund's name.

The WisdomTree Emerging Markets Dividend Index (''EMDI'') measures the stock performance of companies that pay regular cash dividends on shares of common stock with market capitalizations of at least $200 million at the International Screening Point and average daily trading volumes of at least $200,000 for the three months prior to the International Screening Point and that are incorporated in the following 12 emerging market nations: Argentina, Brazil, Chile, Mexico, Israel, South Africa, China, India, Malaysia, South Korea, Taiwan, and Thailand (''Emerging Market Countries''). In the case of China, only companies that are incorporated in China and that trade on the Hong Kong Stock Exchange are eligible for inclusion. The WisdomTree Latin America Dividend Index measures the stock performance of companies included within EMDI that are incorporated in Mexico, Brazil, Argentina, and Chile. The WisdomTree Asia Emerging Markets Dividend Index (''AEMDI'') measures the stock performance of companies included within EMDI that are incorporated in China, India, Malaysia, South Korea, Taiwan, and Thailand.

The EMDI High-Yielding Equity Index (''EMDI HYE'') comprises the top 30% of the companies within EMDI ranked by dividend yield at the International Screening Point. The AEMDI High-Yielding Equity Index comprises the top 30% of the companies within AEMDI ranked by dividend yield at the International Screening Point. EMDI Top 100 is comprised of the 100 highest dividend-yielding companies from the 300 largest companies ranked by market capitalization within EMDI at the International Screening Point (*i.e.*, the top 100 companies that exhibit the highest dividend yields). Securities are weighted in the EMDI Top 100 based on dividend yield.

In the case of the EMDI, EMDI HYE, and EMDI Top 100, component companies must list their shares on a stock exchange in one of the following regions: Argentina, Brazil, Chile, Mexico, Israel, South Africa, Hong Kong, India, Malaysia, South Korea, Taiwan, or Thailand. Companies must be incorporated in one of the Emerging Market Countries.

In the case of LDI, component companies must list their shares on a stock exchange in one of the following regions: Argentina, Brazil, Chile or Mexico. Companies must be incorporated in one of these countries.

In the case of AEMDI and AEMDI HYE, component companies must list their shares on a stock exchange in one of the following regions: Hong Kong, India, Malaysia, South Korea, Taiwan, or Thailand. Companies must be incorporated in China, India, Malaysia, South Korea, Taiwan, or Thailand.

For all 34 Indexes, companies must have paid at least $5 million in cash dividends on shares of their common stock in the 12 months prior to the annual reconstitution.[22] In the high-yield and emerging market Indexes, component companies need to have a market capitalization of at least $200 million on the International Screening Point, and shares of such companies need to have had an average daily dollar volume of at least $200,000 for three months preceding the International Screening Point. For all of the Indexes, common stocks, REITs, tracking stocks, and holding companies are eligible for inclusion. ADRs, GDRs, and EDRs, limited partnerships, royalty trusts, passive foreign investment companies, preferred stocks, closed-end funds, exchange-traded funds, and derivative securities, such as warrants and rights, are not eligible.[23]

The WisdomTree Hong Kong Dividend Index is comprised of all of the dividend-paying companies that pass the inclusion criterion for the WisdomTree DIEFA but that are incorporated in Hong Kong and whose stock trades on the Hong Kong Stock Exchange.

The WisdomTree Singapore Dividend Index is comprised of all of the dividend-paying companies that pass the inclusion criterion for the WisdomTree DIEFA but that are incorporated in Singapore and whose stock trades on the Singapore Stock Exchange.

The WisdomTree China Dividend Index is comprised of all of the dividend-paying companies that pass the inclusion criterion for the EMDI that are incorporated in China and whose stock trades on the Hong Kong Stock Exchange.

*Component and Weighting Changes to the Indexes*

In accordance with the Rules-Based Methodology, the Calculation Agent will ''screen'' annually for the Component Securities to be added to (or deleted from) the International Indexes after the close of trading on the last trading day of May (''International Screening Point'').[24] The Calculation Agent will not disclose any information concerning the identity of companies that meet the selection criteria to WTI, the Advisor, the Subadvisor, or any other affiliated entities, before such information is publicly disclosed on the Web site for the Funds (*http://www.wisdomtree.com*) (or otherwise publicly disseminated by the Calculation Agent) and is available to the entire investing public. Notwithstanding the foregoing, prior to disclosure to the general public, the Calculation Agent may disclose such information solely to those persons at WTI or WTA responsible for creating and monitoring the Rules-Based Methodology in order to permit such persons to monitor the results produced by the Calculation Agent for compliance with the Rules-Based Methodology. The Calculation Agent will be expressly prohibited from providing this information to any other employees of WTI, WTA or the Subadvisor. The employees of WTI or WTA who receive such information from the Calculation Agent (i) will not have any responsibility for the management of the Funds, (ii) will be expressly prohibited from sharing this information with those employees of WTA or the Subadvisor that have responsibility for the management of the Funds, and (iii) will be expressly prohibited from sharing or using this non-public information in any way.

The Exchange states, according to the Application, the identity and Index weightings of the companies that meet the criteria will be readily ascertainable by anyone, since the Rules-Based Methodology, including the selection criteria, will be freely available. The Calculation Agent will establish the weights for the components for the Indexes after the close of trading on the third Wednesday of June (the ''International Weighting Date''). The constituents of the Indexes and their weightings would then be announced after the close on such weighting dates or before the opening on the next Thursday to the general public at the same time as they would be disclosed to the Subadvisor. Except as specifically noted in the Application, neither WTI, the Advisor, the Subadvisor or any other

[22] June 14 Telephone Conference.

[23] *Id.*

[24] This ''screening'' is part of the Index reconstitution that will occur on a fixed periodic basis, no more frequently than quarterly. Currently, the Advisor expects such reconstitution to occur on an annual basis but has discretion to reconstitute the Indexes as frequently as quarterly. Telephone conference between Florence Harmon, Senior Special Counsel, Division, Commission, and Michael Cavalier, Assistant General Counsel, NYSE, on May 15, 2006.

affiliated entity would not be provided with the Index weightings until this time. Actual changes for the International Indexes would take effect before the opening of trading on the first Monday following the close of trading on the third Friday of June (the ''International Reconstitution Date''). The process of screening for eligible securities on the International Screening Point, weighting such securities on the International Weighting Date, and the implementation of changes to each Index on the International Reconstitution Date is sometimes referred to as the ''annual reconstitution'' or ''reconstitution.'' [25]

Securities in an Index are weighted in one of two ways. All of the Indexes, except for the ''Dividend Top 100'' Indexes, weight securities based on the amount of their cash dividends paid. The weightings of Component Securities of these Indexes are determined as follows. The initial weight of a component in an Index is determined by multiplying its annual cash dividend per share by the number of common shares outstanding for that company. This amount is sometimes referred to as the ''Cash Dividend Factor.'' Each component security's weight at the International Weighting Date is equal to its Cash Dividend Factor divided by the sum of all Cash Dividend Factors for all the components in that Index. The exception to this practice is that the ''Dividend Top 100'' Indexes weight Component Securities by dividend yield and not by the total amount of cash dividends paid. A constituent's weight in a Dividend Top 100 Index is equal to its dividend yield divided by the sum of all the dividend yields of the Index constituents.

New Component Securities may be added to an Index on a day other than the International Reconstitution Date only if there is a change to the Rules-Based Methodology that results in such new Component Securities being added to such Index. Applicants expect changes to the Rules-Based Methodology that result in the addition of components to an Index on a day other than the International Reconstitution Date will occur only infrequently, if at all. Component Securities may be deleted from an Index on a day other than the International Reconstitution Date as a result of either (i) changes to the Rules-Based Methodology or (ii) ''corporate actions'' (described below). Pursuant to the Rules-Based Methodology, Component Securities of an Index will be deleted from the Index if they (i) are acquired by a company not in such Index; (ii) are de-listed from a specified exchange; (iii) go bankrupt; (iv) cancel their regular cash dividend; or (v) if a U.S. company re-incorporates outside the U.S., or if a non-U.S. company re-incorporates outside of its specified eligible region (each, a ''corporate action''). These deletions will be executed by the Calculation Agent as soon as possible after the corporate action is announced. The ''lead time'' between the announcement of this deletion action and the action itself will range from one day to a few weeks depending on the corporate action. Whenever possible, at least two business days prior notice will be given.

The Indexes may be ''rebalanced'' in response to certain events. For example, should any Index constituent achieve a weighting equal to or greater than 24.0% of its Index, its weighting will be reduced to 20.0% at the close of the current calendar quarter, and all other components in the Index will be rebalanced. Moreover, should the ''collective weight'' of Index Component Securities whose individual current weights equal or exceed 5.0% of the Index, when added together, equal or exceed 50.0% of the Index, the weightings in those Component Securities will be reduced proportionately so that their collective weight equals 40.0% of the Index at the close of the current calendar quarter, and all other components in the Index will be rebalanced in proportion to their index weightings before the adjustment. Further iterations of these adjustments may occur until no constituent or group of constituents violates these rules.

The Indexes measure price changes against a fixed base period quantity weight. The Indexes are calculated and disseminated at least every 15 seconds whenever the NYSE is open for trading. If trading is suspended while the exchange on which an Index component company trades is still open, the last traded price for that stock is used for all subsequent Index computations until trading resumes. If trading is suspended before the opening, the stock's adjusted closing price from the previous day is used to calculate the Index. Until a particular stock opens, its adjusted closing price from the previous day is used in the Index computation. Index values are calculated and disseminated on an end-of-day basis whenever the NYSE is open for trading.

Each Fund will make changes to its portfolio holdings in response to an announced change in its Underlying Index when the Advisor or Sub-Advisor believes it is in the best interest of the Fund to do so.

According to the Application, each Index meets the numerical criteria in Section 703.16(B) of the Manual for indexes listed pursuant to Rule 19b–4(e) under the Act (with the exception of the requirement that all index securities be listed on a national securities exchange or Nasdaq) including the requirement that the ''component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio.'' The Indexes contain a specific Index screen to ensure that they satisfy the monthly share trading volume criteria of Section 703.16(B).

*Transparency of Indexes*

WTI will describe the basic concept of each Index and disclose the Rules-Based Methodology on the Funds' Web site (*http://www.wisdomtree.com*). The Web site will also include extensive information designed to educate investors, such as whitepapers and other academic discussions relating to investing. The Calculation Agent will make available to WTI information on its Indexes that WTI will make available to the general public on the Web site. Each business day, the Web site will publish free of charge (or provide a link to another Web site that will publish free of charge) the Component Securities of each Index and their respective weightings in each Index as of the close of the prior business day. Each business day, the Web site will publish free of charge (or provide a link to another Web site that will publish free of charge) the securities in each Fund's portfolio and their respective weightings, and each Fund's per share NAV, last-traded price and midpoint of the bid/ask spread as of the NAV calculation time, all as of the prior business day. The components and weightings of the Indexes, as well as each Fund's portfolio, will also be available through unaffiliated third-party data vendors, such as Bloomberg L.P.

The Funds' Web site will be publicly accessible and free of charge to all investors and will provide a weblink to the Web address for every exchange on which the securities of each Index are listed. The Exchange's Web site will include a hyperlink to the Funds' Web site.

Changes to the constituents of each Index will be disclosed prior to implementation in the Index by the Calculation Agent or on the Funds' or the Advisor's Web site. All components, weightings, additions and deletions

[25] The Indexes will be reconstituted on a fixed, periodic basis, no more frequently than quarterly.

from the Indexes will be publicly available, and publicly announced prior to any changes being made. WTI and WTA each have adopted policies, including firewalls, that prohibit personnel responsible for creating and monitoring the Indexes from disseminating or using non-public information about pending changes to Index constituents or methodology. These policies specifically prohibit the Index Administrator (the employee of WTI and/or WTA with ultimate responsibility for the Indexes and Rules-Based Methodology) and Index Staff (those employees of WTA and/or WTI appointed to assist the Index Administrator in the performance of his/her duties) from sharing any non-public information about the Indexes with personnel of the Advisor or Subadvisor responsible for management of the Funds. WTI and WTA each have adopted policies, including firewalls, that prohibit personnel responsible for the management of the Funds from sharing any non-public information about the management of the Funds with the personnel responsible for creating, monitoring, calculating, maintaining or disseminating the Indexes. WTI and WTA periodically review the operation of such procedures.[26]

The Calculation Agent will be instructed to disseminate information about the daily constituents of the Indexes to WTI, WTA, the Subadvisor and the public at the same time (except as otherwise described in the Application). The personnel responsible for creating and monitoring the Indexes, for calculating and maintaining the Indexes and for day-to-day portfolio management of the Funds will be physically segregated from each other. The Index Administrator and Index Staff are employees of WTI and/or WTA. The Calculation Agent is not, and will not be, affiliated with WTI, WTA, or the Subadvisor. The portfolio managers responsible for day-to-day portfolio management of the Funds are employees of the Subadvisor. The personnel responsible for overseeing the activities of the Subadvisor in connection with the management of the Funds are employees of WTA. Employees of WTI and WTA, including the Index Administrator, Index Staff and the personnel responsible for overseeing the activities of the Subadvisor, will not have access to the computer systems used by the Subadvisor in connection with portfolio management. The Subadvisor will not have any input into the development of the Rules-Based Methodology or the calculation of the Indexes.

WTI and WTA have adopted policies which (i) prohibit insider trading on material, non-public information;[27] (ii) require any personnel responsible for the management of a Fund to pre-clear or provide notification of all personal securities transactions with a designated employee within WTI and WTA's Legal or Compliance teams, (iii) require any personnel responsible for creating and monitoring the Indexes to pre-clear or provide notification of all personal securities transactions with a designated employee within WTI and WTA's Legal or Compliance teams, and (iv) require reporting of securities transactions a designated employee within WTI and WTA's Legal or Compliance teams in accordance with Rule 17j–1 under the Investment Company Act and Rule 204A under the Advisors Act. The Subadvisor has informed the Trust that it has adopted policies and procedures to monitor and restrict securities trading by certain employees.

*Public Availability of Information Relating to the Component Securities of Each Index*

All the securities included in the International Indexes will be listed on major stock exchanges in their respective countries. A Web address exists for every international exchange where the international Component Securities trade and ''quotations'' (which may be disseminated on a delayed basis or may not be updated during NYSE trading hours) can be accessed for each of such securities through such Web address. In addition, U.S. retail investors with access to the Internet can access ''quotations'' on a delayed basis with respect to these foreign securities through Yahoo Finance! as well as other financial Web sites.[28] Investors with access to a Bloomberg machine can directly access real-time ''quotations'' and fundamental data on these foreign securities.[29]

As of March 31, 2006, the WisdomTree Europe Dividend Index's top three holdings were HSBC Holdings PLC, BP PLC, and ENI S.p.A.; the Index's top three industries were Financials, Consumer Non-Cyclical, and Energy, and Index components had a total market capitalization of approximately $9.6 trillion. The average total market capitalization was approximately $8.9 billion. The 10 largest constituents represented approximately 21.0% of the Index weight. The five highest weighted stocks, which represented 13.5% of the Index weight, had an average daily trading volume in excess of 130 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree Europe High-Yielding Equity Index's top three holdings were HSBC Holdings PLC, BP PLC, and ENI S.p.A.; the Index's top three industries were Financials, Communications, and Energy; and Index components had a total market capitalization of approximately $3.5 trillion. The average total market capitalization was approximately $11.2 billion. The 10 largest constituents represented approximately 38.2% of the Index weight. The five highest weighted stocks, which represented 25.1% of the Index weight, had an average daily trading volume in excess of 130 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree Japan Dividend Index's top three holdings were Toyota Motor Corp., NTT DoCoMo, Inc., and Nissan Motor Co.; the Index's top three industries were Consumer Cyclical, Industrials, and Financials; and Index components had a total market capitalization of approximately $3.8 trillion. The average total market capitalization was approximately $4.9 billion. The 10 largest constituents represented approximately 26.8% of the Index weight. The five highest weighted stocks, which represented 17.6% of the Index weight, had an average daily trading volume in excess of 5 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree Japan High-Yielding Equity Index's top three holdings were NTT DoCoMo, Inc., Nissan Motor Co., and Takeda Pharmaceutical Co; the Index's top three industries were Utilities, Consumer Cyclical, and Consumer Non-cyclical; and Index components had a total market capitalization of approximately $0.9 trillion. The average total market capitalization was approximately $3.7 billion. The 10 largest constituents represented approximately 43.3% of the Index weight. The five highest weighted stocks, which represented 30.7% of the Index weight, had an average daily trading volume in excess of 5 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree DIEFA Index's top three holdings were HSBC Holdings PLC, BP PLC, and ENI S.p.A.; the Index's top three industries were Financials,

[26] June 14 Telephone Conference.

[27] *Id.*

[28] *Id.*

[29] *Id.*

Consumer Non-cyclical, and Communications; and Index components had a total market capitalization of approximately $14.7 trillion. The average total market capitalization was approximately $ 6.6 billion. The 10 largest constituents represented approximately 15.7% of the Index weight. The five highest weighted stocks, which represented 10.1% of the Index weight, had an average daily trading volume in excess of 130 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree DIEFA High-Yielding Equity Index's top three holdings were HSBC Holdings PLC, BP PLC, and ENI S.p.A; the Index's top three industries were Financials, Communications, and Energy; and Index components had a total market capitalization of approximately $5.4 trillion. The average total market capitalization was approximately $8.5 billion. The 10 largest constituents represented approximately 26.0% of the Index weight. The five highest weighted stocks, which represented 16.7% of the Index weight, had an average daily trading volume in excess of 130 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree Pacific ex-Japan Index's top three holdings were Commonwealth Bank of Australia, National Australia Bank, and China Mobile (Hong Kong); the Index's top three industries were Financials, Communications, and Industrials; and Index components had a total market capitalization of approximately $1.3 trillion. The average total market capitalization was approximately $3.5 billion. The 10 largest constituents represented approximately 34.8% of the index weight. The five highest weighted stocks, which represented 23.0% of the Index weight, had an average daily trading volume in excess of 15 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree Pacific ex-Japan High-Yielding Equity Index's top three holdings were Commonwealth Bank of Australia, National Australia Bank, and Westpac Banking Corp.; the Index's top three industries were Financials, Communications, and Industrials; and Index components had a total market capitalization of approximately $274 billion. The average total market capitalization was approximately $2.9 billion. The 10 largest constituents represented approximately 66.3% of the Index weight. The five highest weighted stocks, which represented 51.23% of the Index weight, had an average daily trading volume in excess of 9 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree International LargeCap Dividend Index's top three holdings were HSBC Holdings PLC, BP PLC, ENI S.p.A.; the Index's top three industries were Financials, Consumer Non-cyclical, and Communications; and Index components had a total market capitalization of approximately $10.2 trillion. The average total market capitalization was approximately $33.9 billion. The 10 largest constituents represented approximately 21.9% of the Index weight. The five highest weighted stocks, which represented 14.0% of the Index weight, had an average daily trading volume in excess of 130 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree International MidCap Dividend Index's top three holdings were United Utilities PLC, Wesfarmers Limited, and Telecom Corp. of New Zealand; the Index's top three industries were Financials, Consumer Cyclical, and Industrials; and Index components had a total market capitalization of approximately $3.4 trillion. The average total market capitalization was approximately $4.9 billion. The 10 largest constituents represented approximately 8.1% of the Index weight. The five highest weighted stocks, which represented 4.7% of the Index weight, had an average daily trading volume in excess of 4.8 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree International SmallCap Dividend Index's top three holdings were Neptune Orient Lines Ltd., Ascenda Real Estate Investment Trust, and CapitalMall Trust; the Index's top three industries were Industrials, Financials, and Consumer Cyclical; and Index components had a total market capitalization of approximately $1.1 trillion. The average total market capitalization was approximately $0.92 billion. The 10 largest constituents represented approximately 5.5% of the Index weight. The five highest weighted stocks, which represented 3.3% of the Index weight, had an average daily trading volume in excess of 2 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree International Dividend Top 100 Index's top three holdings were Telstra Corp. Ltd., Lloyds TSB Group PLC, and Commonwealth Bank of Australia; the Index's top three industries were Financials, Communications, and Utilities; and Index components had a total market capitalization of approximately $4.0 trillion. The average total market capitalization was approximately $40.4 billion. The 10 largest constituents represented approximately 16.2% of the Index weight. The five highest weighted stocks, which represented 9.1% of the Index weight, had an average daily trading volume in excess of 25.7 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree Europe Dividend Top 100 Index's top three holdings were United Utilities, Lloyds TSB Group, and ENEL SPA; and Index components had a total market capitalization of approximately $3.7 trillion. The average total market capitalization was approximately $37 billion. The 10 largest constituents represented approximately 14.5% of the Index weight. The five highest weighted stocks, which represented 7.97% of the Index weight, had an average daily trading volume in excess of 58.8 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree Europe SmallCap Dividend Index's top three holdings were Compagnie Maritime Belge SA, Vastned Retail NV, and Brit Insurance Holdings PLC; and Index components had a total market capitalization of $359.45 billion. The average total market capitalization was approximately $0.78 billion. The 10 largest constituents represented approximately 9.12% of the Index weight. The five highest weighted stocks, which represented 5.07% of the Index weight, had an average daily trading volume in excess of 2.74 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree Japan SmallCap Dividend Index's top three holdings were Bosch Corp., Yokohama Rubber Co. Ltd., and Toho Gas Co. Ltd.; and Index components had a total market capitalization of $522.79 billion. The average total market capitalization was approximately $1.10 billion. The 10 largest constituents represented approximately 5.84% of the Index weight. The five highest weighted stocks, which represented 3.14% of the Index weight, had an average daily trading volume in excess of 1.28 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree International Basic Materials Sector Index's top three holdings were BHP Billiton PLC, Anglo

American PLC, and BASF AG; and Index components had a total market capitalization of approximately $915.2 billion. The average total market capitalization was approximately $ 5.7 billion. The 10 largest constituents represented approximately 48.8% of the Index weight. The five highest weighted stocks, which represented 34.8% of the Index weight, had an average daily trading volume in excess of 12 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree International Communications Sector Index's top three holdings were Vodafone Group, Deutsche Telekom, and China Mobile (Hong Kong); and Index components had a total market capitalization of approximately $1.5 trillion. The average total market capitalization was approximately $10.8 billion. The 10 largest constituents represented approximately 55.8% of the Index weight. The five highest weighted stocks, which represented 36.3% of the Index weight, had an average daily trading volume in excess of 144 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree International Consumer Cyclical Sector Index's top three holdings were Toyota Motor Corp., DaimlerChrysler, and Nissan Motor Co Ltd. and Index components had a total market capitalization of approximately $1.7 trillion. The average total market capitalization was approximately $4.3 billion. The 10 largest constituents represented approximately 31.5% of the Index weight. The five highest weighted stocks, which represented 22.4% of the Index weight, had an average daily trading volume in excess of 7 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree International Consumer Noncyclical Sector Index's top three holdings were GlaxoSmithKline PLC, Nestle SA, and Novartis SG; and Index components had a total market capitalization of approximately $2.2 trillion. The average total market capitalization was approximately $6.5 billion. The 10 largest constituents represented approximately 46.5% of the Index weight. The five highest weighted stocks, which represented 30.5% of the Index weight, had an average daily trading volume in excess of 8 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree International Energy Sector Index's top three holdings were BP PLC, ENI S.p.A., and Total SA; and Index components had a total market capitalization of approximately $1.1 trillion. The average total market capitalization was approximately $22.8 billion. The 10 largest constituents represented approximately 56.1% of the Index weight. The five highest weighted stocks, which represented 40.0% of the Index weight, had an average daily trading volume in excess of 25.3 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree International Financial Sector Index's top three holdings were HSBC Holdings PLC, Royal Bank of Scotland Group, and Lloyds TSB Group PLC; and Index components had a total market capitalization of approximately $4.3 trillion. The average total market capitalization was approximately $9.0 billion. The 10 largest constituents represented approximately 32.8% of the Index weight. The five highest weighted stocks, which represented 20.72% of the Index weight, had an average daily trading volume in excess of 42.9 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree International Healthcare Sector Index's top three holdings were GlaxoSmithKline PLC, Novartis SG, and Astrazeneca PLC; and Index components had a total market capitalization of approximately $1.1 trillion. The average total market capitalization was approximately $10.2 billion. The 10 largest constituents represented approximately 49.8% of the Index weight. The five highest weighted stocks, which represented 40.0% of the Index weight, had an average daily trading volume in excess of 8 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree International Industrial Sector Index's top three holdings were Siemens AG, Wesfarmers Ltd., and Deutsche Post AG; and Index components had a total market capitalization of approximately $1.9 trillion. The average total market capitalization was approximately $3.9 billion. The 10 largest constituents represented approximately 24.4% of the Index weight. The five highest weighted stocks, which represented 15.1% of the Index weight, had an average daily trading volume in excess of 9 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree International Technology Sector Index's top three holdings were Canon Inc., SAP AG, and Oracle Corp. Japan; and Index components had a total market capitalization of approximately $316.3 billion. The average total market capitalization was approximately $3.9 billion. The 10 largest constituents represented approximately 60.1% of the Index weight. The five highest weighted stocks, which represented 46.0% of the Index weight, had an average daily trading volume in excess of 4 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree International Utilities Sector Index's top three holdings were Enel S.p.A., E.ON AG, and National Grid PLC; and Index components had a total market capitalization of approximately $776.1 billion. The average total market capitalization was approximately $12.5 billion. The 10 largest constituents represented approximately 53.9% of the Index weight. The five highest weighted stocks, which represented 35.3% of the Index weight, had an average daily trading volume in excess of 14.3 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the EMDI top three holdings were Taiwan Semiconductor, Manufacturing Company Ltd., Oil & Natural Gas Corp. Ltd., and Chunghwa Telecom Co. Ltd.; and Index components had a total market capitalization of approximately $2.31 trillion. The average total market capitalization was approximately $2.93 billion. The 10 largest constituents represented approximately 20.16% of the Index weight. The five highest weighted stocks, which represented 12.06% of the Index weight, had an average daily trading volume in excess of 11 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the EMDI HYE top three holdings were Taiwan Semiconductor Manufacturing Company Ltd., Oil & Natural Gas Corp. Ltd., and Chunghwa Telecom; and Index components had a total market capitalization of approximately $522.6 billion. The average total market capitalization was approximately $2.15 billion. The 10 largest constituents represented approximately 39.80% of the Index weight. The five highest weighted stocks, which represented 23.94% of the Index weight, had an average daily trading volume of in excess of 11 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the EMDI Top 100 top three holdings were S-Oil Corp, Entel Empresa Nacional de Telecom, and China Steel Corp; and Index components had a total market capitalization of approximately $641.4

billion. The average total market capitalization was approximately $6.55 billion. The 10 largest constituents represented approximately 22.05% of the Index weight. The five highest weighted stocks, which represented 14.09% of the Index weight, had an average daily trading volume in excess of 8 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the AEMDI top three holdings were Taiwan Semiconductor Manufacturing Company Ltd., Oil & Natural Gas Corp Ltd., and Chunghwa Telecom; and Index components had a total market capitalization of approximately $1.7 trillion. The average total market capitalization was approximately $2.68 billion. The 10 largest constituents represented approximately 26.26% of the Index weight. The five highest weighted stocks, which represented 15.87% of the Index weight, had an average daily trading volume in excess of 11 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the AEMDI HYE top three holdings were Taiwan Semiconductor Manufacturing Company Ltd., Chunghwa Telecom, and SK Telecom; and Index components had a total market capitalization of approximately $382.1 billion. The average total market capitalization was approximately $1.95 billion. The 10 largest constituents represented approximately 47.15% of the Index weight. The five highest weighted stocks, which represented 29.60% of the Index weight, had an average daily trading volume in excess of 18 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the LDI top three holdings were Companhia Siderurgica Nacional, Grupo Mexico-B, and Telefonos de Mexico-L; and Index components had a total market capitalization of approximately $250.8 billion. The average total market capitalization was approximately $4.11 billion. The 10 largest constituents represented approximately 58.90% of the Index weight. The five highest weighted stocks, which represented 42.17% of the Index weight, had an average daily trading volume in excess of 12 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree China Dividend Index top three holdings were Petrochina CO–H, China Petroleum & Chemical-H, and China Telecom Corp. Ltd.-H; and Index components had a total market capitalization of approximately $73.6 billion. The average total market capitalization was approximately $2.23 billion. The 10 largest constituents represented approximately 63.01% of the Index weight. The five highest weighted stocks, which represented 47.29% of the Index weight, had an average daily trading volume in excess of 89 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree Hong Kong Dividend Index top three holdings were China Mobile, Hang Seng BK, and BOC Hong Kong Ho; and Index components had a total market capitalization of approximately $490.21 billion. The average total market capitalization was approximately $6.72 billion. The 10 largest constituents represented approximately 58.37% of the Index weight. The five highest weighted stocks, which represented 40.00% of the Index weight, had an average daily trading volume in excess of 16 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, the WisdomTree Singapore Dividend Index top three holdings were Singapore Telecommunications, DBS Group Hldgs, and United Overseas; and Index components had a total market capitalization of approximately $185.55 billion. The average total market capitalization was approximately $2.13 billion. The 10 largest constituents represented approximately 54.43% of the Index weight. The five highest weighted stocks, which represented 40.00% of the Index weight, had an average daily trading volume in excess of 10 million shares during the period January 1 through March 31, 2006.

As of March 31, 2006, 100% of the component stocks of all Indexes underlying the Funds traded at least 250,000 shares in each of the previous six months.

*Purchases and Redemptions of Shares and Creation Units*

The Funds will offer and sell Creation Units of Shares through the Distributor on a continuous basis at the NAV per share next determined after receipt of an order in proper form. The NAV of Shares will be determined as of the close of regular trading on the NYSE (the ''NAV Calculation Time,'' currently expected to be 4 p.m. Eastern Time (''ET'')) on each business day. It is anticipated that the price of a share of each Fund will range from $25 to $200, and that the price of one Creation Unit of such Shares will range from $1million to $10 million.

The Exchange believes that the price at which Shares trade will be disciplined by arbitrage opportunities created by the ability to purchase or redeem Creation Units at NAV, which should similarly prevent Shares from trading at a material premium or discount in relation to NAV.

*Placement of Orders To Purchase Creation Units*

Purchases and redemptions of Creation Units will be made generally by means of an in-kind tender of specified securities (''Deposit Securities''), with any cash portion of the purchase price and redemption proceeds to be kept to a minimum, all in the manner described herein. The Deposit Securities disclosed each business day generally will be a pro rata reflection of a Fund's portfolio securities for the business day. However, as with current ETFs, in limited circumstances and only when doing so would be in the best interest of a Fund as determined by the Advisor or Subadvisor, each Fund may disclose and accept one or more basket(s) of Deposit Securities that may not be an exact pro-rata reflection of such Fund's portfolio securities. For example, a Fund might disclose and accept a non-pro rata basket of Deposit Securities if one or more portfolio securities were not readily available, or in order to facilitate or reduce the costs associated with a rebalancing of a Fund's portfolio in response to changed in its Underlying Index.

In some circumstances it may not be practicable or convenient to operate on an in-kind basis exclusively. In addition, over time, the Trust may conclude that operating on an exclusively in-kind basis for one or more funds may present operational problems for such Funds. Therefore, the Trust may permit, in its discretion, with respect to one or more Funds, under certain circumstances, an in-kind purchaser to substitute cash in lieu of depositing some or all of the requisite Deposit Securities. Substitution might be permitted or required, for example, in circumstances where one or more Deposit Securities may not be available in the quantity needed to make a Creation Deposit (defined below), or may not be eligible for trading by an Authorized Participant (defined below) or the investor on whose behalf the Authorized Participant is acting. One or more Deposit Securities may not be eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances. In order for the Trust to preserve maximum efficiency and flexibility, the Trust also reserves the right to determine in the future that Shares of one or more Funds may be

purchased in Creation Units on a cash-only basis.

Authorized participants (''Authorized Participants'') must be (1) registered as a broker-dealer under the Exchange Act and regulated by the NASD, or else be exempt from being (or otherwise not required to be) so registered or regulated, and be qualified to act as a broker or dealer in the states or other jurisdictions where the nature of its business so requires, and (2) participants in the DTC.[30]

The purchase of a Creation Unit for the Funds will operate as follows. Once a purchase order has been placed with the Distributor, the Distributor will inform the Advisor and the Fund's custodian. The custodian will then inform the appropriate sub-custodians. The Authorized Participant will deliver to the appropriate sub-custodians, on behalf of itself or the Beneficial Owner, the relevant Deposit Securities (or the cash value of all or a part of such securities, in the case of a permitted or required cash purchase or ''cash in lieu'' amount), with any appropriate adjustments as determined by the Fund. Deposit Securities must be delivered to the accounts maintained at the applicable sub-custodians. The subcustodians will confirm to the custodian that the required securities have been delivered, and the custodian will notify the Advisor and Distributor. The Distributor will then furnish the purchaser with a confirmation and Prospectus.

*Timing and Transmission of Purchase Orders*

All orders to purchase Creation Units must be received by the Distributor no later than the NAV Calculation Time, generally 4 p.m. ET on the date the order is placed (the ''Transmittal Date'') in order for the purchaser to receive the NAV determined on the Transmittal Date. The Distributor will maintain a record of Creation Unit purchases and will send out confirmations of such purchases.

The Distributor will transmit all purchase orders to the relevant Fund. The Fund may reject any order that is not in proper form. After a Fund has accepted a purchase order and received delivery of the Deposit Securities and any accompanying cash payment, NSCC or DTC, as the case may be, will instruct the Fund to initiate ''delivery'' of the appropriate number of Shares to the book-entry account specified by the purchaser.

[30] June 14 Telephone Conference.

*Payment for Creation Units*

Persons purchasing Creation Units from a Fund must make an in-kind deposit of Deposit Securities together with an amount of cash specified by the Advisor (the ''Cash Requirement''), plus the applicable Transaction Fee. The Deposit Securities and the Cash Requirement collectively are referred to as the ''Creation Deposit.'' The Cash Requirement is a cash payment designed to ensure that the NAV of a Creation Deposit is identical to the NAV of the Creation Unit it is used to purchase. The Cash Requirement will be the amount equal to the difference between the NAV of a Creation Unit and the market value of the Deposit Securities.

The Advisor or the Subadvisor will make available through NSCC or the Distributor on each business day, prior to the opening of trading on the NYSE, a list of names and the required number of shares of each Deposit Security to be included in the Creation Deposit for each Fund. That Creation Deposit will apply to all purchases of Creation Units until a new Creation Deposit composition is announced. The Advisor or Subadvisor also will make available on a daily basis information about the Creation Deposit.

Once a purchase order has been placed with the Distributor, the Distributor will inform the Subadvisor and the Fund's custodian. The Fund's custodian will then inform the appropriate sub-custodians. The Authorized Participant will deliver to the appropriate sub-custodians, on behalf of itself or the Beneficial Owner on whose behalf it is acting, the relevant Deposit Securities (or the cash value of all or a part of such securities, in the case of a permitted or required cash purchase or ''cash in lieu'' amount), with any appropriate adjustments as determined by the Fund. Deposit Securities must be delivered to the accounts maintained at the applicable sub-custodians.

*Redemption of Creation Units*

To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant. Redemption requests in good order will receive the NAV next determined after the request is received. Therefore, all redemption requests received by the Funds prior to the NAV Calculation Time will receive the NAV determined immediately thereafter, whereas all redemption requests received by the Funds after the NAV Calculation Time will receive the NAV calculated on the immediately following business day. Procedures for redemptions are analogous (in reverse) to those for purchase of Creation Units, except that redemption requests are made directly to the Fund and are not made through the Distributor.

A redemption request for the Funds will not be made through DTC. Creation Units of each Fund will be redeemed principally in kind, except in certain circumstances. However, the Funds have the right to make redemption payments in cash, in kind, or a combination or each, provided that the value of its redemption payments equals to the NAV of the Shares tendered for redemption. The Funds may make redemptions partly or wholly in cash in lieu of transferring one or more of its portfolio securities to a redeeming investor if the Funds determine, in its discretion, that such alternative is warranted due to unusual circumstances. This could happen if the redeeming investor is unable, by law or policy, to own a particular security. For example, a foreign country's regulations may restrict or prohibit a redeeming investor from holding shares of a particular issuer located in that country. The Advisor may adjust the Transaction Fee imposed on a redemption wholly or partly in cash to take into account any additional brokerage or other transaction costs incurred by the Fund.

Shares in Creation Units will be redeemable on any business day for a specified basket securities (''Redemption Securities''), and the Redemption Securities received by a redeeming investor in most cases will be the same as the Deposit Securities required of investor purchasing Creation Units on the same day.

*Availability of Information Regarding Shares and the Underlying Indexes*

In addition to the list of names and amount of each security constituting the current Deposit Securities of the Portfolio Deposit, on each business day, the Cash Requirement effective as of the previous Business Day, per outstanding share of each Fund, will be made available. The NYSE will disseminate at least every 15 seconds during the NYSE's regular trading hours (normally 9:30 a.m. to 4:15 p.m., New York time), an amount per share representing the sum of the estimated Cash Amount effective through and including the previous business day, plus the current value of the Deposit Securities, on a per Share basis. This amount represents the estimated NAV of a Share (sometimes referred to as the Indicative Optimized Portfolio Value (''IOPV'')), and reflects changes in the currency rates between

the U.S. dollar and the applicable home foreign currency. The IOPV for the Funds will be calculated by the Calculation Agent (Bloomberg L.P.).

While the IOPV disseminated by the Exchange at 9:30 a.m. E.T. is expected to be generally very close to the most recently calculated Fund NAV on a per-Fund-share basis, it is possible that the value of the portfolio of securities held by each Fund may diverge from the Deposit Securities values during any trading day. In such case, the IOPV will not precisely reflect the value of each Fund's portfolio. However, during the trading day, the IOPV can be expected to closely approximate the value per Fund share of the portfolio of securities for each Fund, except under unusual circumstances (*e.g.*, in the case of extensive rebalancing of multiple securities in a Fund at the same time by the Advisor).

The Exchange believes that dissemination of the IOPV based on the Deposit Securities provides additional information regarding the Funds that is not otherwise available to the public and is useful to professionals and investors in connection with Fund shares trading on the Exchange or the creation or redemption of Fund shares.

Where there is an overlap in trading hours between the foreign and U.S. markets with respect to the Funds, the Calculation Agent will update the applicable IOPV every 15 seconds to reflect price changes in the applicable foreign market or markets and convert such prices into U.S. dollars based on the applicable currency exchange rate. When the foreign market or markets trading overlap but close during the U.S. market hours, the IOPV will be updated every 15 seconds to reflect changes in currency exchange rates after the foreign markets close. Where there is no overlap in trading hours between the foreign and U.S. markets, then the IOPV will be updated every 15 seconds to reflect change in currency exchange rates after the foreign markets close.

In addition, the following information will be disseminated: (i) Continuously throughout the regular trading hours on the NYSE last sale prices of Shares over the Consolidated Tape, and (ii) every 15 seconds throughout such regular trading hours, the IOPV (which estimate will include the previous day's Cash Requirement and is expected to be accurate to within a few basis points). Comparing these two figures allows an investor to determine whether, and to what extent, Shares are selling at a premium or a discount to NAV. The intra-day value of each Index, based on the market price of its Component Securities, will be updated and disseminated at least every 15 seconds over the Consolidated Tape or through major market data vendors authorized by the Calculation Agent each business day.[31]

The Calculation Agent will also disseminate Index information through the Bloomberg Professional Service, which is available to subscribers. Index values on a total return basis will be disseminated on an end-of-day basis through the Bloomberg Professional Service. Price index values will be calculated by the Calculation Agent and disseminated at least every 15 seconds to the Securities Industry Automation Corporation (''SIAC''), so that such updated Index values can print to the Consolidated Tape at least every 15 seconds. A ''total return Index value'' reflects price appreciation (or depreciation) of the Underlying Securities plus reinvestment of dividends. A ''price Index value'' reflects only price appreciation (or depreciation) of the Underlying Securities. Information on the Indexes, including data on Index constituents and weightings, will be available on the Funds' Web site, as will a description of the Rules-Based Methodology.

The Calculation Agent will disseminate over the Consolidated Tape values for each Underlying Index once each trading day based on closing prices of the securities in each such Index. Each Fund will make available on a daily basis through NSCC the names and required number of Shares of each of the Deposit Securities in a Creation Unit, as well as information regarding the Cash Requirement. Each day, the NAV for each Fund will be calculated and disseminated at the same time to all market participants.[32] The Funds' Web site, accessible to all investors at no charge, will publish the current version of the Prospectus and SAI, the Underlying Index for each Fund, as well as additional quantitative information that is updated on a daily basis, including daily trading volume, closing price and closing NAV for each Fund. The NYSE will disseminate a variety of data with respect to each Fund on a daily basis; information with respect to recent NAV, net accumulated dividend, final dividend amount to be paid, Shares outstanding, estimated cash amount and total cash amount per Creation Unit will be made available prior to the NYSE opening.

The Exchange states that the closing prices of the Funds' Deposit Securities are readily available from, as applicable, the relevant markets, automated quotation systems, published or other public sources or on-line information services such as Bloomberg or Reuters. The exchange rate information required to convert such information into U.S. dollars is also readily available in newspapers and other publications and from a variety of on-line services.[33]

*Dividends and Distributions*

Beneficial owners of the Funds will receive all of the statements, notices, and reports required under the Investment Company Act and other applicable laws. They will receive, for example, annual and semi-annual reports, written statements accompanying dividend payments, proxy statements, annual notifications detailing the tax status of distributions, IRS Form 1099-DIVs, etc. Because the Trust's records reflect ownership of Shares by DTC only, the Trust will make available applicable statements, notices, and reports to the DTC Participants who, in turn, will be responsible for distributing them to the beneficial owners.

2. Other Issues

(a) *Criteria for Initial and Continued Listing.* The Funds are subject to the criteria for initial and continued listing of ICUs in Section 703.16 of the Manual. A minimum of 100,000 Shares of each Fund will be required to be outstanding at the start of trading. This minimum number of shares of each Fund required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously traded series of ICUs.

The Exchange believes that the proposed minimum number of shares of each Fund outstanding at the start of trading is sufficient to provide market liquidity and to further the Funds' investment objective to seek to provide investment results that correspond generally to the price and yield performance of the Underlying Index.

(b) *Original and Annual Listing Fees.* The original listing fees applicable to the Funds for listing on the Exchange is $5,000 for each Fund, and the continuing fees would be $2,000 for each Fund.

[31] All Index values will be disseminated only during U.S. market hours. As with international indexes underlying existing ETFs, the value of each Index will be updated and disseminated at least every 15 seconds each business day to reflect (i) changing market prices if there is any overlap between the normal market hours in the U.S. and the market(s) covered by such Index (otherwise closing or last-sale prices in the applicable non-U.S. market are used), and (ii) changing currency exchange rates.

[32] *See* Amendment No. 1.

[33] Telephone conference between Brian Trackman, Special Counsel, Division, Commission, and Michael Cavalier, Assistant General Counsel, NYSE, on May 25, 2006.

(c) *Stop and Stop Limit Orders.* Commentary .30 to Exchange Rule 13 provides that stop and stop limit orders in an ICU shall be elected by a quotation, but specifies that if the electing bid on an offer is more than 0.10 points away from the last sale and is for the specialist's dealer account, prior Floor Official approval is required for the election to be effective. This rule applies to ICUs generally.

(d) *Rule 460.10.* Rule 460.10 generally precludes certain business relationships between an issuer and the specialist or its affiliates in the issuer's securities.[34] Exceptions in the Rule permit specialists in Fund shares to enter into Creation Unit transactions through the Distributor to facilitate the maintenance of a fair and orderly market. A specialist Creation Unit transaction may only be effected on the same terms and conditions as any other investor, and only at the net asset value of the Fund shares. A specialist may acquire a position in excess of 10% of the outstanding issue of the Funds' shares, provided, however, that a specialist registered in a security issued by an investment company may purchase and redeem the ICU or securities that can be subdivided or converted into such unit, from the investment company as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

(e) *Prospectus Delivery.* The Trust has requested an exemption from certain prospectus delivery requirements under section 24(d) of the Investment Company Act.[35] Any product description used in reliance on a section 24(d) exemptive order will comply with all representations made therein and all conditions thereto. The Exchange, in an Information Memo to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the prospectus or Product Description delivery requirements applicable to the Funds.

(f) *Information Memo.* The Exchange will distribute an Information Memo to its members in connection with the trading of the Funds. 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 Funds are, how the Funds' shares are created and redeemed, the requirement that members and member firms deliver a prospectus or Product Description to investors purchasing shares of the Funds prior to or concurrently with the confirmation of a transaction, applicable Exchange rules, dissemination information, trading information and the applicability of suitability rules (including Exchange Rule 405). The memo will also discuss exemptive, no-action and interpretive relief granted by the Commission from certain rules under the Act.

(g) *Trading Halts.* In order to halt the trading of the Funds, the Exchange may consider, among other things, factors such as the extent to which trading is not occurring in underlying security(s) and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the Funds' shares is subject to trading halts caused by extraordinary market volatility pursuant to Exchange Rule 80B. The Exchange will halt trading in a Fund if the Index value or IOPV applicable to such Fund is no longer calculated or disseminated. In such event, the Exchange would immediately contact the Commission to discuss appropriate measures that may be appropriate under the circumstances. The Advisor for the WisdomTree Funds (WisdomTree Asset Management, Inc.) has informed the Exchange that the Funds will make the NAV for the Funds available to all market participants at the same time. If the NAV is not disseminated to all market participants at the same time, the Exchange will halt trading in the Shares of the Funds.[36]

(h) *Due Diligence.* The Exchange represents that the Information Memo to members will note, for example, Exchange responsibilities including that before an Exchange member, member organization, or employee thereof recommends a transaction in the Funds, a determination must be made that the recommendation is in compliance with all applicable Exchange and Federal rules and regulations, including due diligence obligations under Exchange Rule 405.

(i) *Purchases and Redemptions in Creation Unit Size.* In the Memo referenced above, members and member organizations will be informed that procedures for purchases and redemptions of shares of the Funds in Creation Unit Size are described in the Funds' Prospectus and SAI, and that shares of the Funds are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof.

(j) *Surveillance.* Exchange surveillance procedures applicable to trading in Shares are comparable to those applicable to other ICUs currently trading on the Exchange. The Exchange's surveillance procedures are adequate to properly monitor the trading of the Funds. The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG.

(k) *Hours of Trading/Minimum Price Variation.* The Funds will trade on the Exchange until 4:15 p.m. (E.T.). The minimum price variation for quoting will be $.01.

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)[37] 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 foster cooperation and coordination with persons engaged in 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.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[34] *Id.*

[35] *See* Application, note 7, *supra.*

[36] If the NAV is not disseminated to all market participants at the same time, the Exchange will immediately contact the Commission staff to discuss measures that may be appropriate under the circumstances.

[37] 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 Number SR–NYSE–2006–41 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–2006–41. 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–2006–41 and should be submitted on or before July 13, 2006.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.[38] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act [39] and will promote just and equitable principles of trade, and facilitate transactions in securities, and, in general, protect investors and the public interest.

The Commission believes that the NYSE's proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs and by allowing them to purchase and sell Fund shares at negotiated prices throughout the business day that generally track the price and yield performance of the targeted Underlying Index.[40]

Furthermore, the Commission believes that the proposed rule change raises no issues that have not been previously considered by the Commission. The Fund is similar in structure and operation to exchange-traded index funds that the Commission has previously approved for listing and trading on national securities exchanges under section 19(b)(2) of the Act.[41]

*A. Fund Characteristics*

Similar to other previously-approved, exchange-listed index fund shares, the Commission believes that the proposed Funds are reasonably designed to provide investors with an investment vehicle that substantially reflects in value the performance of the respective Underlying Index and will provide investors with a vehicle to hold a security representing the performance of a portfolio of foreign stocks. In addition, investors will be able to trade shares in the Fund continuously throughout the business day in secondary market transactions at negotiated prices. Accordingly, the proposed Fund will allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transaction costs for trading a portfolio of securities.

The Commission notes that the thirty-four Funds (i) will generally invest at least 95% of their assets in Component Securities of their respective Underlying Index and in Depositary Receipts (defined above) representing such securities and (ii) may invest up to 5% of their assets in futures contracts, options on futures contracts, options, and swaps, as well as cash and cash equivalents, and other investment companies that are not represented in their Underlying Index but which the Advisor believes will help the Funds track their Underlying Index.[42] It is expected that the Funds will have a tracking error relative to the performance of their Underlying Index of no more than 5%. As described above, the Indexes are modified capitalization weighted indexes as developed by WTI to define the dividend-paying segments of the European, Japanese and other national and regional stock markets and to serve as Indexes for equity income investors.

Given the market capitalization and liquidity of the Underlying Indexes and Funds' Component Securities, the Commission does not believe that the Fund shares should be susceptible to manipulation.[43]

The Exchange further represents that each Fund will not concentrate its investments in any particular industry or group of industries, except to the extent that the Underlying Index concentrates in the stocks of a particular industry or industries. Because each Fund's Underlying Index is broad-based and well diversified, the Commission does not believe that the Fund will be so highly concentrated such that it becomes a surrogate for trading unregistered foreign securities on the Exchange.

While the Commission believes that these requirements should help to reduce concerns that the Fund could become a surrogate for trading in a single or a few unregistered stocks, if a Fund's characteristics changed materially from the characteristics described herein, the Fund would not be in compliance with the listing and trading standards approved herein, and the Commission would expect the NYSE to file a proposed rule change pursuant to Rule 19b-4 of the Act.

*B. Disclosure*

The Exchange represents that it will circulate an information memo detailing

[38] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[39] 15 U.S.C. 78f(b)(5).

[40] The Commission notes that, as is the case with similar previously approved exchange traded funds, investors in the Fund can redeem shares in Creation-Unit-size aggregations only. *See, e.g.*, Securities Exchange Act Release Nos. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000) (File No. SR–NYSE–00–46); 50505 (October 8, 2004), 69 FR 61280 (October 15, 2004) (File No. SR–NYSE–2004–55); 50189 (August 12, 2004), 69 FR 51723 (August 20, 2004) (File No. SR–Amex–2004–05); 52178 (July 29, 2005), 70 FR 46244 (August 9, 2005) (File No. SR–NYSE–2005–41); and 52826 (November 22, 2005), 70 FR 71874 (November 30, 2005) (File No. SR–NYSE–2005–67).

[41] 15 U.S.C. 78s(b)(2).

[42] The Commission notes that the Funds may invest in sponsored ADRs and other Depositary Receipts, but will not invest in any unlisted depositary receipts or any listed depositary receipts that the Advisor deems to be illiquid or for which pricing information is not readily available. *See* note 15 *supra.*

[43] The Exchange states that as of March 31, 2006, the ten largest constituents represented a range of approximately 5.5% to 63.01% of the index weight for the thirty-four Funds. The 5 highest weighted stocks, which represented a range of 3.14% to 51.23% of the Funds' respective weight, had an average daily trading volume in excess of between 1.28 million shares and 144 million during the period January 1 through March 31, 2006.

applicable prospectus and product description delivery requirements. The memo will also discuss exemptive, no-action and interpretive relief granted by the Commission from certain rules under the Act. The memo also will address NYSE members' responsibility to deliver a prospectus or product description to all investors (in accordance with NYSE Rule 1100(b)) and highlight the characteristics of the Funds. The memo will also remind members of their suitability obligations, including NYSE Rule 405 (Diligence as to Accounts).[44] For example, the information memo will also inform members and member organizations that Fund shares are not individually redeemable, but are redeemable only in Creation-Unit-size aggregations or multiples thereof as set forth in the Fund Prospectus and SAI.[45] The Commission believes that the disclosure included in the information memo is appropriate and consistent with the Act.

*C. Dissemination of Fund Information*

With respect to pricing, once each day, the NAV for the Fund will be calculated and disseminated by the Calculation Agent, to various sources, including the NYSE, and made available on *http://www.wisdomtree.com,* and the Consolidated Tape. The NAV will be disseminated to all market participants at the same time. Also, during the Exchange's regular trading hours, the Calculation Agent will determine and disseminate every 15 seconds the IOPV for each Fund. The IOPV will reflect price changes in the applicable foreign market or markets and changes in currency exchange rates.

The Commission notes that a variety of additional information about each Fund will be readily available. Information with respect to recent NAV, net accumulated dividend, final dividend amount to be paid, Shares outstanding, estimated cash amount and total cash amount per Creation Unit will be made available prior to the NYSE opening. In addition, the Web site for the Trust, *http://www.wisdomtree.com,* which will be publicly accessible at no charge, will contain the following information for each Fund: (1) The securities in each Fund's portfolio and their respective weightings; (2) each Fund's per share NAV; and (3) the prior business day's NAV and the mid-point of the bid-ask price[46] at the time of calculation of such NAV (''Bid/Ask Price''). Also, the closing prices of the Fund's Deposit Securities are available from, as applicable, the relevant exchanges, automated quotation systems, published or other public sources in the relevant country, or on-line information services such as Bloomberg or Reuters. The exchange rate information required to convert such information into U.S. dollars is also readily available in newspapers and other publications and from a variety of online services.

Based on the representations made in the NYSE proposal, the Commission believes that pricing and other important information about the Fund is consistent with the Act.

*D. Listing and Trading*

The Commission finds that adequate rules and procedures exist to govern the listing and trading of the Fund's shares. Fund shares will be deemed equity securities subject to NYSE rules governing the trading of equity securities, including, among others, rules governing trading halts,[47] responsibilities of the specialist, account opening and customer suitability requirements, and the election of stop and stop limit orders.

In addition, the Exchange states that Shares are subject to the criteria for initial and continued listing of ICUs in Section 703.16 of the NYSE Manual. The Commission believes that the listing and delisting criteria for Fund shares should help to ensure that a minimum level of liquidity will exist in the Fund to allow for the maintenance of fair and orderly markets. The NYSE will require that a minimum of one Creation Units (at least 100,000 Shares) will be required to be outstanding at the start of trading.[48]

*E. Surveillance*

The Commission finds that NYSE's surveillance procedures are reasonably designed to monitor the trading of the proposed iShares, including concerns with specialists purchasing and redeeming Creation Units. The NYSE represents that its surveillance procedures applicable to trading in the proposed Shares are comparable to those applicable to other ICUs currently trading on the Exchange. The Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the Funds. The Exchange is also able to obtain information regarding trading in both the Fund shares and the Component Securities by its members on any relevant market; in addition, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG.

As stated, when a fund advisor or broker-dealer, or its affiliate, is involved in the development and maintenance of a stock index upon which a product is based, the advisor or broker-dealer or its affiliate should have procedures designed specifically to address the improper sharing of information. The Commission notes that WTI and WTA each have adopted policies and procedures, including firewalls, to prevent the misuse of material, non-public information regarding changes to component stocks in the Funds.

*F. Accelerated Approval*

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[49] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the proposal is consistent with the listing and trading standards in NYSE Rule 703.16 (ICUs), and the Commission has previously approved similar products based on foreign indices.[50] Consequently, the Commission believes that it is appropriate to permit investors to benefit from the flexibility afforded by trading these products as soon as possible.

Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,[51] to approve the proposal on an accelerated basis.

[44] NYSE Rule 405 generally requires that members use due diligence to learn the essential facts relative to every customer, order or account accepted.

[45] *See* discussion under Section II.A.1(1) ''Operation of Fund,'' above. The Exchange has represented that the information memo will also discuss exemptive, no-action, and interpretive relief granted by the Commission from certain rules under the Act.

[46] The Bid-Ask Price of the Fund is determined using the highest bid and lowest offer on the Exchange as of the time of calculation of the Fund's NAV.

[47] In order to halt the trading of the Fund, the Exchange may consider, among others, factors including: (i) The extent to which trading is not occurring in stocks underlying the index; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Fund shares is subject to trading halts caused by extraordinary market volatility pursuant to NYSE Rule 80B.

[48] This minimum number of shares required to be outstanding at the start of trading is comparable to requirements that have been applied to previously listed series of ICUs. June 14 Telephone Conference.

[49] 15 U.S.C. 78s(b)(2).

[50] *See supra* note 40. *See also, e.g.*, Securities Exchange Act Release Nos. 44990 (October 25, 2001), 66 FR 56869 (November 13, 2001) (SR–Amex–2001–45); 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000) (SR–Amex–98–49); and 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (SR–Amex–95–43).

[51] 15 U.S.C. 78s(b)(5).

## V. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[52] that the proposed rule change (SR–NYSE–2006–41), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[53]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. 06–5626 Filed 6–21–06; 8:45 am]

**BILLING CODE 8010–01–P**

[52] 15 U.S.C. 78s(b)(2).

[53] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–53999; File No. SR–NYSEArca–2006–30]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Trading of WisdomTree Exchange Traded Funds Pursuant to Unlisted Trading Privileges

June 15, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 15, 2006, NYSE Arca, Inc. (the ''Exchange''), through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or the ''Corporation''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to NYSE Arca Equities Rule 5.2(j)(3), the Exchange proposes to trade, pursuant to unlisted trading privileges (''UTP''), shares (''Shares'') of the following thirty-four (34) exchange traded funds (''ETFs''), which are Investment Company Units under the Rule: (1) WisdomTree Europe Total Dividend Fund; (2) WisdomTree Europe High-Yielding Equity Fund; (3) WisdomTree Japan Total Dividend Fund; (4) WisdomTree Japan High-Yielding Equity Fund; (5) WisdomTree DIEFA Fund; (6) WisdomTree DIEFA High Yielding Equity Fund; (7) WisdomTree Pacific ex-Japan Total Dividend Fund; (8) WisdomTree Pacific ex-Japan High-Yielding Equity Fund; (9) WisdomTree International LargeCap Dividend Fund; (10) WisdomTree International MidCap Dividend Fund; (11) WisdomTree International SmallCap Dividend Fund; (12) WisdomTree International Dividend Top 100 Fund; (13) WisdomTree Europe Dividend Top 100 Fund; (14) WisdomTree Europe SmallCap Dividend Fund; (15) WisdomTree Japan SmallCap Dividend Fund; (16) WisdomTree International Consumer Non-Cyclical Sector Fund; (17) WisdomTree International Basic Materials Sector Fund; (18) WisdomTree International Communications Sector Fund; (19) WisdomTree International Consumer Cyclical Sector Fund; (20) WisdomTree International Energy Sector Fund; (21) WisdomTree International Financial Sector Fund; (22) WisdomTree International Healthcare Sector Fund; (23) WisdomTree International Industrial Sector Fund; (24) WisdomTree International Technology Sector Fund; (25) WisdomTree International Utilities Sector Fund; (26) WisdomTree Emerging Markets Total Dividend Fund; (27) WisdomTree Emerging Markets High-Yielding Equity Fund; (28) WisdomTree Emerging Markets Dividend Top 100 Fund; (29) WisdomTree Latin America Dividend Fund; (30) WisdomTree Asia Emerging Markets Total Dividend Fund; (31) WisdomTree Asia Emerging Markets High-Yielding Equity Fund; (32) WisdomTree China Dividend Fund; (33) WisdomTree Hong Kong Dividend Fund; and (34) WisdomTree Singapore Dividend Fund (collectively, the ''Funds'').[3]

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

[3] ''WisdomTree,'' ''High-Yielding Equity,'' ''Dividend Top 100,'' ''WisdomTree DIEFA,'' ''International Dividend Top 100,'' and ''Dividend Stream'' are servicemarks of WisdomTree Investments, Inc.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Pursuant to NYSE Arca Equities Rule 5.2(j)(3), the Exchange proposes to trade, pursuant to UTP, Shares of the Funds. The Funds are separate investment portfolios of the WisdomTree Trust (the ''Trust'').[4] A rule proposal for the original listing and trading of the Shares was filed with the Commission by the New York Stock Exchange, LLC (''NYSE'')[5] and was approved on June 15, 2006.[6] The Shares are Investment Company Units under NYSE Arca Equities Rule 5.2(j)(3).

The Funds will hold certain securities (''Component Securities'') selected to correspond generally to the performance of the following indexes, respectively (the ''Indexes,'' ''Underlying Indexes'' or ''International Indexes''): (1) WisdomTree Europe Dividend Index; (2) WisdomTree Europe High-Yielding Equity Index; (3) WisdomTree Japan Dividend Index; (4) WisdomTree Japan High-Yielding Equity Index; (5) WisdomTree Dividend Index of Europe, Far East Asia and Australasia (referred to as the ''WisdomTree DIEFA Index''); (6) WisdomTree DIEFA High-Yielding Equity Index; (7) WisdomTree Dividend Index of the Pacific Region (referred to as the ''WisdomTree Pacific ex-Japan Index''); (8) WisdomTree Pacific ex-Japan High-Yielding Equity Index; (9) WisdomTree International LargeCap

[4] The Trust will be registered under the Investment Company Act of 1940 (15 U.S.C. 80a), (the ''Investment Company Act''). The Trust filed with the Commission a Registration Statement for certain Funds (specifically, numbers 1 to 15 of the Funds specified above) on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the Investment Company Act relating to the Funds (File Nos. 333–132380 and 811–21864) on March 13, 2006, and filed an amendment thereto on June 5, 2006, (''Registration Statement''). In the June 5, 2006, amendment to the Registration Statement, the Trust changed the names of the WisdomTree DIPR Fund and WisdomTree DIPR High-Yielding Equity Fund to the WisdomTree Pacific ex-Japan Total Dividend Fund and WisdomTree Pacific ex-Japan High-Yielding Equity Fund, respectively. In contrast to the Funds, which each invest in dividend-paying non-U.S. equity securities, the Trust also consists of six funds that invest in indexes comprised of dividend-paying U.S. equity securities, as described in the Registration Statement, that are not included in this rule proposal.

On April 19, 2006, the Trust filed with the Commission an Application for Orders under Sections 6(c) and 17(b) of the Investment Company Act for the purpose of exempting all of the Funds from various provisions of the Investment Company Act and the rules thereunder (''Application'').

[5] *See* File No. SR–NYSE–2006–41. (''NYSE Proposal'').

[6] *See* Securities Exchange Act Release No. 53998 (File No. SR–NYSE–2006–41) (''NYSE Order'').

Dividend Index; (10) WisdomTree International MidCap Dividend Index; (11) WisdomTree International SmallCap Dividend Index; (12) WisdomTree International Dividend Top 100 Index; (13) WisdomTree Europe Dividend Top 100 Index; (14) WisdomTree Europe SmallCap Dividend Index; (15) WisdomTree Japan SmallCap Dividend Index; (16) WisdomTree International Consumer Non-Cyclical Sector Index; (17) WisdomTree International Basic Materials Sector Index; (18) WisdomTree International Communications Sector Index; (19) WisdomTree International Consumer Cyclical Sector Index; (20) WisdomTree International Energy Sector Index; (21) WisdomTree International Financial Sector Index; (22) WisdomTree International Healthcare Sector Index; (23) WisdomTree International Industrial Sector Index; (24) WisdomTree International Technology Sector Index; (25) WisdomTree International Utilities Sector Index; (26) WisdomTree Emerging Markets Dividend Index (''EMDI''); (27) WisdomTree Emerging Markets High-Yielding Equity Index (''EMDI HYE''); (28) WisdomTree Emerging Markets Dividend Top 100 Index (''EMDI Top 100''); (29) WisdomTree Latin America Dividend Index (''LDI''); (30) WisdomTree Asia Emerging Markets Dividend Index (''AEMDI''); (31) WisdomTree Asia Emerging Markets High-Yielding Equity Index (''AEMDI HYE''); (32) WisdomTree China Dividend Index; (33) WisdomTree Hong Kong Dividend Index and (34) WisdomTree Singapore Dividend Index.

The investment objective of each Fund will be to provide investment returns that closely correspond to the price, dividend, and yield performance of its Underlying Index. In seeking to achieve the respective investment objective of each Fund, BNY Investment Advisors (the ''Subadvisor'') may utilize a ''replication'' strategy, or a ''representative sampling'' strategy with respect to its Underlying Index. The Trust expects that a Fund using a replication strategy will invest in substantially all of the component securities in its portfolio in the same approximate proportions as in its Index. A Fund utilizing a representative sampling strategy generally will invest in a significant number of the component securities of its Underlying Index, but it may not invest in all of the component securities of its Underlying Index. Each Fund's investment objectives, policies and investment strategies are fully disclosed in its relevant prospectus and statement of additional information (''SAI'').

The Shares

A description of the operation of the Funds, the Indexes, and the Shares is set forth in the NYSE Proposal. To summarize, the Trust will issue, with respect to each Fund on a continuous offering basis, only specified large aggregations of Shares (each such aggregation a ''Creation Unit'') currently expected to range from 25,000 to 200,000 Shares, as will be clearly stated in such Fund's Prospectus.

The Funds will offer and sell Creation Units of Shares through ALPS Distributors, Inc. (the ''Distributor'') on a continuous basis, by or through participants that have entered into participant agreements (each, an ''Authorized Participant'')[7] with the Distributor. The Funds will offer and sell Creation Units of Shares at the NAV per share next determined after receipt of an order in proper form. The NAV of the Shares will be determined as of the close of regular trading on the NYSE (the ''NAV Calculation Time,'' currently expected to be 4 p.m. Eastern Time (''ET'')) on each business day.[8]

Purchases and redemptions of Creation Units will be made generally by means of an in-kind tender of specified securities (''Deposit Securities''), with any cash portion of the purchase price (''Cash Requirement'') and redemption proceeds to be kept to a minimum, as described in the Registration Statement. The Deposit Securities and the Cash Requirement collectively are referred to as the ''Creation Deposit.'' The Cash Requirement is a cash payment designed to ensure that the NAV of a Creation Deposit is identical to the NAV of the Creation Unit it is used to purchase. The Cash Requirement will be the amount equal to the difference between the NAV of a Creation Unit and the market value of the Deposit Securities. Authorized Participants that wish to purchase a Creation Unit must transfer the Creation Deposit to the accounts maintained at the applicable sub-custodians. Creation Units are then separable upon issuance into the Shares that will be traded on the NYSE Arca Marketplace on a UTP basis.[9]

The Shares will not be individually redeemable but will only be redeemable in Creation Units. To redeem, an Authorized Participant must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant. Redemption requests in good order will receive the NAV next determined after the request is received. Procedures for redemptions are analogous (in reverse) to those for purchase of Creation Units, except that redemption requests are made directly to the Fund and are not made through the Distributor.

More information regarding the creation and redemption process is provided in the Funds' Registration Statement, SAI, and the NYSE Proposal.

Availability of Information Regarding Shares and the Underlying Indexes

In addition to the list of names and amount of each security constituting the current Deposit Securities, on each business day, the Cash Requirement effective as of the previous business day, per outstanding share of each Fund, will be made available. Every 15 seconds during the NYSE's regular trading hours (normally 9:30 a.m. to 4:15 p.m., ET), there will be disseminated though a major market vendor or on the Consolidated Tape an amount per share representing the sum of the estimated Cash Requirement effective through and including the previous business day, plus the current value of the Deposit Securities, on a per-Share basis. This amount represents the estimated NAV of a Share (sometimes referred to as the Indicative Optimized Portfolio Value (''IOPV''), and reflects changes in the currency rates between the U.S. dollar and the applicable home foreign currency. The IOPV for the Funds will be calculated by the Calculation Agent (Bloomberg L.P.).

While the IOPV is expected to be generally very close to the most recently calculated Fund NAV on a per-Fund-share basis, it is possible that the value of the portfolio of securities held by each Fund may diverge from the Deposit Securities values during the trading day. In such case, the IOPV will not precisely reflect the value of each Fund's portfolio. However, during the trading day, the IOPV can be expected to closely approximate the value per Fund share of the portfolio of securities for each Fund, except under unusual circumstances (*e.g.*, in the case of extensive rebalancing of multiple securities in a

[7] Authorized Participants are Depository Trust Company (''DTC'') participants that must be registered as broker-dealers under the Exchange Act (unless offering or selling shares outside the U.S. and not otherwise required to be registered).

[8] A ''business day'' with respect to each Fund is any day on which the NYSE is open for business.

[9] Shares are separate and distinct from the underlying securities comprising the portfolio of a Fund. The Exchange expects that the number of outstanding Shares will increase and decrease as a result of in-kind deposits and withdrawals of the underlying securities.

Fund at the same time by WisdomTree Asset Management, Inc. (the ''Advisor'')).

According to the NYSE Proposal, where there is an overlap in trading hours between the foreign and U.S. markets with respect to the Funds, the Calculation Agent will update the applicable IOPV at least every 15 seconds from 9:30 a.m. to 4:15 p.m. ET to reflect price changes in the applicable foreign market or markets and convert such prices into U.S. dollars, based on the applicable currency exchange rate. At times when the foreign market or markets are closed during the hours of 9:30 a.m. to 4:15 p.m. ET, the IOPV will be updated at least every 15 seconds during these hours to reflect changes in currency exchange rates after the foreign markets close. Where there is no overlap in trading hours between the foreign and U.S. markets, then the IOPV will be updated at least every 15 seconds from 9:30 a.m. to 4:15 p.m. ET to reflect changes in currency exchange rates after the foreign markets close.

In addition, the following information will be disseminated: (i) Continuously from 9:30 a.m. to 4:15 p.m. ET, last sale prices of Shares over the Consolidated Tape, and (ii) at least every 15 seconds throughout such hours, the IOPV. Comparing these two figures allows an investor to determine whether, and to what extent, Shares are selling at a premium or a discount to the NAV. The intra-day value of each Index, based on the market price of its component securities, will be updated and disseminated every 15 seconds over the Consolidated Tape or through organizations authorized by the Calculation Agent each business day.[10]

Information on the Indexes will be available on the Funds' Web site (*http://www.wisdomtree.com*), as will a description of the rules-based methodology. Each business day, the Web site will publish free of charge (or provide a link to another Web site that will publish free of charge) the securities in each Fund's portfolio and their respective weightings, each Fund's per share NAV and last-traded price and midpoint of the bid/ask spread as of the NAV calculation time, all as of the prior business day. The components and weightings of the Indexes, as well as each Fund's portfolio, will also be available through unaffiliated third-party major market data vendors, such as Bloomberg L.P.

All the securities included in the International Indexes will be listed on major stock exchanges in their respective countries. A Web address exists for every international exchange where the international component securities trade and ''quotations'' (which may be disseminated on a delayed basis or may not be updated during NYSE trading hours) can be accessed for each of such securities through such Web address. In addition, U.S. retail investors with access to the Internet can access ''quotations'' with respect to these foreign securities through Yahoo Finance! (*http://finance.yahoo.com*), as well as other financial Web sites. Investors with access to a Bloomberg machine can directly access ''quotations'' and fundamental data on these foreign securities. In addition, according to the NYSE Proposal, issuers of all component securities of any International Index file disclosure documents, such as prospectuses, with their respective regulators.

The Funds' Web site will be publicly accessible and free of charge to all investors and will provide a link to the Web address for every exchange on which the securities of each Index are listed. The Exchange's Web site will include a hyperlink to the Funds' Web site.

According to the NYSE Proposal, the Calculation Agent will disseminate Index information through the Bloomberg Professional Service, which is available to subscribers. Index values on a total return basis will be disseminated on an end-of-day basis through the Bloomberg Professional Service. Price index values will be calculated by the Calculation Agent and disseminated every 15 seconds from 9:30 a.m. to 4:15 p.m. ET to the Securities Industry Automation Corporation (''SIAC'') so that such Index values can print to the Consolidated Tape. A ''total return Index value'' reflects price appreciation (or depreciation) of the underlying securities, plus reinvestment of dividends. A ''price Index value'' reflects only price appreciation (or depreciation) of the underlying securities.

According to the NYSE Proposal, the Calculation Agent will disseminate over the Consolidated Tape values for each Underlying Index once each trading day, based on closing prices of the securities in each such Index. Each Fund will make available on a daily basis through National Securities Clearing Corporation (the ''NSCC'') the names and required number of Shares of each of the Deposit Securities in a Creation Unit, as well as information regarding the Cash Requirement. The NAV for each Fund will be calculated and disseminated daily. The Funds' Web site, accessible to all investors at no charge, will publish the current version of the Prospectus and SAI, the Underlying Index for each Fund, as well as additional quantitative information that is updated on a daily basis, including daily trading volume, closing price and closing NAV for each Fund. The NYSE will disseminate a variety of data with respect to each Fund on a daily basis. Information with respect to recent NAV, net accumulated dividend, final dividend amount to be paid, Shares outstanding, estimated cash amount, and total cash amount per Creation Unit will be made available each day, prior to 9:30 a.m. ET.

The closing prices of the Funds' Deposit Securities are readily available from, as applicable, the relevant markets, automated quotation systems, published or other public sources or on-line information services, such as Bloomberg or Reuters.

UTP Trading Criteria

The Exchange represents that it will cease trading the Shares of a Fund during the listing market's trading hours if: (a) The listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 and/or a halt because the IOPV and/or the Index value of a Fund is no longer calculated or disseminated; or (b) the listing market delists the Shares; or (c) the NAV per share is not disseminated to all market participants.[11] Additionally, the Exchange may cease trading the Shares of a Fund if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's

[10] All Index values will be disseminated only from 9:30 a.m. to 4:15 p.m. ET. As with international indexes underlying existing ETFs, the value of each Index will be updated and disseminated every 15 seconds during these hours each business day to reflect (i) changing market prices if there is any overlap between the normal market hours in the U.S. and the market(s) covered by such Index (otherwise closing or last-sale prices in the applicable non-U.S. market are used), and (ii) changing currency exchange rates. Index values will not be disseminated from 4:15 p.m. to 8 p.m. ET because the all relevant international markets are closed during this time. Telephone conversation between David Strandberg, Director, Issuer Services, NYSE Arca, Inc. and Ronesha Butler, Special Counsel, Division of Market Regulation (''Divison''), Commission, on June 15, 2006.

[11] Telephone conversation between Glenn H. Gsell, Director, Regulation, NYSE Arca, Inc. and Ronesha Butler, Special Counsel, and Angela Muehr, Attorney, Division, Commission, on June 15, 2006.

existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 9:30 a.m. ET until 8 p.m. ET. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be $0.01.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising an Underlying Index of a Fund, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule [12] or by the halt or suspension of trading of the underlying securities. See ''UTP Trading Criteria'' above for specific instances when the Exchange will cease trading the Shares.

Shares will be deemed ''Eligible Listed Securities,'' as defined in NYSE Arca Equities Rule 7.55, for purposes of the Intermarket Trading System (''ITS'') Plan and therefore will be subject to the trade through provisions of NYSE Arca Equities Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

Unless exemptive or no-action relief is available, the Shares will be subject to the short sale rule, Rule 10a–1 and Regulation SHO under the Act. If exemptive or no-action relief is provided, the Exchange will issue a notice detailing the terms of the exemption or relief.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to monitor Exchange trading of the Shares in all trading sessions.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange is able to obtain information regarding trading in the Shares and the securities comprising the Underlying Indexes through ETP Holders in connection with such ETP Holders' proprietary or customer trades. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (2) Funds' calculation of NAV; (3) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; [13] (4) how information regarding the IOPV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

The Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds.[14] The Information Bulletin will also discuss any relief, if granted by the Commission or the staff, from any rules under the Securities Exchange Act of 1934.[15]

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also disclose that the NAV for the Shares will be calculated shortly after 4 p.m. ET each trading day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [16] in general and furthers the objectives of Section 6(b)(5),[17] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

In addition, the Exchange believes that the proposal is consistent with Rule 12f–5 under the Act [18] because it deems the Shares to be equity securities, thus rendering the Shares subject to the Exchange's existing rules governing the trading of equity securities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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

[12] *See* NYSE Arca Equities Rule 7.12.

[13] The Exchange has proposed to amend NYSE Arca Equities Rule 9.2(a) (''Diligence as to Accounts'') to provide that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the proposed rule amendment provides that ETP Holders should make reasonable efforts to obtain the customer's financial status, tax status, investment objectives and any other information that they believe would be useful to make a recommendation. *See* Amendment No. 2 to SR–PCX–2005–115 (May 5, 2006).

[14] The Application included a request that the exemptive order also grant relief from Section 24(d) of the 1940 Act, which would permit dealers to sell Shares in the secondary market unaccompanied by a statutory prospectus when prospectus delivery is not required by the Securities Act of 1933. Any Product Description used in reliance on Section 24(d) exemptive relief will comply with all representations and conditions set forth in the order.

[15] 15 U.S.C. 78a.

[16] 15 U.S.C. 78s(b).

[17] 15 U.S.C. 78s(b)(5).

[18] 17 CFR 240.12f–5.

Number SR–NYSEArca–2006–30 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2006–30. 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–NYSEArca–2006–30 and should be submitted on or before July 13, 2006.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[20] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[21] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[22] The Commission notes that it previously approved the listing and trading of the Shares on the NYSE.[23] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[24] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. NYSEArca rules deem the Shares to be equity securities, thus trading in the Shares will be subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[25] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

In support of the portion of the proposed rule change regarding UTP of the Shares, the Exchange has made the following representations:

1. The Exchange has appropriate rules to facilitate transactions in this type of security in all trading sessions.

2. The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange.

3. The Exchange will distribute an Information Bulletin to its members prior to the commencement of trading of the Shares on the Exchange that explains the special characteristics and risks of trading the Shares.

4. The Exchange will require a member with a customer who purchases newly issued Shares on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the Information Bulletin.

5. The Exchange will cease trading in the Shares if (i) the listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 and/or a halt because the IOPV and/or the Index value of a Fund is no longer calculated or disseminated, or (ii) the listing market delists the Shares, or (iii) the NAV per share is not disseminated to all market participants. Additionally, the Exchange may cease trading the Shares if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of these Shares on the NYSE is consistent with the Act.[26] The Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Shares.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEArca–2006–30), is hereby approved on an accelerated basis.[27]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–9831 Filed 6–21–06; 8:45 am]

BILLING CODE 8010–01–P

[19] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78*l*(f).

[22] Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[23] *See* NYSE Order, *supra* note 6.

[24] 17 CFR 240.12f–5.

[25] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[26] *See* NYSE Order, *supra* note 6.

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket No. OST–2006–25103]**

### Advisory Committee on Synthesis and Assessment Product 4.7: Impacts of Climate Variability and Change on Transportation Systems and Infrastructure—Gulf Coast Study

**AGENCY:** Office of the Secretary (OST), USDOT.

**ACTION:** Notice of intent to establish an advisory committee.

**SUMMARY:** Pursuant to duties imposed by law upon the Department, including the Federal Advisory Committee Act (5 U.S.C. App. 2) ''FACA,'' and DOT Order 1120.3B, the Office of the Secretary, U.S. Department of Transportation is establishing an advisory committee to provide technical advice and recommendations to a USDOT/USGS Research Team investigating the potential impacts of climate change on transportation. The committee will include scientists, educators, experts, and representatives of State and local governments engaged in transportation decision-making. This document describes the role of the committee as set forth in the Charter. The purpose of the notice is to invite representatives from interested sectors to participate.

**FOR FURTHER INFORMATION CONTACT:** Michael Savonis, Air Quality Team Leader, Federal Highway Administration Office of Natural and Human Environment, at 202–366–2080 (*Michael.Savonis@dot.gov*). His mailing address is at the Department of Transportation, Room 3240 HEPN–10, 400 7th Street, SW., Washington, DC 20590.

*Comment Period:* The comment period for this notice extends through July 7, 2006. The Department will accept comments received as a result of this notice. During the comment period, the Department will file a charter for the committee with the General Services Administration, and the convener will begin contacting potential participants.

**SUPPLEMENTARY INFORMATION:** The DOT Center for Climate Change and Environmental Forecasting has identified the need for improved information about climate variability and change in transportation decision making. In consultation with transportation experts, climate scientists and Federal partners, the Center developed this study to investigate the impacts of climate change and variability on transportation through a regional study of the central U.S. Gulf Coast. The study will develop decision-support knowledge and tools to assist transportation decision-makers in incorporating climate-related trend information into transportation system planning, design, engineering, and operational decisions. Implications for all transportation modes—surface, marine, and aviation—will be addressed.

This study is one of 21 Synthesis and Assessment Products of the U.S. Climate Change Science Program (CCSP). The study prospectus has been posted by the CCSP for public review in the **Federal Register**, and has been modified to incorporate public comments. The prospectus is available at: *http://www.climatescience.gov/Library/sap/sap4–7/sap4–7prospectus-final.htm*.

DOT is assisted by the U.S. Geological Survey (USGS) in this study. DOT and USGS signed a memo of understanding in January 2004 agreeing to cooperate on research that will inform decision-makers and the public about the potential effects of climate variability and change on the Nation's transportation systems. This study is the first project under that agreement.

*Charter:* A summary of the Charter of the Advisory Committee on Synthesis and Assessment Product 4.7: Impacts of Climate Variability and Change on Transportation Systems and Infrastructure—Gulf Coast Study is provided below.

The Secretary of Transportation, pursuant to duties imposed by law upon the Department, including the Federal Advisory Committee Act (5 U.S.C. App. 2) ''FACA,'' and DOT Order 1120.3B, hereby establishes the U.S. Department of Transportation's (DOT) Advisory Committee on Synthesis and Assessment Product 4.7 (S&A 4.7): Impacts of Climate Variability and Change on Transportation Systems and Infrastructure—Gulf Coast Study, Phase I.

The committee will provide technical advice and recommendations to DOT in order to develop S&A Product 4.7 for the Climate Change Science Program (CCSP). The committee will provide balanced, consensual advice on the Study design, research methodology, data sources and quality, and Study findings. The committee will function as an advisory body and will comply with the requirements of FACA in carrying out its duties.

Issued this 16th day of June, 2006, at Washington DC.

**Tyler Duvall,**

*Assistant Secretary for Policy, U.S. Department of Transportation.*

[FR Doc. E6–9860 Filed 6–21–06; 8:45 am]

BILLING CODE 4910–9X–P

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket No. OST–2006–25103]**

### Advisory Committee on Synthesis and Assessment Product 4.7: Impacts of Climate Variability and Change on Transportation Systems and Infrastructure—Gulf Coast Study

**AGENCY:** Office of the Secretary (OST), USDOT.

**ACTION:** Notice of appointees to the committee, and notice of the first meeting of the committee.

**SUMMARY:** Pursuant to duties imposed by law upon the Department, including the Federal Advisory Committee Act (5 U.S.C. App. 2) ''FACA,'' and DOT Order 1120.3B, the Office of the Secretary, Department of Transportation has established an advisory committee to provide technical advice and recommendations to a USDOT/USGS Research Team investigating the potential impacts of climate change on transportation. The committee includes scientists, educators, experts, and representatives of State and local governments engaged in transportation decision-making. This document describes the role of the committee as set forth in the Charter, provides information on the qualifications of the individuals appointed by the Secretary, and provides notice of the initial meeting of the committee.

**DATES:** The first meeting of the committee will take place on July 18–19, 2006. All meetings are open to the public. The meeting is scheduled to run from 9 a.m. to 6 p.m. on July 18th and 8 a.m. to 5 p.m. on July 19th.

**ADDRESSES:** The committee meeting will take place at: Houston Marriott North at Greenspoint, 255 N. Sam Houston Pkwy East, Houston, Texas 77060. Phone: (281) 875–4000.

**FOR FURTHER INFORMATION CONTACT:** Michael Savonis, Air Quality Team Leader, Federal Highway Administration Office of Natural and Human Environment, at 202–366–2080 (*Michael.Savonis@dot.gov*). His mailing address is at the Department of Transportation, Room 3240 HEPN–10, 400 7th Street, SW., Washington, DC 20590.

*Comment Period:* The comment period for this notice extends through July 7, 2006.

**SUPPLEMENTARY INFORMATION:** The DOT Center for Climate Change and Environmental Forecasting (the Center) has identified the need for improved information about climate variability and change in transportation decision making. In consultation with transportation experts, climate scientists and Federal partners, the Center developed this study to investigate the impacts of climate change and variability on transportation through a regional study of the central U.S. Gulf Coast. The study will develop decision-support knowledge and tools to assist transportation decision-makers in incorporating climate-related trend information into transportation system planning, design, engineering, and operational decisions. Implications for all transportation modes—surface, marine, and aviation—will be addressed.

This study is one of 21 Synthesis and Assessment Products of the U.S. Climate Change Science Program (CCSP). The study prospectus has been posted by the CCSP for public review in the **Federal Register**, and has been modified to incorporate public comments. The prospectus is available at: *http://www.climatescience.gov/Library/sap/sap4-–7/sap4–7prospectus-final.htm.* DOT is assisted by the U.S. Geological Survey (USGS) in this study. DOT and USGS signed a memo of understanding in January 2004 agreeing to cooperate on research that will inform decision-makers and the public about the potential effects of climate variability and change on the Nation's transportation systems. This study is the first project under that agreement.

Members of the public wishing to attend meetings held in Department of Transportation buildings or other Federal facilities will have to enter through designated security checkpoints. The visitor entry point for the Department of Transportation headquarters building is in the southwest corner entrance to the building (i.e., the entrance nearest the corner of 7th and E Streets, SW.). Visitors must be escorted into and out of the building. Because it can take some time for large numbers of visitors to process through security, we request that visitors arrive between 8:30 and 8:45 a.m. to undergo the screening process. DOT personnel will then escort groups of visitors to the meeting room. This group escort process will also be followed for persons entering following the lunch break and for persons leaving the building for lunch and at the end of each day's meeting.

**Charter of the Committee**

A summary of the Charter of the Advisory Committee on Synthesis and Assessment Product 4.7: Impacts of Climate Variability and Change on Transportation Systems and Infrastructure—Gulf Coast Study is provided below.

The Secretary of Transportation, pursuant to duties imposed by law upon the Department, including the Federal Advisory Committee Act (5 U.S.C. App. 2) ''FACA'', and DOT Order 1120.3B, hereby establishes the U.S. Department of Transportation's (DOT) Advisory Committee on Synthesis and Assessment Product 4.7 (S&A 4.7): Impacts of Climate Variability and Change on Transportation Systems and Infrastructure—Gulf Coast Study, Phase I.

The committee will provide technical advice and recommendations to the DOT in order to develop S&A Product 4.7 for the Climate Change Science Program (CCSP). The committee will provide balanced, consensual advice on the Study design, research methodology, data sources and quality, and Study findings. The committee will function as an advisory body and will comply with the requirements of FACA in carrying out its duties.

**Members of the Committee**

The members of the committee and a summary of their qualifications are provided below.

VICKI ARROYO, J.D., Director of Policy Analysis for the Pew Center on Global Climate Change

PHILIP B. BEDIENT, Ph.D., Professor, Department of Civil and Environmental Engineering at Rice University

LEIGH B. BOSKE, Ph.D., Associate Dean and Professor of Economics at the Lyndon B. Johnson School of Public Affairs, University of Texas at Austin

ALAN CLARK, Director for Houston-Galveston Area Council Metropolitan Planning Organization

FRED DENNIN, Regional Administrator of the Federal Railroad Administration (FRA), Region 3

PAUL FISCHBECK, Ph.D., Professor, Department of Engineering and Public Policy and the Department of Social and Decision Sciences, Carnegie Mellon University

ANTHONY JANETOS, Ph.D., Vice President, H. John Heinz III Center for Science, Economics and the Environment

THOMAS KARL, Ph.D., Director of the National Climatic Data Center, NOAA

ROBERT LEMPERT, Ph.D., Senior Physical Scientist, the RAND Corporation

GILBERT MITCHELL, Division Chief, National Geodetic Survey

CHRIS OYNES, J.D., Regional Director for the Gulf of Mexico OCS Region of Minerals Management Service

HAROLD R. ''SKIP'' PAUL, P.E., Associate Director of Research at the Louisiana Transportation Research Center, Office of Highways

TOM PODANY Acting Deputy District Engineer for Programs and Project Management and Chief of Planning, Programs and Project Management Division

BURR STEWART Strategic Planning Manager, Port of Seattle

ELAINE WILKINSON, Executive Director, Gulf Regional Planning Commission

JOHN ZAMURS, Ph.D., Air Quality Section Head, Environmental Analysis Bureau, New York State Department of Transportation

**Meeting Agenda**

This meeting and any future meetings of the committee are open to the public (unless portions of the meeting are held in closed session, as provided under FACA), and time will be provided in each meeting's schedule for comments by members of the public. Attendance will necessarily be limited by the size of the meeting room. Members of the public wishing to present written materials to the committee may do so, and should make enough copies for the facilitator and all members of the committee.

The agenda topics of the meeting of the committee will include, but not necessarily be limited to, discussion of the following issues:

1. Review of draft findings of the USGS research team on climate variability and change in the study region;

2. Review of technical memos addressing the potential effects of climate variability and change on transportation planning and operations in the study region, including implications for:

—Highways and transit,
—Rail,
—Ports and waterways,
—Aviation,
—Pipelines,
—Emergency management,
—Long range planning and investment; and

3. Next steps for completion of the study.

The committee may alter its schedule and the agenda items. The agenda presented in this notice is necessarily very general since the direction and nature of the advisory committee discussions will shape the meeting. The Department will issue additional notices, as needed, with respect to future meeting schedules and agenda topics.

Issued this 16th day of June, 2006, at Washington DC.

**Tyler Duvall,**

*Assistant Secretary for Policy, U.S. Department of Transportation.*

[FR Doc. E6–9861 Filed 6–21–06; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

June 15, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before July 24, 2006 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0162.

*Type of Review:* Revision.

*Title:* Credit for Federal Tax Paid on Fuels.

*Form:* Form 4136.

*Description:* Internal Revenue Code section 34 allows a credit for Federal excise tax for certain fuel uses. This form is used to figure the amount of the income tax credit. The data is used to verify the validity of the claim for the type of nontaxable or exempt use.

*Respondents:* Individuals or households; Business or other for-profit.

*Estimated Total Burden Hours:* 9,822,578 hours.

*OMB Number:* 1545–1569.

*Type of Review:* Revision.

*Title:* Welfare-to-Work Credit.

*Form:* Form 8861.

*Description:* Section 51A of the Internal Revenue code allows employers an income tax credit of 35% of the first $10,000 of first-year wages and 50% of the first $10,000 of second-year wages paid to long-term family assistance recipients. The credit is part of the general business credit.

*Respondents:* Individuals or households; Business or other for-profit.

*Estimated Total Burden Hours:* 1,769 hours.

*OMB Number:* 1545–1983.

*Type of Review:* Extension.

*Title:* Qualified Railroad Track Maintenance Credit.

*Form:* Form 8900.

*Description:* Form 8900, Qualified Railroad Track Maintenance Credit, was developed to carry out the provisions of new Code section 45G. This new section was added by section 245 of the American Jobs Creation Act of 2004 (Pub. L. 108–357). The new form provides a means for the eligible taxpayers to compute the amount of credit.

*Respondents:* Business or other for-profit;

*Estimated Total Burden Hours:* 2,684 hours.

*OMB Number:* 1545–1825.

*Type of Review:* Extension.

*Title:* Improving the Accuracy of EITC Prepared Returns.

*Form:* Form 13388.

*Description:* This postcard will be sent to tax preparers that submitted a mixture of paper and electronic returns for their clients. The postcard provides these professionals an opportunity to acquire additional information about the EITC. It is part of a brochure to encourage 100% filing of EITC returns.

*Respondents:* Business or other for-profit; Farms.

*Estimated Total Burden Hours:* 150 hours.

*OMB Number:* 1545–1999.

*Type of Review:* Extension.

*Title:* Volunteer Return Preparation Program Hurricane Katrina Interview and Intake Sheet.

*Form:* Form 13614K.

*Description:* The complete form is used by screeners, preparers, or others involved in the return preparation process to more accurately complete tax returns of Katrina impacted taxpayers having low to moderate incomes. The persons need assistance having their returns prepared so they can fully comply with the law. The form can also be used to assist the taxpayer after their appointment.

*Respondents:* Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

*Estimated Total Burden Hours:* 105,605 hours.

*OMB Number:* 1545–1998.

*Type of Review:* Extension.

*Title:* Alternative Motor Vehicle Credit.

*Form:* Form 8910.

*Description:* Taxpayers will file Form 8910 to claim the credit for certain alternative motor vehicles placed in service after 2005.

*Respondents:* Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

*Estimated Total Burden Hours:* 65,861 hours.

*OMB Number:* 1545–1060.

*Type of Review:* Revision.

*Title:* Application for Withholding for Dispositions by Foreign Persons of U.S. Real Property Interests.

*Form:* Form 8288–B.

*Description:* Form 8288–B is used to apply for a withholding certificate from IRS to reduce or eliminate the withholding required by section 1445.

*Respondents:* Businesses or other for-profit institutions, Individuals or households.

*Estimated Total Burden Hours:* 29,256 hours.

*Clearance Officer:* Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224. (202) 622–3428.

*OMB Reviewer:* Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. (202) 395–7316.

**Robert Dahl,**

*Treasury PRA Clearance Officer.*

[FR Doc. E6–9855 Filed 6–21–06; 8:45 am]

**BILLING CODE 4830–01–P**

# Corrections

Federal Register
Vol. 71, No. 120
Thursday, June 22, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### 15 CFR Part 774

**[Docket No. 060228055–6055–01]**

**RIN 0694–AD62**

### Implementation of Unilateral Chemical/Biological (CB) Controls on Certain Biological Agents and Toxins; Clarification of Controls on Medical Products Containing Certain Toxins on the Australia Group (AG) Common Control Lists; Additions to the List of States Parties to the Chemical Weapons Convention (CWC)

*Correction*

In rule document E6–8995 beginning on page 33614 in the issue of Monday, June 12, 2006, make the following correction:

**Supplement No. 1 to Part 774 [Corrected]**

On page 33621, in Supplement No. 1 to Part 774, the table is corrected in part to read as follows:

| Control(s) | Country chart |
|---|---|
| * * * * * * * | |
| NS applies to "technology" for items controlled by 1A004 | NS Column 2. |
| MT applies to "technology" for items controlled by 1A101, 1B001, 1B101, 1B102, 1B115 to 1B119, 1C001, 1C007, 1C011, 1C101, 1C102, 1C107, 1C111, 1C116, 1C117, or 1C118 for MT reasons. | MT Column 1. |
| * * * * * * * | |

[FR Doc. Z6–8995 Filed 6–21–06; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday,
June 22, 2006

# Part II

# Department of Housing and Urban Development

## 24 CFR Part 203

## Debenture Interest Payment Changes; Final Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 203**

**[Docket No. FR–4945–F–01]**

**RIN 2502–AI41**

## Debenture Interest Payment Changes

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule makes conforming revisions to the regulations under the single family mortgage insurance program with respect to the payment of interest at the debenture rate for mortgage insurance claims. The revisions implement a recent statutory amendment to the National Housing Act that provides for a mandatory change in the calculation of all debenture interest on mortgage insurance claims paid in cash. The statutory change mandates that, when paying insurance claims in cash, debenture interest rates for such claims must be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

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

**FOR FURTHER INFORMATION CONTACT:** Leslie Bromer, Office of the Deputy Assistant Secretary for Single Family Housing, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9172, Washington, DC 20410–8000; telephone (202) 708–1672 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 224 of the National Housing Act (NHA) (12 U.S.C. 1710) provides for the debenture interest rate to be used in the payment of Federal Housing Administration (FHA) single family mortgage insurance claims upon default of the mortgage. Before the recent amendment to section 224 of the NHA by section 215 of the Consolidated Appropriations Act, 2004 (Pub. L. 108–199, approved January 23, 2004), section 224 provided that debentures issued under any section of the NHA were to bear interest at the rate in effect on the date the mortgage was endorsed for insurance (or the rate that was in effect on the issue date of the commitment to insure the loan or mortgage; such a rate is no longer used in single family programs). As amended by section 215 of the Consolidated Appropriations Act, section 224 of the NHA now provides in pertinent part that the debenture interest rate for purposes of calculating an insurance claim paid in cash on a mortgage insured under section 203 or 234 of the NHA and endorsed after January 23, 2004, ''shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.''

### II. This Final Rule

This final rule amends the single family mortgage insurance regulations under 24 CFR part 203 to conform them to section 215 of the Consolidated Appropriations Act, 2004. As noted above, section 224 of the NHA now provides that the debenture interest rate for purposes of calculating an insurance claim paid in cash on a mortgage insured under section 203 or 234 of the NHA and endorsed after January 23, 2004, ''shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.''

HUD is codifying this provision by adding new §§ 203.405(b) and 203.479(b) that track section 224 of the NHA, as amended. Specifically, these new sections state that for mortgages endorsed for insurance after January 23, 2004, the debenture interest rate for insurance claims paid in cash ''shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.''

This final rule also makes several conforming changes to HUD's single family mortgage insurance regulations to ensure that they reflect HUD's statutory authority and that they accurately describe for the public the procedure by which HUD will determine the debenture interest rate for conveyance claims, non-conveyance claims, assignment claims, and rehabilitation loan claims. These conforming changes are described below.

First, HUD is amending § 203.402 that lists the items included in the payment of insurance benefits paid in connection with conveyance claims, claims without conveyance of title, and pre-foreclosure sale claims. Specifically, § 203.402(k)(1) is amended to provide that insurance claims for properties conveyed and endorsed for insurance after January 23, 2004, shall include the debenture interest rate as it is set forth in the new § 203.405(b), which, as already described, codifies the debenture rate authorized by section 224 of the NHA, as amended. Furthermore, for properties endorsed for insurance after January 23, 2004, amended § 203.402(k)(2) and (k)(3) also implement the new debenture interest rate as it applies to the payment of insurance benefits for property without conveyance of title and to the payment for insurance benefits following a pre-foreclosure sale, respectively.

The second conforming change that HUD is making is to the regulation describing the amount of payment for assigned mortgages. Specifically, sections 203.404 and 203.478(a)(5) are amended to provide that upon an acceptable mortgage assignment, the Federal Housing Commissioner shall pay the unpaid principal balance of the loan at the time of assignment and an amount determined by, in part, an amount equivalent to the new debenture interest rate as it is set forth in section 224 of the NHA, as amended.

### III. Findings and Certifications

*Justification for Final Rulemaking*

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.'' HUD finds that good cause exists to publish this final rule for effect without first soliciting public comment, as public comment would be unnecessary and contrary to the public interest.

This final rule implements a statutory amendment to the National Housing Act that sets forth a mandatory change in the calculation of all debenture interest on mortgage insurance claims paid in cash. This amendment is prescriptive and allows no agency discretion in promulgating implementing regulations. The required revisions to the regulations incorporate the statutory amendment and do not make additional substantive changes. HUD must revise the single family mortgage insurance regulations in order to incorporate this amendment and to ensure that the regulations accurately reflect the statutory method of calculating debenture interest rates.

Since the statutory amendment is self-implementing, public comment is unnecessary. HUD is only updating its existing regulations to conform to the amendment. Accordingly, HUD believes that it is in the public interest to publish this final rule to make the statutory amendment effective as soon as possible and that prior public procedure is unnecessary.

*Environmental Impact*

This rule revises existing regulations to conform the regulations to a recent statutory change. The rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, in accordance with 24 CFR 50.19(c)(1), this rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

*Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose a federal mandate on any State, local, or tribal government, nor on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are no unusual procedures that would need to be complied with by small entities.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

**List of Subjects in 24 CFR Part 203**

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance number is 14.117.

■ Accordingly, HUD amends 24 CFR part 203 to read as follows:

## PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 1. The authority citation for part 203 continues to read as follows:

**Authority:** 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d)

■ 2. Revise § 203.402, paragraph (k) to read as follows:

**§ 203.402 Items included in payment-conveyed and nonconveyed properties.**

* * * * *

(k)(1) Except as provided in paragraphs (k)(1)(i) and (ii) of this section, for properties conveyed to the Secretary and endorsed for insurance on or before January 23, 2004, an amount equivalent to the debenture interest that would have been earned, as of the date such payment is made, on the portion of the insurance benefits paid in cash, if such portion had been paid in debentures, and for properties conveyed to the Secretary and endorsed for insurance after January 23, 2004, debenture interest at the rate specified in § 203.405(b) from the date specified in § 203.410, as applicable, to the date of claim payment, on the portion of the insurance benefits paid in cash.

(i) When the mortgagee fails to meet any one of the applicable requirements of §§ 203.355, 203.356(b), 203.359, 203.360, 203.365, 203.606(b)(l), or 203.366 within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended;

(ii) When the mortgagee fails to meet the requirements of § 203.356(a) within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may specify in writing), the interest allowance in such cash payment shall be computed to a date set administratively by the Secretary.

(2)(i) Where a claim for insurance benefits is being paid without conveyance of title to the Commissioner in accordance with § 203.368 and was endorsed for insurance on or before January 23, 2004, an amount equivalent to the sum of:

(A) The debenture interest that would have been earned, as of the date the mortgagee or a party other than the mortgagee acquires good marketable title to the mortgaged property, on an amount equal to the amount by which an insurance claim determined in accordance with § 203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(B) The debenture interest that would have been earned from the date the mortgagee or a party other than the mortgagee acquires good marketable title to the mortgaged property to the date when payment of the claim is made, on the portion of the insurance benefits paid in cash if such portion had been paid in debentures, except that if the mortgagee fails to meet any of the applicable requirements of §§ 203.355, 203.356, and 203.368(i)(3) and (5) within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(ii) Where a claim for insurance benefits is being paid without conveyance of title to the Commissioner in accordance with § 203.368 and was endorsed for insurance after January 23, 2004, an amount equivalent to the sum of:

(A) Debenture interest at the rate specified in § 203.405(b) from the date specified in § 203.410, as applicable, to the date that the mortgagee or a party other than the mortgagee acquires good marketable title to the mortgaged property, on an amount equal to the amount by which an insurance claim determined in accordance with § 203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(B) Debenture interest at the rate specified in § 203.405(b) from the date the mortgagee or a person other than the mortgagee acquires good marketable title to the mortgaged property to the date when payment of the claim is made, on the portion of the insurance

benefits paid in cash, except that if the mortgagee fails to meet any of the applicable requirements of §§ 203.355, 203.356, and 203.368(i)(3) and (5) of this chapter within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(3)(i) Where a claim for insurance benefits is being paid following a pre-foreclosure sale, without foreclosure or conveyance to the Commissioner in accordance with § 203.370, and the mortgage was endorsed for insurance on or before January 23, 2004, an amount equivalent to the sum of:

(A) The debenture interest that would have been earned, as of the date of the closing of the pre-foreclosure sale on an amount equal to the amount by which an insurance claim determined in accordance with § 203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(B) The debenture interest that would have been earned, from the date of the closing of the pre-foreclosure sale to the date when payment of the claim is made, on the portion of the insurance benefits paid in cash, if such portion had been paid in debentures; except that if the mortgagee fails to meet any of the applicable requirements of § 203.365 within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(ii) Where a claim for insurance benefits is being paid following a pre-foreclosure sale, without foreclosure or conveyance to the Commissioner, in accordance with § 203.370, and the mortgage was endorsed for insurance after January 23, 2004, an amount equivalent to the sum of:

(A) Debenture interest at the rate specified in § 203.405(b) from the date specified in § 203.410, as applicable, to the date of the closing of the pre-foreclosure sale, on an amount equal to the amount by which an insurance claim determined in accordance with § 203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(B) Debenture interest at the rate specified in § 203.405(b) from the date of the closing of the pre-foreclosure sale to the date when the payment of the claim is made, on the portion of the insurance benefits paid in cash, except that if the mortgagee fails to meet any of the applicable requirements of § 203.365 within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

■ 3. Revise § 203.404, paragraph (a)(4) to read as follows:

**§ 203.404 Amount of payment-assigned mortgages.**

* * * * *

(a)(4) For mortgages endorsed for insurance on or before January 23, 2004, an amount equivalent to the debenture interest that would have been earned on the portion of the insurance benefits paid in cash, as of the date such payment is made, and for mortgages endorsed for insurance after January 23, 2004, debenture interest at the rate specified in § 203.405(b), from the date specified in § 203.410 to the date of claim payment on the portion of the insurance benefits paid in cash, except that when the mortgagee fails to meet any one of the requirements of §§ 203.350(e), 203.351, and 203.353 of this chapter within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

* * * * *

■ 4. Revise § 203.405 to read as follows:

**§ 203.405 Debenture interest rate.**

(a) Debentures shall bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the day the commitment was issued, or as of the date the mortgage was endorsed for insurance, whichever rate is higher. For applications involving mortgages originated under the single family Direct Endorsement program, debentures shall bear interest from the date of issue, payable semiannually on the first day of January and on the first day of July of each year at the rate in effect as of the date the mortgage was endorsed for insurance;

(b) For mortgages endorsed for insurance after January 23, 2004, if an insurance claim is paid in cash, the debenture interest rate for purposes of calculating such a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

■ 5. Revise § 203.478, paragraph (a)(5) to read as follows:

**§ 203.478 Payment of insurance benefits.**

(a) * * *

(5)(i) If payment is made in cash on a mortgage endorsed for insurance on or before January 23, 2004, an amount equivalent to the debenture interest that would have been earned, as of the date insurance settlement occurs, except that where the lender fails to meet any one of the requirements of §§ 203.476 and 203.477 and such failure continues for more than 30 days (or such further time as the Commissioner may approve in writing), the debenture interest shall be computed for 30 days or the extended period;

(ii) If payment is made in cash on a mortgage endorsed for insurance after January 23, 2004, debenture interest at the rate specified in § 203.479 from the date specified in § 203.486 to the date insurance settlement occurs, except that where the lender fails to meet any one of the requirements of §§ 203.476 and 203.477 and such failure continues for more than 30 days (or such further time as the Commissioner may approve in writing), the debenture interest shall be computed for 30 days or the extended period.

■ 6. Revise § 203.479 to read as follows:

**§ 203.479 Debenture interest rate.**

(a) Debentures shall bear interest from the date of issue, payable semiannually on the first day of January and on the first day of July every year at the rate in effect as of the date the commitment was issued, or as of the date the loan was endorsed for insurance, whichever rate is higher. The applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

(b) For mortgages endorsed for insurance after January 23, 2004, if an insurance claim is paid in cash, the debenture interest rate for purposes of calculating such a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

Dated: June 14, 2006.

**Brian D. Montgomery,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 06–5577 Filed 6–21–06; 8:45 am]

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## LIST OF PUBLIC LAWS

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

**H.R. 4939/P.L. 109–234**

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**S. 193/P.L. 109–235**

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**S. 2803/P.L. 109–236**

Mine Improvement and New Emergency Response Act of 2006 (June 15, 2006; 120 Stat. 493)

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